

1 SR
AARON FORD
2 Attorney General
RICHARD P. YIEN, Bar No. 13035
3 Deputy Attorney General
State of Nevada
4 Office of the Attorney General
100 North Carson Street
5 Carson City, NV 89701-4717
Tel: (775) 684-1129
6 Fax: (775) 684-1156
Email: ryien@ag.nv.gov

7 *Attorneys for Division of Insurance*
8

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 STATE OF NEVADA, EX REL.
12 COMMISSIONER OF INSURANCE, IN
HER OFFICIAL CAPACITY AS
13 STATUTORY RECEIVER FOR
DELINQUENT DOMESTIC INSURER,

14 Plaintiff,

15 vs.

16 LANCET DINDEMNITY RISK
17 RETENTION GROUP, INC., a Nevada
Domiciled Association Captive Insurance
18 Company,

19 Defendant.

Case No. A-19-791409-B

Dept. No. 16

20 **FIRST STATUS REPORT**

21 COMES NOW, Commissioner of Insurance and Receiver, Barbara D. Richardson,
22 and CANTILO & BENNETT, L.L.P., Special Deputy Receiver (“SDR”), and files this quarterly
23 Status Report (“Report”) in the above-captioned receivership. In accordance with the
24 orders of this Court and the Nevada Revised Statutes (“NRS”) Chapter 696B, the Receiver
25 makes this “true report[s] in summary form of the insurer’s affairs under the receivership
26 and of progress being made in accomplishing the objectives of the receivership.” NRS
27 696B.290(7).

28 ///

1 **I. INTRODUCTION**

2 Lancet Indemnity Risk Retention Group (“Lancet” or the “Company”) is an
3 association captive insurance company organized under the insurance laws of Nevada and
4 the Liability Risk Retention Act of 1986. Lancet received its Amended Certificate of
5 Authority on November 19, 2008, and operates under the authority of NRS Chapter 694C.
6 Lancet was focused in the medical professional liability line, and was formed to insure the
7 medical professional liability of its physician and medical group members.

8 Pursuant to NRS 679A.160, Lancet is subject to Nevada laws in Chapters 694C and
9 695E that pertain to captive insurers (as “captive insurer” is defined in NRS 694C.060) and
10 risk retention groups (as “risk retention group” is defined in NRS 695E.110) that have a
11 Certificate of Authority from the Division of Insurance. Lancet is considered an association
12 captive insurer (as “association captive insurer” is defined in NRS 694C.050). As a risk
13 retention group (“RRG”), Lancet is subject to the federal Liability Risk Retention Act of
14 1986. RRGs domiciled in Nevada do not participate in the Nevada Guaranty Association.
15 Pursuant to NRS 695E.140(1)(a), Lancet is also subject to all laws that pertain to
16 traditional liability insurers (with exceptions given in Bulletin 14-008).

17 At the outset of the receivership, Lancet owned minimal personal property, had no
18 office lease of its own, and only two employees. Lancet’s business was primarily conducted
19 through third-party contractors¹ such as Tampa Bay Health Solutions, LLC (management
20 and policyholder services), Western Litigation, Inc. (claims administrator), and Risk
21 Services (accounting and auditing services). The Company also provided in-house premium
22 financing services for a number of its policies.

23 On March 11, 2019, the Company consented to receivership by a letter from its
24 President and Board of Directors to the Commissioner requesting that Lancet be placed
25 into receivership. The Commissioner filed her Verified Petition for Appointment of

26 _____
27 ¹ Per the “About Us” page on the Company’s web site (prior to receivership):
28 “Domiciled in Nevada, Lancet Indemnity is a Physician Owned and Directed Professional
Liability Insurance carrier that utilizes professional Insurance Executives for the
underwriting, development and implementation process of our several coverage options.”

1 Commissioner as Receiver and Other Permanent Relief on March 19, 2019. As detailed in
2 the petition, Lancet qualified for receivership based on several criteria and Lancet was in
3 a very hazardous financial condition. On April 12, 2019, this Court entered its Permanent
4 Injunction and Agreed Order Appointing Commissioner as Permanent Receiver of Lancet
5 Indemnity Risk Retention Group (the “Permanent Receivership Order”). Barbara D.
6 Richardson, Commissioner of Insurance (“Commissioner”), in her capacity as Receiver for
7 Lancet appointed the firm of CANTILO & BENNETT, L.L.P. as the Special Deputy Receiver of
8 the Companies. The “Receiver” and “Special Deputy Receiver” are referred to collectively
9 herein as the “Receiver.”

10 In brief, the Permanent Receivership Order establishes the following key points for
11 the initial phase of the receivership:

- 12 1. that all evidences of coverage, insurance policies, and contracts of insurance
13 are to be canceled effective on April 30, 2019, unless the Receiver determines
14 that any such contracts should be canceled as of an earlier date;
- 15 2. that the Receiver may impose a full suspension on all disbursements owed by
16 Lancet, including insurance policy disbursements, and costs related to the
17 defense or adjudication of insurance policy claims;
- 18 3. that the receivership court has exclusive jurisdiction over all matters
19 pertaining to Lancet and all persons are enjoined from commencing, bringing,
20 maintaining, or further prosecuting any action at law, suit in equity,
21 arbitration, or special or other proceeding against the Company, Receiver, or
22 Special Deputy Receiver;
- 23 4. that the Receiver is vested with exclusive title both legal and equitable to all
24 of Lancet’s property wherever located, to administer under the general
25 supervisions of the Court;
- 26 5. that the Receiver may change to her own name the name of any of Lancet’s
27 accounts, funds, or other property or assets, held with any bank, savings and
28 loan association, other financial institution, or any other person, wherever

1 located, and may withdraw such funds, accounts, and other assets from such
2 institutions or take any lesser action necessary for the proper conduct of the
3 receivership; and

- 4 6. that the Receiver is authorized to establish a receivership claims and appeal
5 procedure for all receivership claims. The receivership claims and appeals
6 procedures shall be used to facilitate the orderly disposition or resolution of
7 claims or controversies involving the receivership or the receivership estate.

8 **II. RECEIVERSHIP ADMINISTRATION**

9 **A. Notice of Receivership**

10 The Receiver has distributed Notices of Receivership which contain contact
11 information for the submission of questions, claims, and correspondence, as well as details
12 regarding the discontinuation of, and the need to replace, all Lancet policies as of April 30,
13 2019. Notices of Receivership have been mailed, or e-mailed, to: policyholders (306 parties
14 with active policies as of April 12, 2019; and 6358 parties with inactive policies that were
15 ever insured by Lancet from inception to date), claimants, attorneys representing
16 claimants and insureds, reinsurers, financial institutions, and other interested parties of
17 the receivership of Lancet. Additionally, cancellation endorsements were sent to all active
18 insureds and their brokers which included information about the receivership and its
19 impact on return premium and tail coverage.

20 The Permanent Receivership Order stayed proceedings against Lancet outside of
21 this Court, but it did not stay lawsuits against Lancet insureds. Policyholders have been
22 notified that the Receiver has imposed a full suspension of insurance policy disbursements,
23 including the payment of insurance defense costs, mediation costs, and other such costs
24 related to the defense or adjudication of insurance policy claims. Policyholders that were
25 being defended by Lancet through outside litigation counsel were encouraged to contact
26 their counsel to arrange for the continued defense (*i.e.*, to pay for their own defense).
27 Policyholders that agree to pay their own defense costs for claims covered by Lancet and/or
28 pay money to settle claims covered by Lancet's insurance, will be entitled to submit claims

1 for those paid defense costs or claim settlements (*i.e.*, as covered by the Company's
2 insurance policy) to the Receiver. Defense counsel for policyholders have been notified of
3 the above as well. With few policyholders being willing to take on the cost of their own
4 defense, and with no assurances that can be given as to when the claims payment
5 moratorium can be lifted, many defense counsel have filed motions to withdraw as
6 counsel—and have had those motions granted. Defense counsel have been advised that
7 they will need to submit a claim in the receivership for any unpaid bills for their services.

8 The Receiver has pursued, and continues to pursue, the stay or dismissal of
9 litigation pending or filed against Lancet directly. Likewise, where Lancet has been ordered
10 to appear in alternative dispute resolution forums, the Receiver has provided notice that
11 Lancet cannot do so and that this Court (as the “Receivership Court”) is the only
12 appropriate forum for the resolution of claims against Lancet.

13 As the Receiver discovers additional interested parties, or receives inquiries, notice
14 and information about the receivership will be provided as needed. Additionally, the
15 Receiver has revised Lancet's web site at www.lancetindemnity.com to include up-to-date
16 information about the receivership.

17 **B. Claims Administration and Third-Party Support Services**

18 The Receivership Court has authorized the Receiver to establish a receivership
19 claims and appeal procedure. The Receiver is developing a procedure in accordance with
20 NRS Chapter 696B.330. The Receiver has not set a deadline for the filing of claims in the
21 estate. There are several competing concerns that the receiver must evaluate to determine
22 the best course for resolving claims against the Lancet estate. For example, a key concern
23 that the receivership is evaluating is the potential for a receivership claim determination
24 to trigger mandatory reporting to national and state medical boards for the insured doctors.
25 Claimants have an interest in receiving compensation for their claims. Physicians have an
26 interest in not having claims settled or paid without their consent in a manner that could
27 trigger mandatory reporting actions to regulatory entities. The Receiver is working to
28 develop a procedure that is in keeping with the Nevada Revised Statutes that will (to the

1 extent possible) also minimize harm to all interested parties. After further evaluation of
2 Lancet's potential liabilities, and legal issues, the Receiver will submit a proposed claims
3 procedure and filing deadline, and proposed procedures for notifying interested parties of
4 such deadline, to the Receivership Court for approval. Upon approval by the Receivership
5 Court, the Receiver will then mail notices to all interested parties of Lancet about the
6 claims filing deadline, and the claims and appeals procedures. In the meantime, all notices
7 and correspondence have directed interested parties to continue to submit their inquiries
8 and claims information to the Receiver.

9 As of the outset of the receivership, according to Company records provided by
10 Western Litigation, there were seventy-four (74) open medical malpractice claims. Based
11 on a preliminary review of the most-recent available loss run report, these claims appear
12 to be nationwide and appear to involve: two (2) administrative claims (*i.e.*, board
13 investigations); ten (10) department of regulation claims (*i.e.*, board investigation or
14 records requests); four (4) incident reports; one (1) panel review claim; seventeen (17)
15 claims filed, and forty (40) lawsuits filed. The Receiver is evaluating the potential liability
16 to the estate for these claims.

17 In addition to assisting in the resolution of policy claims against the estate, the
18 receivership has need for a third-party administrator ("TPA") to update the claims files of
19 the Company so that insureds can be provided with loss run reports and credentialing
20 forms – these documents are crucial for the insureds to be able to satisfy their work
21 requirements and to obtain new insurance policies.

22 Prior to receivership, claims administration services were provided by Western
23 Litigation. The Receiver has received and is evaluating a proposal from Western Litigation
24 for the continuation of its services. The Receiver is also evaluating proposals from other
25 companies to take over the claim records and assist the Receiver to process policy claims in
26 receivership. Due to the issues described above, the selection of a TPA is a high priority for
27 the Receiver.

1 At the outset of the receivership, there was an appeal pending in the U.S. Court of
2 Appeals for the Fourth Circuit in the matter of *Mora v. Lancet Indemnity*. Prior to the
3 decision on the appeal, the Receiver attempted informal settlement negotiations with
4 plaintiffs' counsel (which would have been subject to Receivership Court approval). The
5 plaintiffs were not inclined to settle. On May 9, 2019, the Fourth Circuit affirmed a decision
6 by the U.S. District Court for the District of Maryland, ruling that Lancet Indemnity owes
7 coverage for a default judgment obtained against an insured physician who fled the country
8 and refused to participate in the defense of a malpractice action against him.² Lancet had
9 denied coverage under the policy because of the insureds' failure to give notice of the claim,
10 and failure to then cooperate in the defense of the claim.³ Lancet had not reserved any
11 significant amount for this claim.⁴ There was a supersedeas bond in place, to stay execution
12 of the District Court's judgment during the pendency of Lancet's appeal. Lancet assets of
13 \$1,475,000 were pledged as security for the letter of credit securing the bond. Therefore,
14 these assets were secured and could not be made part of the estate's general assets, per
15 NRS 696B.090, as long as the trial judgment and the appeal decision affirming the trial
16 judgment stood. The Receiver worked with Lancet's trial and appellate attorneys, and filed
17 a petition for rehearing *en banc* which was due to be filed within two weeks of the appeal
18 decision. The Fourth Circuit denied Lancet's Petition for Rehearing on June 4, 2019,
19 without further comment. The only remaining option from that point would have been to
20 appeal to the U.S. Supreme Court, and it was determined by the Receiver and appellate
21 counsel that this would be a costly endeavor for the estate that would be highly unlikely to

22 ² *Mora v. Lancet Indem. Risk Retention Grp., Inc.*, No. 18-1566, 2019 WL 2004205
23 (4th Cir. May 7, 2019).

24 ³ See Judy Greenwald, *Risk Retention Group Must Pay Med Mal Judgment Despite*
25 *See Judy Greenwald, Risk Retention Group Must Pay Med Mal Judgment Despite AWOL*
26 *Doctor*, BUSINESS INSURANCE, May 9, 2019,
[https://www.businessinsurance.com/article/20190509/NEWS06/912328367/
Risk-retention-group-must-pay-med-mal-judgment-despite-absent-doctor](https://www.businessinsurance.com/article/20190509/NEWS06/912328367/Risk-retention-group-must-pay-med-mal-judgment-despite-absent-doctor).

27 ⁴ As noted above, the Receiver is evaluating the claims liabilities of the estate. The
28 *Mora* matter is but one illustration of the need for comprehensive review and analysis of
the Company's potential claims liabilities.

1 yield any positive outcome for Lancet. The Fourth Circuit mandate was issued on June 12,
2 2019. The plaintiffs have drawn down on the letter of credit and satisfied the trial court
3 judgment. The Receiver has reported on this claim to Lancet’s reinsurers.

4 PALOMAR FINANCIAL, LC (“Palomar”) is an affiliated company of the SDR and
5 performs financial and technical administrative support services for Lancet in
6 receivership—and those services are now being performed by Palomar. Palomar is being
7 used to gain better control and stability over Lancet’s affairs, save costs for the receivership
8 estate, centralize data and information, and facilitate the receivership’s administration.

9 **C. Records & Property**

10 Lancet is a “virtual company” (*i.e.*, paperless). Thus, there was no physical space that
11 the Receiver could take possession of to immediately secure the bulk of the Company’s files.
12 However, Lancet’s server data is being copied to a secure hard drive which will be shipped
13 to the Receiver. Once the Receiver receives the hard drive and confirms that it is complete
14 and that all data is accessible, Lancet’s server equipment will also be shipped to the
15 Receiver. There were four computer hard drives at the Company as well, and the hard
16 drives have been removed and shipped to the Receiver for review of their contents. The
17 Receiver has taken over the hosting and maintenance of the Company’s web site; and has
18 already posted relevant receivership notices and documents at www.lancetindemnity.com.

19 The Company’s policy data is held in a cloud-based system called “Epic”, which is
20 owned by Applied Systems, Inc. The Receiver has performed a full back-up of all the data
21 held in the system as of the start of the receivership. This data is not readable outside of
22 the Epic system, and the Receiver is maintaining access to the Epic system for the time
23 being in order to develop a long-term plan for the receivership to have access to this data
24 in a usable format while reducing costs to the estate.

25 The Company also stored records relating to its in-house premium financing in a
26 propriety software program owned by Input 1, LLC. The Receiver has requested a full
27 back-up of this data from Input 1, LLC and, in the meantime while this back-up is being
28 created, standard reports that show all premiums received and outstanding for policies

1 that received premium financing from Lancet. The Receiver has been advised by Lancet
2 employees that neither the Input 1 system nor the Epic system were used for accounting
3 purposes, and that receivables shown in these systems should not be relied upon. At this
4 time, it appears that no reconciliation was performed between the several separate
5 systems.

6 Lancet employees have advised that Risk Services, the Company's former captive
7 manager, is the source of any and all accounting records of the Company. Risk Services
8 has provided what is purported to be the full extent of its records relating to Lancet, and
9 the Receiver is evaluating these materials.

10 Additionally, the Receiver has undertaken to request and obtain electronic records
11 from any parties known to be in possession of files relating to the Company. The Receiver
12 has requested and received information and documents from the claims TPA, program
13 administrator, captive managers, reinsurers, consultants, auditors, attorneys, and
14 financial institutions. The Receiver will continue with her evaluation of the Company and
15 will continue gathering the Company's records and data. Aside from the above-referenced
16 server, Lancet owns very little tangible personal property with little to no resale value. The
17 Receiver is arranging for this property to be disposed of by sale or charitable donation. The
18 two Lancet employees were given notification of the termination of their employment, and
19 Lancet operations (such as they were) have been ceased at the Tampa location where
20 Lancet conducted business prior to the receivership.

21 **D. Actuarial Reports**

22 The Receiver is evaluating policy information, claims data, and litigation
23 information for Lancet and will be requiring the services of an actuary to project the current
24 and future claims liabilities of the estate. The Receiver is currently evaluating proposals
25 from actuarial firms.

26 **E. Reinsurance**

27 The Receiver is still evaluating Lancet's reinsurance coverage and to that end is
28 working with Lancet's reinsurance brokers, Integro Insurance Brokers Limited ("Integro").

1 After a number of commutation agreements were executed in July and August of 2018,
2 there appears to be just one reinsurer remaining on risk for one excess of loss reinsurance
3 contract (the “XOL”). The XOL covers 14.5% of claims in excess of \$1 million, to a maximum
4 of \$3 million.⁵ The Receiver, and Integro, will continue to report claims on the active XOL
5 contract. All claims submitted are subject to swing-rate adjustment, which ends after a
6 certain level of claims have been reported. There is also one active awards-made
7 reinsurance contract, with multiple reinsurers on risk (covering various percentages of the
8 total reinsurance). The awards-made policy covers 82.5% of each award made (*i.e.*, a verdict
9 or judgment on a claim) over and above \$1 million, to a limit of \$3 million. Reinsurers have
10 been put on notice of the above-mentioned *Mora v. Lancet* decision.

11 **F. Receivership Assets and Liabilities**

12 The Receiver has been gathering information and evaluating the assets and
13 liabilities of Lancet. A liability analysis cannot be updated until a TPA evaluates further
14 current claims and an actuary prepares reports on the liabilities of Lancet. Below is an
15 overview of some key assets and liability matters thus far identified by the Receiver.

- 16 1) As of June 30, 2019, the approximate liquid assets of the Company were as
17 follows:
 - 18 a. Cash, held in bank, \$662,633.20.
 - 19 b. Investments, held at Morgan Stanley, fair market value of
20 \$1,418,944.39 as of June 30, 2019.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27

28 ⁵ The only reinsurer remaining on XOL coverage is S.A. Meacock & Co., Ltd., with 14.5% of exposure for claims that qualify for XOL coverage.

1 **III. CONCLUSION**

2 In compliance with this Court’s instructions for a status report regarding the affairs
3 of the Company, the Receiver has submitted the aforementioned status report and requests
4 that the Court approve this First Status Report and the actions taken by the Receiver.

5 DATED: July 12, 2019.

6
7 Respectfully submitted:

8 Barbara D. Richardson, Commissioner of
9 Insurance of the State of Nevada, in her
10 Official Capacity as Statutory Receiver of
11 Delinquent Domestic Insurer

12 By: /s/ CANTILO & BENNETT, L.L.P.
13 Special Deputy Receiver
14 By Its Authorized Representative
15 Mark F. Bennett

16 Respectfully submitted:

17 AARON D. FORD
18 Attorney General

19 By: /s/ Richard Yien
20 RICHARD YIEN, Bar No. 13035
21 Deputy Attorney General
22 100 N. Carson Street
23 Carson City, Nevada 89701
24 Tel: (775) 684-1129
25 E-mail: ryien@ag.nv.gov
26 *Attorneys for the Division of Insurance*
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on July 12, 2019, I filed the foregoing **FIRST STATUS REPORT** via this Court’s electronic filing system. Parties that are registered with this Court’s EFS will be served electronically.

Constance L. Akridge
Holland & Hart
9555 Hillwood Drive
Las Vegas, NV 89134
CLAkridge@hollandandhart.com

/s/ Nohely Plascencia-Mariscal
An employee of the
Office of the Nevada Attorney General