

1 THE CLERK: Westlake Property
2 Holdings, LLC. Trustee's motion for a Rule 2004
3 examination.

4 MR. GUON: Good morning, Your Honor.
5 Allen Guon for Ira Bodenstein, the Chapter 7 trustee.

6 THE COURT: Good morning.

7 MS. CIAMBRONE: Good morning, Your
8 Honor. Rosanne Ciambrone on behalf of
9 Pipeline-Westlake; SRC Hospital; Pipeline West
10 Suburban; and Pipeline Health System, LLC.

11 MR. CARMEL: Good morning, Your Honor.
12 Marc Carmel from McDonald Hopkins. I'm here on
13 behalf of VHS of Illinois, Inc., who filed an
14 objection, and also here on behalf of its affiliates,
15 which are defined in the motion as the tenet
16 entities, and includes Conifer and other tenet
17 entities.

18 And with me, Your Honor, is my
19 co-counsel, David Wender of Alston & Bird.

20 THE COURT: Good morning.

21 MR. WENDER: Good morning, Your Honor.
22 David Wender with Alston & Bird.

23 THE COURT: Okay.

24 MR. THEIS: Good morning, Your Honor.
25 John Theis on behalf of Riley Safer Holmes & Cancila,

1 LLP. That's one of the law firms that's named in the
2 motion.

3 THE COURT: Okay. I've briefly
4 reviewed the papers. I don't know -- I'm assuming
5 that the trustee may want to file some kind of reply.

6 MR. GUON: Well, Your Honor, we're
7 under a lot of pressure because VHS wants its claim
8 allowed, and they're applying pressure to us to get
9 the show on the road, if you will.

10 We understand that the next time the
11 Court is sitting is December 10th, so we set this
12 motion up for hearing today so we can get started.

13 We can file a reply, but, you know, as
14 often happens, examinees don't want to be examined,
15 and file objections. But, typically, you know,
16 courts deal with these as premature because they can
17 be addressed after the subpoena is issued.

18 The trustee has good cause to issue
19 subpoenas and examine all of the objectors. They
20 were all involved in the initial acquisition of the
21 Westlake Hospital or were counsel to the debtor.

22 As Your Honor may or may not be aware,
23 that acquisition closed in January 28th, 2019.
24 Pursuant to the party's acquisition agreement, the
25 Westlake Hospital was required to be shut down by

1 June 5th, and -- of that same year -- and as a
2 result of the shutdown and where we are today, one of
3 the tenet entities, VHS of Illinois, asserts a
4 purported \$17 million claim against the property's
5 estate, and as part of the sale, you know, they
6 wanted to be paid some of their claim, which the sale
7 order provides.

8 And then the Pipeline entities assert
9 a 9 million prepetition, unsecured claim against the
10 estate and then 2.3 million in administrative claims
11 against these estates.

12 So, now, despite having these large
13 claims, and despite the trustee understanding they
14 were required to shut down this hospital, they want
15 to impair the trustee's efforts to investigate both
16 those asserted liabilities, which is clearly within
17 the scope of Rule 2004, and any potential claims the
18 estates have against those entities.

19 The entire purpose of Rule 2004 is for
20 discovering assets, examining transactions,
21 investigating liabilities, and determining whether
22 any wrongdoing occurred. It's designed as a
23 pre-litigation discovery device.

24 I've read their objections, and
25 they -- there is no true basis to stop the issuance

1 of the subpoena. If they want to object once the
2 subpoena is out there, as I revised the order -- I
3 uploaded a revised proposed order to address that
4 concern -- I specifically put in paragraph three that
5 all of the examinee's right to assert privileges and
6 protections under the Federal Rules of Bankruptcy
7 Procedure are preserved.

8 So that should address any
9 preconceived concerns they have about what these
10 subpoenas will require them to do.

11 But what they're essentially asking is
12 for the Court to wipe Rule 2004 out of existence so
13 the Federal Rules of Civil Procedure must apply. And
14 Rule 2004, by its very nature, does not require
15 compliance with the Federal Rules of Civil Procedure.
16 There just isn't authority for this.

17 So while we can delay it and file a
18 reply, we would prefer just to get the subpoenas out
19 there and let it take its natural course if they want
20 to object.

21 I read a case by Judge Grant, in re
22 Sheets, from the Northern District of Indiana, and
23 the judge lays out a very nice explanation of why,
24 you know, you can't stop a trustee from investigating
25 claims like a mortgage.

1 And he says, you know, under
2 Rule 3001, claims are presumed prima facie valid.
3 And the trustee is parachuted in the case, and until
4 the trustee has an ability to examine the claims, he
5 can't come forward with information to dispute the
6 prima facie validity of those claims.

7 So simply saying "I object" isn't
8 enough, and the trustee's entitled to use Rule 2004
9 as the vehicle because it's the only vehicle a
10 trustee has to investigate the claims that the estate
11 may have.

12 With respect to debtor's counsel,
13 look, if an attorney represented the debtor, the
14 trustee holds the privilege. There's no dispute
15 about that under Weintraub. So, you know, we're
16 entitled to those documents.

17 But we'll issue the subpoena, and if
18 they have objections, you know, we'll deal with them
19 before Your Honor.

20 But, essentially, the premise of these
21 objections to impose rules that aren't required under
22 Rule 2004 are just premature at this point.

23 MS. CIAMBRONE: If I may, Your Honor.

24 THE COURT: Go ahead.

25 MS. CIAMBRONE: Our objection is that

1 the scope of the Rule 2004 examination is simply far
2 too broad.

3 If you look at what they're
4 requesting, it is in no way limited to the claims
5 objections that they think they may have and extends
6 to literally every piece of paper relating to two
7 currently operating hospitals that may exist.

8 I don't dispute that the trustee is
9 entitled to some type of Rule 2004 exam, but they
10 certainly aren't entitled to the broad, wide-ranging
11 scope of documents and information that they have set
12 forth in their Rule 2004 motion. It must be limited.

13 You have to understand, Your Honor,
14 that there are multiple parties that are at issue
15 here. This was a purchase of three hospitals. Two
16 of the hospitals continue to be operating entities.
17 There's ongoing privilege with respect to those
18 operating entities.

19 We don't dispute that to the extent
20 there are lawyers that represented the debtor that
21 the trustee holds that privilege, but it doesn't hold
22 the privilege for other entities. And, certainly,
23 deposing lawyers is a last resort. The trustee
24 hasn't even bothered to determine whether or not he
25 can get this information from other parties.

1 At this juncture, there's no -- first
2 of all, the pressing need to force all of us to come
3 in literally on two days' notice to object to
4 something that is so incredibly wide ranging, if you
5 look at the scope of it, it just isn't warranted at
6 this juncture, and it certainly isn't warranted to
7 give the trustee the authority that he seeks in the
8 2004 motion.

9 If you look at paragraphs 13 and 14 of
10 the motion, if you look at the scope of the order
11 that he wants entered, it is simply far too broad and
12 needs to be tempered.

13 MR. TEISS: Your Honor, if I may.

14 THE COURT: Yes, go ahead.

15 MR. THEIS: Your Honor, I'm John
16 Theis, and, again, I represent one of the law firms
17 that's listed in the motion, and I just want to
18 specifically echo the point about the privilege
19 issue.

20 We as a law firm, the lawyers to both
21 the debtor pre-bankruptcy and to various other
22 entities, we were litigation counsel in the state
23 court lawsuits, so not part of any transactions that
24 were -- that seem to be at issue in the motion, so
25 we're a bit baffled why we're involved in this.

1 We have two primary objections -- and
2 our apologies, Your Honor, for not submitting these
3 before, again, this is a very short notice for this
4 that we've received.

5 But, first, you know, in the state
6 court cases, we represented both -- in a joint
7 representation, both the debtor and various other
8 entities. So our communications, our privileged
9 communications would be both with the debtor
10 pre-bankruptcy, plus a variety of other entities.

11 And we have an ethical obligation to
12 maintain the confidentiality of those communications.
13 This is not a simple example of when the debtor can
14 waive that privilege.

15 Second --

16 THE COURT: Mr. Theis, your firm, or
17 the firm you represent, represented the debtor, so
18 you have that privilege issue, and then you
19 represented other parties, as I understand it.

20 MR. THEIS: Correct. Correct.

21 The debtor was one of several parties
22 that was named in the state court lawsuit.

23 And so we -- you know, our
24 communications with the individuals who represented
25 both the debtor and various other entities -- and I

1 say "debtor," pre-bankruptcy -- but that entity and
2 the other entities, those are all going to be the
3 same communications. So there's going to be very
4 difficult and thorny privilege issues that are going
5 to have to be sorted out in that context. That's the
6 first one.

7 The second point, Your Honor, is that
8 it's very unclear to us, and we have not heard from
9 counsel for the trustee at all about meeting and
10 conferring about this, but we have very limited, if
11 any, information about what appear to be the
12 transactions that are at issue in this motion.

13 You know, they're seeking transactions
14 among certain debtors, and the liabilities and
15 financial condition of the debtors.

16 Again, we're not the transactional
17 attorneys. We are litigators in the state court
18 case. We didn't represent them in regard to those
19 transactions, so it's unclear what we would have that
20 cannot be obtained either from the debtors or the
21 claimants or some other source.

22 THE COURT: Any other parties that
23 want to speak to this?

24 MR. WENDER: Yes, Your Honor. David
25 Wender with Alston & Bird on behalf of the tenet

1 entities, which includes VHS, the secured lender.

2 And, Your Honor, and our point, and
3 just to kind of build on what Ms. Ciambrone said, is
4 that what we have here really is an issue of scope
5 and procedure.

6 And we don't think -- and based on the
7 pleadings submitted to the Court, the trustee hasn't
8 met his burden for this -- under the motion itself
9 and the proposed order is extensively broad, almost
10 unlimited discovery. And, in fact, seeking
11 information related to transactions amongst the
12 debtors, period full of stuff with no date
13 limitations, could go back to the seven years of
14 ownership that the tenet entities had prior to the
15 bankruptcy.

16 And in seeking that -- and one of the
17 procedural problems we have here is, typically, when
18 a trustee or party seeks the 2004 discovery, they
19 attack kind of the scope of what they're seeking.

20 And here -- and I recognize that there
21 are issues with the holiday, and the trustee wanted
22 to get things on the schedule, but it's -- there's
23 none of that stuff. There's no proper scope.

24 And so if the order's granted, and
25 we're just limited under the Federal Rules of

1 Bankruptcy Procedure -- and we tried to ask for more,
2 because we're trying to backfill here -- is that if
3 the Court grants this broad, extensive discovery, our
4 rights to object on that, from our perspective, are
5 waived, are gone, because the Court has ordered this
6 broad and expansive discovery.

7 Moreover, and I take a little bit of
8 an exception relative to the purpose of 2004 and the
9 trustee's use here. 2004 is meant for a trustee to
10 analyze and determine kind of its assets, really, for
11 the most part, in the early stages of the case, but
12 also, I recognize that in Sheets, the court said in
13 claims allowance and potential claims objection. But
14 the facts here are a little different, is that for --
15 commencing in January 23 -- sorry, let me rephrase
16 that.

17 As set forth in the motion filed with
18 this Court on January 23rd, the trustee said he had
19 already started investigating VHS' claim. So the
20 trustee's had ten months to investigate.

21 Now, if the trustee hasn't uncovered
22 anything else in the claim by now, that's surprising.
23 But 2004, with such a broad request after ten months,
24 is not supported evidentiary. There's no declaration
25 or any facts in evidence before the Court as to why

1 this is now needed ten months in. Our secured claim
2 was always there. They know it was there. They got
3 our authority to use cash collateral.

4 And so the issue that we have is --
5 and I recognize we're trying to fit a square peg into
6 a round hole, because we understand the trustee is
7 entitled to discovery, and we're not opposed to
8 reasonable discovery within the limit.

9 But what's sought here is not
10 supported and is not justified under the rules, and
11 that's where the tenet entities are coming from.

12 THE COURT: Okay. This is what I'm
13 going to suggest, and perhaps my schedule -- I'm
14 supposed to be at a meeting on December 3rd. I'm
15 not even positive that meeting's going forward. But
16 I will make myself absolutely available. This is a
17 pandemic. I'm not going anywhere.

18 What I would suggest is that the
19 parties have some type of meet and confer. We have
20 good lawyers on this case. 2004 is very broad. The
21 trustee has a duty to look at these claims and to
22 understand them and to ultimately make a
23 recommendation to the Court as to whether they should
24 be allowed or whether there should be some paring
25 back or they shouldn't exist at all.

1 But I'm going to -- I think the
2 parties need to talk about this. The trustee has
3 reasonable counsel, and as I said, I think this case
4 has good counsel.

5 Why don't we continue this to see if
6 there can be some way you can hammer out an order
7 that maybe is more particular to the scope that the
8 trustee feels that he needs.

9 I am happy to sit on another day --
10 Wednesday afternoon is my Chapter 13 day, but I'm
11 available pretty much any other time. Like I say, I
12 am not going anywhere.

13 So if you want to continue this to
14 even Tuesday the 1st, I could make myself available
15 that day, providing we can get a court reporter, but
16 I think we probably can find one.

17 If you want to try to do it next week
18 on Tuesday, if you want to move that fast, I would
19 make myself available. I could make myself available
20 Wednesday morning, the 25th.

21 If the parties want to -- maybe the
22 best thing for you is to talk offline. I think we
23 have the ability to make a breakout room. Mr. Smith,
24 this might be our test. If you wanted to talk and
25 then come back, that would be fine.

1 Or if it makes more sense to talk and
2 let us know later today or tomorrow when a good time
3 would be, I think you could probably come up with an
4 order, or I can help you get to an order so that
5 discovery under 2004 proceeds in the broad context
6 that it has, but perhaps it could be more -- you
7 know, maybe define it a little bit more.

8 What do you think?

9 MR. WENDER: Your Honor, this is
10 Wender. And if I could -- a suggestion, which I
11 think is where we started to go, and Mr. Guon can
12 disagree with me, is that if we see kind of a
13 proposed subpoena so we can actually see the exact
14 scope and the exact request from the trustee, I think
15 that would go a long way of helping us to figure out
16 whether there's anything to actually argue about.

17 And so what I'd suggest is -- and
18 maybe -- or the parties discussing as to what the
19 scope would be so that we're actually -- if we do
20 have a disagreement, or if we do have an argument,
21 it's actually based on something definitive as
22 opposed to concepts and concerns, without anything
23 more.

24 THE COURT: I mean, I think the
25 redline order that I see here, the trustee's getting

1 the authority to issue the subpoenas. And then
2 paragraph three, he does make it subject to the
3 rights of examinees to assert all privileges and
4 protections available under the Federal Rules of
5 Bankruptcy Procedure.

6 If there are attorney/client privilege
7 issues, those aren't going away in 2004, except for
8 as to the trustee.

9 So, I mean, I think this order limits
10 it. If there needs to be further defining of this
11 order, I'm happy to consider it. But this does seem
12 like it moves towards what you're arguing about.

13 MR. WENDER: Well -- and, Your Honor,
14 the problem is -- again, David Wender, for the
15 record.

16 The problem is the scope. Because the
17 scope under this order is unlimited, and it's not
18 clear to us -- and we attempted to clarify this last
19 night, then I'll stop there -- is to because the
20 scope is everything, it's not clear whether an
21 objection to the scope is actually preserved under
22 the Federal Rules of Bankruptcy Procedure.

23 Because, again, as you know, the 2004
24 is potentially broad if the Court finds just cause
25 for it, for a broader scope.

1 MR. GUON: Your Honor, if I may.

2 THE COURT: Yes.

3 MR. GUON: As Your Honor pointed out,
4 it's just a very plain, vanilla order. There is no
5 obligation for the trustee to give the subpoena,
6 attach the subpoena to the motion. That's just not
7 required, and that's not the practice that's handled
8 in this district.

9 When there's an objection to a
10 subpoena, we deal with that pursuant to Rule 9016 and
11 Rule 45.

12 I specifically -- to address the
13 concern of Mr. Wender, I put in there that all
14 privileges and protections are available under the
15 Federal Rules of Bankruptcy Procedure.

16 The trustee is not going to agree that
17 the Federal Rules of Civil Procedure apply. That's
18 just not required. It's an attempt to hamstring his
19 investigation of almost \$30 million of claims
20 asserted against the estate and potential claims the
21 estate may have against various parties.

22 So we're not -- the trustee won't
23 agree -- I'm happy to pare this down if there's
24 something that is objectionable, but I -- to address
25 their concern, I specifically put in the fact that

1 all their privileges and protections under the
2 Federal Rules of Bankruptcy Procedure are protected.

3 So to the extent -- and you hear me
4 say this now -- to the extent that they have an
5 objection to the subpoena as to scope, we'll deal
6 with it before Your Honor, as I'm sure we will, on a
7 motion to quash, or a motion to object to the scope
8 of the discovery.

9 THE COURT: When do you think you'll
10 be issuing the subpoena?

11 MR. GUON: In the next week or two.
12 Some of them -- I mean, it will be a rolling basis.
13 Obviously, there's a number of parties here.

14 Maybe the debtor's counsel -- you
15 know, 2004 doesn't even require a subpoena. It only
16 requires a subpoena if I want to enforce it. And so,
17 obviously, I'm going to issue subpoenas.

18 But maybe debtor's counsel, since the
19 privilege belongs to the trustee, maybe we can
20 informally get the information we need. So I may not
21 have to issue a subpoena unless we hit a roadblock.

22 So this order is just a plain, vanilla
23 order that gives us the right to do our investigation
24 as authorized under Federal Rules of Bankruptcy
25 Procedure 2004, specifically asserting the right of

1 the parties to protect their objections.

2 And I don't really see, you know, what
3 delaying this will do, because the trustee won't
4 agree to make the Federal Rules of Civil Procedure
5 apply, and he's certainly not required to give the
6 subpoena to the parties to see if they object before
7 it's issued.

8 THE COURT: Yeah, I'm going to go
9 ahead and enter the --

10 MS. CIAMBRONE: Your Honor, if I
11 could --

12 THE COURT: Just hold on one second.
13 Hold on a second.

14 I'm inclined to enter the order as it
15 is now, and then when there are specific objections
16 to subpoenas, to hear those.

17 Because this seems a little bit --
18 nobody knows exactly what the subpoena's going to say
19 at this point. Until there's a motion to quash it,
20 it's a little bit hard for me to do this in a vacuum.

21 And I'm mindful of the privilege
22 issues people are raising and the fact that there are
23 multiple hospitals, there may be a mishmash of
24 communications that may come in to deal with.

25 So I think it actually will be

1 delaying things to continue this, and I'd rather deal
2 with specific objections to the subpoenas.

3 Ms. Ciambrone, I know you're trying to
4 saying something now. Go ahead -- but that's the
5 direction that I'm going right now.

6 I don't see that -- since there is no
7 subpoena yet, it's a little bit hard to -- we're kind
8 of talking a little bit in a vacuum at this point.
9 I'd really like to see the specific objections to the
10 specific portions.

11 MS. CIAMBRONE: I think the problem
12 that we have is exactly what Mr. Guon said, is that
13 the trustee is not required to issue a subpoena once
14 he has authority for a Rule 2004 exam.

15 And the scope, the broad scope of the
16 trustee's language in the order that permits that
17 investigation goes -- is simply too far. It
18 encompasses everything.

19 It is not limited to the claims that
20 have been filed against the estate. It governs
21 operating entities and their relationships amongst
22 each other, and the scope is far too broad.

23 THE COURT: Well, 2004 provides for
24 the trustee to take discovery about things that would
25 lead to either marshaling assets or to the

1 administration of the estate.

2 And to the extent that the trustee
3 asks questions that are beyond that broad scope, I
4 will entertain objections. There's no other way --
5 I'm not going to limit the trustee right now without
6 knowing the specifics of what he's going to ask.

7 If there is something about one of the
8 other hospitals that affects the administration of
9 this estate, including the claims against this
10 estate, that may very well be relevant.

11 So I'm going to enter the order. 2004
12 is broad, but it doesn't go to everything in the
13 world. And to the extent that the parties think that
14 it's gone beyond what it should, I will entertain
15 those objections.

16 And like I say, I'm not going
17 anywhere. I'll be here. I'll even handle things on
18 an emergency basis if it warrants that and you can't
19 get in otherwise.

20 But I don't see at this point, without
21 seeing the specific questions the trustee wants to
22 ask or the areas he's going to, that I can really
23 have the authority to limit 2004, really, in the
24 dark.

25 MR. GUON: Thank you, Your Honor.

1 THE COURT: So I'm going to enter the
2 order as revised. I think I have a plain copy of
3 that as well. I'll take one more read through it
4 before I enter it.

5 But looking at it now, it seems to
6 provide the parties the right to assert objections,
7 certainly as to privilege and other protections that
8 would be available.

9 But we are all -- I mean, 2004 is
10 broad. It is a fishing expedition, but it's not
11 without some limitations, and the parties certainly
12 can raise those.

13 MR. GUON: Thank, Your Honor.

14 THE COURT: You're welcome.

15 (Which were all the proceedings had in
16 the above-entitled cause, November 19,
17 2020, 9:00 a.m.)

18

19 I, JERRI ESTELLE, CSR, RPR, DO HEREBY
20 CERTIFY THAT THE FOREGOING IS A TRUE
21 AND ACCURATE TRANSCRIPT OF PROCEEDINGS
22 HAD IN THE ABOVE-ENTITLED CAUSE. /S/
23
24
25