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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

LANCET INDEMNITY RISK
RETENTION GROUP, INC., a Nevada
Domiciled Association Captive Insurance
Company,

Defendant.

Case No. A-19-791409-B

Dept. No. 16

SECOND STATUS REPORT

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

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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 contractors,¹ 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 ¹ Per the “About Us” page on the Company’s web site (prior to receivership):
27 “Domiciled in Nevada, Lancet Indemnity is a Physician Owned and Directed Professional
28 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
8 of 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. Notices were also sent to all fifty (50) state departments of
18 insurance and are being sent to additional agencies in response to individual inquiries and
19 notices. Cancellation endorsements were sent to all active insureds and their brokers,
20 which included information about the receivership and its impact on return premium and
21 tail coverage. See more information below about return premiums for tail policies.

22 The Permanent Receivership Order stayed proceedings against Lancet outside of
23 this Court, but it did not stay lawsuits against Lancet insureds. Lancet policyholders were
24 notified about the full suspension of insurance policy disbursements by Lancet, including,
25 but not limited to, defense costs. Due to Lancet's circumstances, Lancet policyholders have
26 been required to pay for their own defense if they are able, and will be able to bring claims
27 for reimbursement in the receivership once a claim procedure has been approved by this
28 Court. The Receiver has advised though that there can be no guarantee of reimbursement

1 for such claims, as this will be dependent on (1) whether the SDR approves such claims
2 (*i.e.*, determines the claim valid and covered by a Lancet policy), (2) the availability of
3 sufficient assets in the estate for payment of the claims, and (3) the Court's approval of the
4 SDR's determination of amounts to be paid for the claims. Defense counsel for Lancet
5 policyholders have been notified of the above as well, including the need to submit a claim
6 in the receivership for any unpaid bills for their services.

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

12 As the Receiver discovers additional interested parties, or receives inquiries, notice
13 and information about the receivership will be provided as needed. Additionally, the
14 Receiver periodically updates Lancet's web site at www.lancetindemnity.com for
15 information about the receivership.

16 **B. Claims Administration**

17 The Receivership Court has authorized the Receiver to establish a receivership
18 claims and appeal procedure. The Receiver is working to develop a procedure that is in
19 keeping with the Nevada Revised Statutes that will (to the extent possible) also minimize
20 harm to all interested parties. After further evaluation of Lancet's potential liabilities, and
21 legal issues, the Receiver will submit proposed claims and notice procedures to the
22 Receivership Court for approval.

23 The Receiver has selected a third-party administrator ("TPA"), Claims Resource
24 Management, Inc. ("CRMI"), to assist with this evaluation, and eventually with the
25 adjudication of policy claims against the estate. CRMI is in the process of reviewing and
26 updating the claim files of Lancet. Among its first priorities, CRMI will review the claims
27 that may be eligible for reinsurance coverage and assist the SDR with any attendant
28 reporting needed to submit claims for coverage. Several Lancet policyholders have inquired

1 about whether their individual claims may be eligible for direct payments from Lancet's
2 reinsurers. This is not the case, as any reinsurance recoveries would be placed into the
3 general assets of the estate for the benefit of all policyholders of the receivership.

4 The Receiver is also working with CRMI to develop a policy regarding loss run and
5 credentialing requests. The Lancet estate has very limited assets, and based on costs for
6 the receivership, the Receiver is unsure at this time whether Lancet will be able to continue
7 to provide up-to-date loss run and credentialing reports. These documents may be needed
8 by insureds to satisfy their work requirements and to obtain new insurance policies. The
9 Receiver is evaluating whether Lancet can, and should, provide additional Loss Run
10 Reports. The Receiver is also evaluating Lancet's financial reporting required for various
11 state and federal reporting entities, and she anticipates filing further financial reports.

12 The Receiver has previously reported on the matter of *Mora v. Lancet Indemnity*,
13 which was pending appeal at the outset of the receivership. The plaintiffs in that case were
14 secured on the trial court judgment in their favor, by a supersedes bond (Lancet assets of
15 \$1,475,000 that were pledged pre-receivership as security for the letter of credit securing
16 the appeal bond). After the U.S. Court of Appeals for the Fourth Circuit denied Lancet's
17 Petition for Rehearing, the plaintiffs were able to satisfy their judgment (*i.e.*, as a secured
18 creditor of Lancet) of approximately \$1.3M. The Receiver took possession of the amount in
19 excess of the secured collateral. In the meantime, the Receiver has communicated, and
20 continues to communicate, about this claim with Lancet's reinsurers, seeking coverage and
21 payment for amounts owed to Lancet by reinsurers.

22 C. Third-Party Support Services

23 Claims Resource Management, Inc. ("CRMI") is the third-party claims administrator
24 for the receivership estate. Please refer to section (B), *supra*, to read about CRMI's work
25 for the estate. PALOMAR FINANCIAL, LC ("Palomar"), an affiliated company of the SDR,
26 performs financial and technical administrative support services for Lancet in receivership.
27 Palomar is being used to save costs for the receivership estate, centralize data and
28 information, and facilitate the receivership's administration. Merlinos & Associates

1 (“Merlinos”) is an actuarial firm that has been selected to assist the receivership estate as
2 described further below in section E (“Actuarial Reports”).

3 **D. Records & Property**

4 Lancet is a “virtual company” (*i.e.*, paperless). Thus, there was no physical space
5 that the Receiver could take possession of to immediately secure the bulk of the Company’s
6 files. The Receiver has, however, taken possession of Lancet’s hard drives and server
7 equipment.

8 The Company’s policy data is held in a cloud-based system called “Epic,” which is
9 owned by Applied Systems, Inc. The Receiver is maintaining access to the Epic system for
10 the time being, but is working with CRMI to develop a long-term plan for the policy records
11 of the Company that includes cost-savings measures.

12 The Company also stored records relating to its in-house premium financing in a
13 proprietary software program owned by Input 1, LLC (Input 1), though the system was
14 apparently not used for accounting purposes and does not conform with Lancet’s
15 accounting. The Receiver needs to review and reconcile the information in this system.
16 The Receiver has arranged with Input 1 to have short-term access to run the necessary
17 reports and obtain the data from this system.

18 Lancet employees have advised that Risk Services, the Company’s former captive
19 manager, is the source of accounting records of the Company. Risk Services has provided
20 what it believes to be the full extent of its records relating to Lancet, and the Receiver
21 continues its evaluation of these materials.

22 The Receiver has now disposed of what little tangible personal property Lancet
23 owned at the outset of the Receivership. Lancet has no remaining employees, and all
24 Lancet operations have been ceased at the Tampa location where Lancet conducted
25 business prior to the receivership.

26 **E. Actuarial Reports**

27 Merlinos is an actuarial firm that has been selected to assist the estate by evaluating
28 the policy and claims information for Lancet to provide a projection of the current and

1 future claims liabilities of the estate. Merlino will also evaluate Lancet's liability for the
2 return premium owed for tail coverage policies that were terminated by the receivership
3 order cancelling such insurance coverages. Lancet policyholders with tail coverage were
4 informed that the Receiver will assign a value to the lost tail coverage (*i.e.*, the return
5 premium owed on the terminated tail coverage) so that such policyholders may file a claim
6 against the estate for the terminated tail coverage. Once the required actuarial analysis is
7 complete, the Receiver will mail a notice to each policyholder that was impacted by the loss
8 of tail policy coverage, notifying of their calculated claims.

9 **F. Reinsurance**

10 The Receiver is working with Lancet's reinsurance brokers, Tyser & Co. Ltd.
11 ("Tysers") (formerly known as Integro Insurance Brokers Limited) to evaluate Lancet's
12 reinsurance coverage and reinsured claims. After a number of commutation agreements
13 were executed in July and August of 2018, there appeared to be just one reinsurer
14 remaining on risk for the current policy year for one excess of loss reinsurance contract (the
15 "XOL"). The Receiver, and Tysers, will continue to report claims on the active XOL
16 contract. The Receiver is also working with Tysers on potential reinsurance recoveries
17 related to the *Mora vs. Lancet Indemnity* matter that is described above in Section B of this
18 report. As noted above, CRMI is working to update Lancet's claim files, which includes a
19 focus on those claims that involve additional reinsurance claim reporting. Lancet's
20 reinsurers have requested updates of claims information, and the Receiver will continue to
21 work with CRMI and Tysers to prepare the necessary reinsurance reporting on an ongoing
22 basis.

23 **G. Receivership Assets and Liabilities**

24 The Receiver has been gathering information and evaluating the assets and
25 liabilities of Lancet. A further liability analysis will be updated when the company's claims
26 evaluation is completed with the assistance of outside parties who are now performing
27 claims and actuarial services. On September 11, 2019, the Court entered its Order
28 Granting Receiver's Motion to Approve Fees and Rates Filed on July 24, 2019. Pursuant

1 to this Order, the Receiver has included an informational copy, as Exhibit A to this Second
2 Status Report, of the invoices paid to the SDR and other receivership consultants since the
3 last status report to this Court.² Below is an overview of some key financial matters for the
4 Lancet receivership.

5 As of August 31, 2019, the approximate liquid assets of the Company were as follows:

6 a. Cash in bank total: \$808,859.48

7 b. Investments fair market value total: \$1,448,807.72

8 Cash flow reports of Lancet for May through August 2019 are attached as Exhibit B.

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13 ² The *in camera* materials are being submitted in a separate envelope that reflect
14 paid invoices. Certain billings submitted to the Court are appropriate for *in camera* review
15 (as opposed to being made part of a public filing). In this regard, courts have held that the
16 bills of legal counsel and experts may be withheld from legal discovery and are not subject
17 to legal disclosure, as this information may provide indications or context concerning
18 potential litigation strategy and the nature of the expert services being provided. *See, e.g.,*
19 *Avnet, Inc. v. Avana Technologies Inc.*, No. 2:13-cv-00929- GMN-PAL, 2014 WL 6882345,
20 at *1 (D. Nev. Dec. 4, 2014) (finding that billing entries were privileged because they reveal
21 a party's strategy and the nature of services provided); *Fed. Sav. & Loan Ins. Corp. v. Ferm*,
22 909 F.2d 372, 374-75 (9th Cir. 1990) (considering whether or not fee information revealed
23 counsel's mental impressions concerning litigation strategy). Other courts that have
24 addressed this issue have recognized that the "attorney-client privilege embraces attorney
25 time, records and statements to the extent that they reveal litigation strategy and the
26 nature of the services provided." *Real v. Cont'l Grp., Inc.*, 116 F.R.D. 211, 213 (N.D. Cal.
27 1986).

28 The *in-camera* review should apply not only to documentation concerning attorney
fees, but it also extends to "details of work revealed in [an] expert's work description [which]
would relate to tasks for which she [or he] was compensated[,]" a situation which is
"analogous to protecting attorney-client privileged information contained in counsel's bills
describing work performed." *See DaVita Healthcare Partners, Inc. v. United States*, 128
Fed. Cl. 584, 592-93 (2016); *see also Chaudhry v. Gallerizzo*, 174 F.3d 394, 402 (4th Cir.
1999) (recognizing that "correspondence, bills, ledgers, statements, and time records which
also reveal the motive of the client in seeking representation, litigation strategy, or the
specific nature of the services provided, such as researching particular areas of law," are
protected from disclosure) (quoting *Clarke v. Am. Commerce Nat'l Bank*, 974 F.2d 127, 129
(9th Cir. 1992)).

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 Second Status Report and the actions taken by the Receiver.

5 DATED: October 11, 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
Delinquent Domestic Insurer

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

15 Respectfully submitted:

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