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13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

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

20 Plaintiff,

21 vs.

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

26 Defendant.

Case No. A-19-791409-B

Dept. No. 16

27 **NINTH STATUS REPORT**

28 COMES NOW, Commissioner of Insurance, Barbara D. Richardson, in her sole
capacity as Receiver, 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

1 under the receivership and of progress being made in accomplishing the objectives of the
2 receivership.” NRS 696B.290(7).

3 **I. INTRODUCTION**

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

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

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

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

13 In brief, the Permanent Receivership Order established the following key points for
14 the receivership:

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

1 5. that the Receiver may change to her own name the name of any of Lancet's
2 accounts, funds, or other property or assets, held with any bank, savings and
3 loan association, other financial institution, or any other person, wherever
4 located, and may withdraw such funds, accounts, and other assets from such
5 institutions or take any lesser action necessary for the proper conduct of the
6 receivership; and

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

11 On February 25, 2020, the Receiver filed a consolidated motion for a Final Order
12 Placing Lancet Indemnity Risk Retention Group, Inc. into Liquidation, and for a Final
13 Order Setting a Claims Filing Deadline and Granting Related Relief (the "Consolidated
14 Motion"). The Consolidated Motion was heard and granted on April 1, 2020. On April 9,
15 2020, the Court entered its Final Order Placing Lancet into Liquidation (the "Liquidation
16 Order") and its Final Order Setting Claims Filing Deadline for Lancet and Related Relief
17 (the "Claims Order"). The Claims Order established a Claims Filing Deadline of April 1,
18 2021, and procedures for filing claims against Lancet, which is discussed further below.
19 The Liquidation Order also granted the Receiver's request to formally place Lancet into
20 liquidation effective on April 9, 2020.

21 **II. RECEIVERSHIP ADMINISTRATION**

22 **A. Notice of Receivership**

23 The Receiver initially distributed notices regarding the Permanent Receivership
24 Order to all interested parties of Lancet, as detailed in the Receiver's prior quarterly status
25 reports. On February 5, 2020, the Court entered its Order Regarding Motion for
26 Instructions Including Notice Requirements (the "Notice Order"). Pursuant to the Notice
27 Order, the Receiver has given notice (as detailed further in the previously submitted Fourth
28 Status Report) to interested parties of the Liquidation Order, the Claims Order, and the

1 approved procedures for filing claims against Lancet in receivership. Future notices about
2 Lancet's receivership will continue to be provided to interested parties in accordance with
3 the Court's Notice Order.

4 **B. Claims Administration**

5 The April 1, 2021, Claims Filing Deadline has now passed, and Lancet received one
6 hundred nine (109) timely Proof of Claim ("POC") submissions. At this time, around forty-
7 four (44) of these may potentially be classified as Class B claims, pursuant to NRS
8 696B.420(1)(b) (the "Policy Claims"). For the claims that the Receiver is tentatively
9 assigning Policy Claim status, the total *claimed* amount is over \$90 million. The ultimate
10 liability for the Policy Claims will be lower, as policy limits will be applied to a number of
11 the claims, and as a number of the POCs submitted may be denied or only partially allowed
12 for other reasons. The Receiver has identified several issues which may impact the Policy
13 Claims, and is now working to gather additional information to help facilitate a fair
14 resolution of claim matters.

15 The Receiver's third-party claims administrator ("TPA"), Claims Resource
16 Management, Inc. ("CRMI"), is assisting the Receiver in the evaluation and adjudication of
17 incoming proofs of claim ("POC"). CRMI is also responding to loss run and credentialing
18 requests to the extent possible given the limited resources of the Lancet estate.²

19 **C. Third-Party Support Services**

20 CRMI is the third-party claims administrator for the receivership estate. Further
21 information regarding CRMI's receivership services are provided in section (B), *supra*.
22 PALOMAR FINANCIAL, LC ("Palomar"), an affiliated company of the SDR, performs financial
23 and technical administrative support services for Lancet in receivership. Palomar is being
24 used to save costs for the receivership estate, centralize data and information, and facilitate
25 the receivership's administration. Merlinos & Associates ("Merlinos") is an actuarial firm

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

3 The Receiver has received notice from time to time of lawsuits filed against Lancet
4 in violation of the Court’s Permanent Receivership Order. The Receiver’s established
5 procedure is to write to the parties involved to inform them of the injunctions of the
6 Permanent Receivership Order, and to request a voluntary dismissal of Lancet from the
7 matter. Thus far, the majority of counsel have been amenable to such requests. In limited
8 cases and only when absolutely necessary, the Receiver will engage outside counsel to
9 address ongoing or repeated violations of this Court’s orders. The Receiver has been
10 required to engage outside counsel Frost Brown Todd in a Kentucky matter where Lancet
11 was named as a third-party defendant. The court in that matter denied Lancet’s Motion to
12 Dismiss. The Receiver’s outside counsel has requested that the court in that matter enter
13 a formal written order, has registered the Permanent Receivership Order in Kentucky
14 under the Uniform Enforcement of Foreign Judgments Act, and on April 30, 2021, filed a
15 Motion for Relief from Prior Proceeding.

16 **D. Records & Property**

17 The Receiver is maintaining access, for the time being, to the cloud-based Lancet
18 policy database (*i.e.*, the Epic system, owned by Applied Systems, Inc.). The Receiver will
19 terminate these systems once it is certain that they are no longer needed. The Receiver
20 has terminated the premium financing software (*i.e.*, the Input 1 system) in order to
21 conserve costs, as the software was determined to no longer be necessary.

22 As previously reported, it does not appear that the Company kept complete and
23 accurate claims records – and it has been necessary for the Receiver and/or CRMI to request
24 records from third parties in an attempt to complete the claim files. Many files remain
25 incomplete. The Receiver will continue to evaluate the available records and will continue
26 to make requests as needed for missing information.

1 **E. Actuarial Reports**

2 Merlinos is an actuarial firm that was selected to assist the estate by evaluating the
3 policy and claims information for Lancet to provide a projection of the current and future
4 claims liabilities of the estate. Merlinos also evaluated Lancet’s liability for the return
5 premium owed for tail coverage policies that were terminated by the receivership order
6 cancelling such insurance coverages.

7 Merlinos has completed its actuarial reports on loss and loss expense reserves, gross
8 of reinsurance, for Lancet as of April 30, 2019, and December 31, 2019. The Receiver wrote
9 about these reports in the previous Seventh Status Report. The Receiver has determined
10 that a further actuarial report is not needed at this time. Updates to the Lancet claims
11 data will be made as claims are processed and claim determinations made final.

12 **F. Reinsurance**

13 The Receiver is working with Lancet’s reinsurance brokers, Tyser & Co. Ltd.
14 (“Tysers”) (formerly known as Integro Insurance Brokers Limited), to evaluate Lancet’s
15 reinsurance coverage and reinsured claims. After a number of commutation agreements
16 were executed in July and August of 2018, just one reinsurer remained on a small portion
17 of insurance risk for one excess of loss reinsurance contract (the “XOL”), with most of the
18 XOL reinsurance extinguished and released in 2018. The Receiver, and Tysers, will
19 continue to report claims on the XOL contract for the small portion of insurance risk that
20 remains covered.

21 Lancet also had an Awards Made reinsurance treaty.³ The Receiver pursued and
22 collected a reinsurance reimbursement payment due to Lancet, on the above-referenced
23

24
25 ³ Generally, an “awards made” reinsurance contract provides indemnification of the
26 insurance company for a percentage of the losses that accrue to the insurance company as
27 a result of each award made (*i.e.*, a verdict or judgment rendered by a court of competent
28 jurisdiction) reported to the insurance company during the term of the Awards Made
reinsurance contract term.

1 *Mora* claim, from the Awards Made treaty reinsurers. The Receiver reported on the
2 settlement of this claim in the previous Eighth Status Report.

3 To date, the Receiver has made reinsurance recoveries totaling \$662,425.90 for the
4 Lancet estate. The Receiver will continue to work with CRMI and Tysers to prepare the
5 reinsurance reporting on an ongoing basis that is necessary for further reinsurance
6 recoveries. Lancet does not have any reinsurance policies that would provide coverage to
7 individual claimants or policyholders of Lancet, and the above-referenced collections have
8 been placed into the general assets of the estate for the benefit of all creditors of the estate.

9 **G. Tax Matters**

10 On March 4, 2020, the Receiver requested tax prompt assessment from the
11 Department of Treasury regarding tax claims that may exist for tax years 2018 and prior.
12 The Department of Treasury will now have a period of eighteen months to provide notice
13 to the Receiver of any claims for the above-mentioned tax claims. This year, the Receiver
14 will be pursuing tax prompt assessment from the Department of Treasury for tax years
15 2019 and 2020.

16 **H. Asset Recovery**

17 On March 4, 2019, the Receiver put the prior directors and officers (“D&O”) of the
18 company, and their professional liability and/or errors and omissions insurance carrier (the
19 “D&O Insurance Carrier”), on notice of prior bad acts and actionable claims of the Receiver
20 resulting from pre-receivership errors, omissions, negligence, and misrepresentations. As
21 further detailed by the Receiver in prior status reports, the Receiver, the D&O, and the
22 D&O Insurance Carrier reached a settlement agreement without the need for any litigation
23 – and the Receiver has collected the agreed-upon settlement amount.

24 **I. Receivership Assets and Liabilities**

25 The Receiver has been gathering information and evaluating the assets and
26 liabilities of Lancet. A further liability analysis will be updated when the company’s claims
27 evaluation is completed with the assistance of outside parties who are now performing
28 claims services. On September 11, 2019, the Court entered its Order Granting Receiver’s

1 Motion to Approve Fees and Rates Filed on July 24, 2019. Pursuant to this Order, the
2 Receiver has included an informational copy, as Exhibit A to this Ninth Status Report, of
3 the invoices paid to the SDR and other receivership consultants since the last status report
4 to this Court.⁴ Below is an overview of some key financial matters for the Lancet
5 receivership.

6 As of April 30, 2021, the approximate liquid assets of the Company were as follows:

- 7 a. Cash in bank total: \$906,604.68
- 8 b. Investments fair market value total: \$1,222,094.52

9 A cash flow report for April 2021 is attached as Exhibit C.
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13 ⁴ The *in camera* materials, **Exhibit B**, are being submitted in a separate envelope
14 that reflect paid invoices. Certain billings submitted to the Court are appropriate for *in*
15 *camera* review (as opposed to being made part of a public filing). In this regard, courts
16 have held that the bills of legal counsel and experts may be withheld from legal discovery
17 and are not subject to legal disclosure, as this information may provide indications or
18 context concerning potential litigation strategy and the nature of the expert services being
19 provided. See, e.g., *Avnet, Inc. v. Avana Technologies Inc.*, No. 2:13-cv-00929- GMN-PAL,
20 2014 WL 6882345, at *1 (D. Nev. Dec. 4, 2014) (finding that billing entries were privileged
21 because they reveal a party's strategy and the nature of services provided); *Fed. Sav. &*
22 *Loan Ins. Corp. v. Ferm*, 909 F.2d 372, 374-75 (9th Cir. 1990) (considering whether or not
23 fee information revealed counsel's mental impressions concerning litigation strategy).
24 Other courts that have addressed this issue have recognized that the "attorney-client
25 privilege embraces attorney time, records and statements to the extent that they reveal
26 litigation strategy and the nature of the services provided." *Real v. Cont'l Grp., Inc.*, 116
27 F.R.D. 211, 213 (N.D. Cal. 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 Ninth Status Report and the actions taken by the Receiver.

5 DATED: June 2, 2021.

6 Respectfully submitted:

7
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:

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