IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
TEHUM CARE SERVICES, INC	§	**Case No. 23-90086 (CML)**
Debtor[1]	§	
ANANT KUMAR TRIPATI **Plaintiff,**	§	
	§	**Adv. Proc. No. 23-03072 (CML)**
V.	§	
SARAH TIRSCHWELL, et al., **Defendants**	§	

OBJECTION TO PLAINTIFF'S UNENUMERATED MOTION TO STRIKE ANY PAPER FILED BY WEBER GALLAGHER SIMPSON STAPLETON FIRES & NEWBY LLP; BEECKEN PETTY O'KEEFE & COMPANY, LLC; COVERYS SPECIALTY INSURANCE; EVANSTON INSURANCE; ZURICH AMERICAN INSURANCE; AMERICAN ZURICH INS.; HARFORD CASUALTY INSURANCE FOR FAILURE TO SERVE
(*Re*: AP Docket No. 129)

NOW COMES Coverys Specialty Insurance Company ("**Coverys**"), by and through its undersigned counsel, and, subject to its *Special Limited Notice of Appearance by Verrill Dana LLP on Behalf of Coverys Specialty Insurance Company* [Dkt. No. 101] and without submitting to the jurisdiction of this Court, makes this special appearance for the limited purpose of filing this *Objection* (the "**Objection**") to the *Unenumerated Motion to Strike Any Paper Filed by Weber Gallagher Simpson Stapleton Fires & Newby LLP; Beecken Petty O'Keefe & Company, LLC; Coverys Specialty Insurance; Evanston Insurance; Zurich American Insurance; American Zurich*

[1] The last four digits of the Debtor's federal tax identification number is 8853. The Debtor's service address is: 205 Powell Place, Suite 104, Brentwood, Tennessee 37027.

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Ins.; Hartford Casualty Insurance for Failure to Serve [Dkt. No. 129] (the "**Motion to Strike**") filed by Anant Kumar Tripati ("**Plaintiff'**).

In support thereof, Coverys states the following:

I. Background

1. On May 1, 2023, Plaintiff filed a *Complaint* (the "**Complaint**") initiating the above-captioned adversary proceeding.

2. On May 4, 2023, a docket notation reflects that "Summons Not Issued" as to, among others, Coverys Specialty Insurance Company.

3. On May 19, 2023, a docket notation reflects that "Summons Issued on," among others, Coverys Specialty Insurance Company.

4. Still later, on June 28, 2023, a further docket notation reflects that "Summons Not Issued" as to, among others, Coverys Specialty Insurance Company.

5. On July 17, 2023, although it appears from the most recent docket entry that no summons was issued as to Coverys, and, under any circumstance, Plaintiff both failed to serve Coverys with a Summons and Complaint in this adversary proceeding as required by Bankruptcy Rule 7004, and failed to file a Return of Service with respect to service of the Summons and Complaint on Coverys, the Plaintiff filed an *Application to the Clerk for Entry of Default Against Coverys Specialty Insurance Company for Failure to Plead or Respond Otherwise* [Dkt. No. 83] (the "**First Application for Entry of Default**").

6. On August 4, 2023, Coverys timely filed and served upon the Plaintiff its *Objection to Application to the Clerk for Entry of Default Against Coverys Specialty Insurance Company for Failure to Plead or Respond Otherwise* [Dkt. No. 102] (the "**First Objection**"). The *Certificate of Service* filed with the First Objection certifies that, on August 4, 2023, Coverys served the First

Objection on the Plaintiff by USPS mail, First Class, Prepaid to the following address: Anant Kumar Tripati, #102081, P.O. Box 8909, Yuma, AZ 85349. *See generally* Dkt. No. 102.

7. On August 22, 2023, the Plaintiff filed the Motion to Strike. The Motion to Strike states that:

> I am not on the e-filing system. In the event the above defendants have filed any papers I ask it be struck for failure to serve a copy upon me by mail.

Motion to Strike, pp. 1-2.

8. Coverys properly served the Plaintiff with the First Objection and filed evidence of the same. *See* Dkt. No. 102. Accordingly, the Motion to Strike is without merit and should be overruled.

II. Objection

9. Bankruptcy Local Rule 7007-1 provides that "[m]otion practice in adversary proceedings is governed by BLR 9013-1." Bankruptcy Local Rule 9013-1(d), in turn, provides that service must be made on "parties to the proceeding" in adversary proceedings. Here, Coverys served the Objection *via* the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas in the above-captioned adversary proceeding **and** to the Plaintiff, *via* USPS, first-class, prepaid. *See* Dkt. No. 102.

10. With respect to the method of service to the Plaintiff (USPS mail first-class, prepaid), Federal Rule of Bankruptcy Procedure 7005 provides that Federal Rule of Civil Procedure 5 applies in adversary proceedings. Under Fed. R. Civ. P. 5, service is made "by mailing it to the person's last known address—in which event service is complete upon mailing." Fed. R. Civ. P. 5(b)(2)(C). Additionally, when service is not made through the court's electronic-filing system, a certificate of service must be filed. *See* Fed. R. Civ. P. 5(d)(1)(B).

11. Here, service of the First Objection complied with the applicable Bankruptcy Local Rules, the Federal Rules of Bankruptcy Procedure and, to the extent incorporated therein, the Federal Rules of Civil Procedure. The Motion to Strike is without merit and, in fact, is contrary to the docket in this adversary proceeding, and should be denied.

III. Reservation of Rights

12. This Objection is submitted without prejudice to, and with full reservation of, Coverys' rights, claims, defenses, and remedies, including the right to supplement the Objection or modify, amend, or withdraw this Objection, to seek discovery, to raise additional objections and to introduce evidence at any hearing related to the Motion to Strike, and without in any way limiting any other rights of Coverys to object to and defend against the Complaint, on any grounds, as may be appropriate.

IV. Conclusion

13. The Plaintiff's Motion to Strike is without merit, this Court lacks jurisdiction over the Coverys, and the Court should sustain Coverys' objection to the Plaintiff's Motion to Strike.

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Dated: September 12, 2023
Boston, Massachusetts

Respectfully submitted,

VERRILL DANA LLP

By: */s/Thomas O. Bean*

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Counsel to Coverys Specialty Insurance Company

Certificate of Service

I, Thomas O. Bean of Verrill Dana, LLP, certify that I am over the age of eighteen and, on September 12, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas in the above-captioned adversary proceeding along with the Plaintiff, *via* USPS, first-class, prepaid to the address below.

/s/ *Thomas O. Bean*
Thomas O. Bean (admitted *pro hac vice*)

***Via* USPS, First Class, Prepaid:**
Anant Kumar Tripati
#102081
P.O. Box 8909
Yuma, AZ 85349