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16
17 DISTRICT COURT
18 CLARK COUNTY, NEVADA

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

22 Plaintiff,

23 vs.

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

27 Defendant.
28

Case No. A-19-791409-B

Dept. No. 16

FOURTH STATUS REPORT

1 **FOURTH STATUS REPORT**

2 COMES NOW, Commissioner of Insurance, Barbara D. Richardson, in her sole
3 capacity as Receiver, and CANTILO & BENNETT, L.L.P., Special Deputy Receiver (“SDR”),
4 and files this quarterly Status Report (“Report”) in the above-captioned receivership. In
5 accordance with the orders of this Court and the Nevada Revised Statutes (“NRS”) Chapter
6 696B, the Receiver makes this “true report[s] in summary form of the insurer’s affairs
7 under the receivership and of progress being made in accomplishing the objectives of the
8 receivership.” NRS 696B.290(7).

9 **I. INTRODUCTION**

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

16 Pursuant to NRS 679A.160, Lancet is subject to Nevada laws in Chapters 694C and
17 695E that pertain to captive insurers (as “captive insurer” is defined in NRS 694C.060) and
18 risk retention groups (as “risk retention group” is defined in NRS 695E.110) that have a
19 Certificate of Authority from the Division of Insurance. Lancet is considered an association
20 captive insurer (as “association captive insurer” is defined in NRS 694C.050). As a risk
21 retention group (“RRG”), Lancet is subject to the federal Liability Risk Retention Act of
22 1986. RRGs domiciled in Nevada do not participate in the Nevada Guaranty Association.
23 Pursuant to NRS 695E.140(1)(a), Lancet is also subject to all laws that pertain to
24 traditional liability insurers (with exceptions given in Bulletin 14-008).

25 At the outset of the receivership, Lancet owned minimal personal property, had no
26 office lease of its own, and only two employees. Lancet’s business was primarily conducted
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1 through third-party contractors,¹ such as Tampa Bay Health Solutions, LLC (management
2 and policyholder services), Western Litigation, Inc. (claims administrator), and Risk
3 Services (accounting and auditing services). The Company also provided in-house premium
4 financing services for a number of its policies.

5 On March 11, 2019, the Company consented to receivership by a letter from its
6 President and Board of Directors to the Commissioner requesting that Lancet be placed
7 into receivership. The Commissioner filed her Verified Petition for Appointment of
8 Commissioner as Receiver and Other Permanent Relief on March 19, 2019. As detailed in
9 the petition, Lancet qualified for receivership based on several criteria and Lancet was in
10 a very hazardous financial condition. On April 12, 2019, this Court entered its Permanent
11 Injunction and Agreed Order Appointing Commissioner as Permanent Receiver of Lancet
12 Indemnity Risk Retention Group (the “Permanent Receivership Order”). Barbara D.
13 Richardson, Commissioner of Insurance (“Commissioner”), in her capacity as Receiver for
14 Lancet, appointed the firm of CANTILO & BENNETT, L.L.P. as the Special Deputy Receiver
15 of the Companies. The “Receiver” and “Special Deputy Receiver” are referred to collectively
16 herein as the “Receiver.”

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

- 19 1. that all evidences of coverage, insurance policies, and contracts of insurance
20 are to be canceled effective on April 30, 2019, unless the Receiver determines
21 that any such contracts should be canceled as of an earlier date;
- 22 2. that the Receiver may impose a full suspension on all disbursements owed by
23 Lancet, including insurance policy disbursements, and costs related to the
24 defense or adjudication of insurance policy claims;

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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 3. that the receivership court has exclusive jurisdiction over all matters
2 pertaining to Lancet and all persons are enjoined from commencing, bringing,
3 maintaining, or further prosecuting any action at law, suit in equity,
4 arbitration, or special or other proceeding against the Company, Receiver, or
5 Special Deputy Receiver;
- 6 4. that the Receiver is vested with exclusive title both legal and equitable to all
7 of Lancet's property wherever located, to administer under the general
8 supervisions of the Court;
- 9 5. that the Receiver may change to her own name the name of any of Lancet's
10 accounts, funds, or other property or assets, held with any bank, savings and
11 loan association, other financial institution, or any other person, wherever
12 located, and may withdraw such funds, accounts, and other assets from such
13 institutions or take any lesser action necessary for the proper conduct of the
14 receivership; and
- 15 6. that the Receiver is authorized to establish a receivership claims and appeal
16 procedure for all receivership claims. The receivership claims and appeals
17 procedures shall be used to facilitate the orderly disposition or resolution of
18 claims or controversies involving the receivership or the receivership estate.

19 On February 25, 2020, the Receiver filed a consolidated motion for a Final Order
20 Placing Lancet Indemnity Risk Retention Group, Inc. into Liquidation, and for a Final
21 Order Setting a Claims Filing Deadline, and Granting Related Relief (the "Motion"). The
22 Motion was heard and granted on April 1, 2020. The Court then entered an Order
23 approving the Receiver's proposed claim deadline and procedures on April 9, 2020, and this
24 is discussed further below. Additionally, on April 9, 2020 the Court entered an Order
25 granting the Receiver's request to formally place Lancet into liquidation. The Receiver will
26 provide notice of Lancet's liquidation status pursuant to the Court's Order Regarding
27 Motion for Instructions Including Notice Requirements which was entered on February 5,
28 2020 (the "Notice Order").

1 **II. RECEIVERSHIP ADMINISTRATION**

2 **A. Notice of Receivership**

3 The Receiver previously distributed notices of the receivership to all interested
4 parties of Lancet (*i.e.*, policyholders, known creditors, relevant government agencies *inter*
5 *alia*) that could be located in the available company records. The Receiver has worked to
6 improve the mailing lists provided by Lancet and its vendors at the outset of the
7 receivership and will continue to do so throughout the receivership. Future notices about
8 the Lancet receivership will be provided to interested parties in accordance with the Court’s
9 Notice Order.

10 **B. Claims Administration**

11 The Receivership Court has authorized the Receiver to establish a receivership
12 claims and appeal procedure. The Receiver has developed a procedure in accordance with
13 NRS Chapter 696B.330. The proposed Receivership Claims and Appeal Procedure for all
14 Lancet claims, and the required Proof of Claim form, were submitted to this Court for
15 approval on February 25, 2020, with the Receiver’s Motion.

16 The Motion was heard and granted on April 1, 2020 and a formal order entered on
17 April 9, 2020. The April 9, 2020 Order approved the Receiver’s proposed claims and appeal
18 procedures, including a Claim Filing Deadline of **April 1, 2021**. The Order also provides
19 an extended claim reporting period for policies having tail coverage, as is detailed further
20 in Section E (Actuarial Reports) below. The Receiver will shortly cause the approved claim
21 forms and procedures to be posted to the Lancet web site. The Receiver will also begin
22 mailing notices to all interested parties (as identified in the Notice Order) shortly
23 thereafter. Additionally, notice will be published in the USA Today and the Las Vegas
24 Review-Journal.

25 The Receiver’s third-party claims administrator (“TPA”), Claims Resource
26 Management, Inc. (“CRMI”), will assist the Receiver in the evaluation and adjudication of
27 policy claims against the estate through the Proof of Claim (“POC”) process. In the
28 meantime, CRMI is reviewing all claims designated “open” by the prior TPA at the outset

1 of receivership and bringing those files up to date in anticipation of claim filings in the
2 receivership. CRMI is currently in the process of reviewing the claims that may be eligible
3 for reinsurance coverage. CRMI is also responding to loss run and credentialing requests,
4 to the extent possible given the limited resources of the Lancet estate.²

5 As reported in detail in the Third Status Report, the Receiver established a
6 streamlined procedure for responding to requests for documents and information from the
7 Lancet estate. The Receiver has evaluated one subpoena received from Lancet's corporate
8 agent for service of process, CSC, and sent a response in writing to the inquiring party
9 regarding the receivership's ability to provide the requested information, the anticipated
10 timeframe for response, and the associated fee. The Receiver did not receive further
11 correspondence from the requesting party, and has not received any other such requests
12 since the last status report.

13 The Receiver has previously reported on the matter of *Mora v. Lancet Indemnity*
14 which was pending appeal at the outset of the receivership. The Receiver has
15 communicated, and continues to communicate, about this claim with Lancet's reinsurers,
16 seeking coverage and payment for amounts owed to Lancet by reinsurers. The Receiver
17 has submitted this claim to the reinsurers for payment, provided all requested information
18 to support the claim, and will continue to pursue payment of this claim and keep the Court
19 updated on the status of Lancet's claim for reinsurance coverage.

20 C. Third-Party Support Services

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

26 ² As previously reported, Lancet at this time can only provide loss run and claim
27 history based on the available records of Lancet as of April 2019. Therefore, loss run
28 reports provided by the SDR contain a disclosure regarding the completeness and accuracy
of the same.

1 information, and facilitate the receivership's administration. Merlinos & Associates
2 ("Merlinos") is an actuarial firm that has been selected to assist the receivership estate as
3 described further below in section E ("Actuarial Reports").

4 **D. Records & Property**

5 The Receiver has taken possession of Lancet's hard drives and server equipment,
6 along with numerous records retrieved from third parties. The Receiver is reviewing the
7 electronic records of the Company. The Receiver is maintaining access, for the time being,
8 to the cloud-based policy database (*i.e.*, the Epic system, owned by Applied Systems, Inc.)
9 and premium financing software (*i.e.*, the Input 1 system). The Receiver will terminate
10 these systems once it is certain that they are no longer needed.

11 Former Lancet employees advised that Risk Services, the Company's former captive
12 manager, is the source of accounting records of the Company. Risk Services provided what
13 it believed to be the full extent of its records relating to Lancet, and the Receiver continues
14 its evaluation of these materials. Since the prior status report the Receiver has continued
15 to make additional specific requests of Risk Services, where noticeable gaps in the
16 information have arisen, and has received additional Lancet records (*e.g.*, missing
17 reinsurance billing records for prior years, etc.) in response. The Receiver will continue to
18 evaluate the available records, and will make requests as needed for missing information,
19 if any.

20 **E. Actuarial Reports**

21 Merlinos is an actuarial firm that has been selected to assist the estate by evaluating
22 the policy and claims information for Lancet to provide a projection of the current and
23 future claims liabilities of the estate. Merlinos has also evaluated Lancet's liability for the
24 return premium owed for tail coverage policies that were terminated by the receivership
25 order cancelling such insurance coverages. Lancet policyholders with tail coverage were
26 informed that the Receiver would assign a value to the lost tail coverage (*i.e.*, the return
27 premium owed on tail coverage terminated effective April 30, 2019, by the Permanent
28 Receivership Order) so that such policyholders could file a claim against the estate for the

1 terminated tail coverage. Merlinos evaluated the tail policies and determined that many
2 or most of the policies have minimal or zero return premium owing.³ Due to the difficulty
3 in assigning a cash value for the loss of tail coverage, the Receiver recommended that there
4 should instead be an extended claim reporting period for tail policy claimants. The Court
5 has now ordered that there shall be an extended claim reporting period for Lancet policies
6 having tail coverage, and the claim reporting period for each individual tail policy shall end
7 on either April 1, 2021, or the actual end date of tail coverage under each individual policy,
8 whichever date occurs first.

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. Asset Recovery**

24 On March 4, 2019, the Receiver put the prior directors and officers of the company,
25 and their professional liability and/or errors and omissions insurance carrier, on notice of
26 prior bad acts and actionable claims of the Receiver resulting from pre-receivership errors,

27
28 ³ For instance, a number of the policies offered complimentary tail coverage for retiring physicians – with no premium associated with the tail coverage.

1 omissions, negligence, and misrepresentations. The Receiver presented a demand for
2 payment to the insurance carrier for the claims described within the notice.

3 H. Receivership Assets and Liabilities

4 The Receiver has been gathering information and evaluating the assets and
5 liabilities of Lancet. A further liability analysis will be updated when the company's claims
6 evaluation is completed with the assistance of outside parties who are now performing
7 claims and actuarial services. On September 11, 2019, the Court entered its Order
8 Granting Receiver's Motion to Approve Fees and Rates Filed on July 24, 2019. Pursuant
9 to this Order, the Receiver has included an informational copy, as Exhibit A to this Fourth
10 Status Report, of the invoices paid to the SDR and other receivership consultants since the
11 last status report to this Court.⁴ Below is an overview of some key financial matters for
12 the Lancet receivership.

13 As of February 29, 2020, the approximate liquid assets of the Company were as
14 follows:

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

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

1 a. Cash in bank total: \$233,240.65

2 b. Investments fair market value total: \$1,749,256.45

3 A cash flow report for February 2020 is attached as Exhibit B.

4 **III. CONCLUSION**

5 In compliance with this Court's instructions for a status report regarding the affairs
6 of the Company, the Receiver has submitted the aforementioned status report and requests
7 that the Court approve this Fourth Status Report and the actions taken by the Receiver.

8 DATED: April 10th day of April 2020.

9 Respectfully submitted:

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

15 By: /s/ CANTILO & BENNETT, L.L.P.
16 Special Deputy Receiver
17 By Its Authorized Representative
18 Mark F. Bennett

19 Respectfully submitted:

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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)).

CERTIFICATE OF SERVICE

I certify that I am an employee of the law firm Greenberg Traurig, LLP, and that on April 10th, 2020, I filed and served electronically the foregoing *Fourth Status Report* via Odyssey, this Court’s electronic filing system upon all parties that are registered with this Court’s EFS. I further certify that on this day I served via USPS, postage prepaid, the parties listed below:

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/s/ Andrea Lee Rosehill
An employee of Greenberg Traurig, LLP

EXHIBIT LIST

EXHIBIT NO.	DESCRIPTION	NO. OF PAGES (Excluding tabs)
A	Bill Summary of Interim Fees and Expenses Incurred by Lancet Indemnity Risk Retention Group for the Month of October 2019, November 2019, December 2019, and January 2020, by Cantilo & Bennett, L.L.P.	25
B	Bill Summary of Interim Fees and Expenses Incurred by Lancet Indemnity Risk Retention Group for the Month of November 2019, December 2019, and January 2020, by Palomar	2
C	In Camera Submission to be Filed Separately	17