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,**	§	**Ad. Proc. No. 23-03072 (CML)**
V.	§	
SARAH TIRSCHWELL, et al., **Defendants**	§	

OBJECTION TO BR 7055 APPLICATION FOR DEFAULT JUDGMENT AGAINST WEBER GALLAGHER SIMPSON STAPLETON FIRES & NEWBY LLP; EVANSTON INSURANCE COMPANY; ZURICH AMERICAN INSURANCE; AMERICAN ZURICH INSURANCE COMPANY; COLUMBIA CASUALTY COMPANY; SCOTTSDALE INSURANCE COMPANY; COVERYS SPECIALTY INSURANCE COMPANY; HARTFORD CASUALTY INSURANCE COMPANY; BEECKEN PETTY O'KEEFE, A DELAWARE CORPORATION
(*Re*: AP Docket No. 132)

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 *BR Application For Default Judgment Against Weber Gallagher Simpson Stapleton Fires & Newby LLP; Evanston Insurance Company; Zurich American Insurance; American Zurich Insurance Company; Columbia Casualty Company;*

[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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Scottsdale Insurance Company; Coverys Specialty Insurance Company; Hartford Casualty Insurance Company; Beecken Petty O'Keefe, A Delaware Corporation [Dkt. No. 132] (the "**Second Application for Entry of Default**") filed by Anant Kumar Tripati ("**Plaintiff'**) based on Plaintiff's failure to properly serve Coverys with the summons and complaint in the above-captioned adversary proceeding.

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 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 "**Frist 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. The Court has not acted on the First Application for Entry of Default nor has the Plaintiff cured jurisdictional prerequisite that Coverys be properly served with a summons and the Complaint.

8. Nonetheless, on August 29, 2023, the Plaintiff filed his Second Application for Entry of Default.

9. Because the Plaintiff has still failed to serve Coverys with any summons and complaint in this adversary proceeding and the docket confirms that no proof of service has been filed with respect to Coverys, both the First Application for Entry of Default and the Second Application for Entry of Default should be denied.

II. Objection

10. Service of process for adversary proceedings filed in the United States Bankruptcy Court is governed by Rule 7004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and, to the extent incorporated therein, Rule 4 of the Federal Rules of Civil Procedure. Pursuant to Bankruptcy Rule 7004, a plaintiff filing an adversary proceeding must serve a copy of the complaint, along with the summons, upon the defendant. Fed. R. Civ. P. 4(c)(1) ("A summons must be served with a copy of the complaint.").

11. It is self-evident that the Clerk must issue a summons before service can be made. *See* Fed. R. Bankr. P. 7004(e) ("If service is by any authorized form of mail, the summons and complaint shall be deposited in the mail within 7 days after the summons is issued."); *see also* Fed. R. Bankr. P. 7004(f) ("If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, *serving a summons* . . . in accordance with this rule . . . is effective to establish personal jurisdiction over the person of any defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code."). In this case, based on the most recent docket notation, the Clerk did not issue a summons with respect to Coverys. *See* June 28, 2023 docket notation (stating that "Summons Not Issued" as to, among others, Coverys Specialty Insurance Company). However, even assuming the Clerk issued a summons as reflected in the May 19, 2023 docket entry, the Plaintiff still failed to serve Coverys with the summons and Complaint in accordance with the Bankruptcy Rules.

12. Coverys is a corporation. Thus, Plaintiff – if intending to effectuate service *via* USPS, first class, prepaid – was required to perfect service pursuant to Bankruptcy Rule 7004(b)(3). Under this rule, service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant." *Id*.

13. Plaintiff avers in the Second Motion for Entry of Default Judgment that, "[b]y mail Plaintiff served the summons and complaint on Defendants, and moved for default after they did not respond." *See* Dkt. No. 132. Yet, Plaintiff fails to cite to any proof of service on the docket, and the Plaintiff has not, in fact, served Coverys. *See generally* Adversary Proceeding 23-03072

(CML) reflecting no service upon Coverys;[2] *see also* Fed. R. Civ. P. 4(l)(1) as made applicable to this Adversary Proceeding by Fed. R. Bankr. P. 7004 ("Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit").

14. "Proper service of process is a jurisdictional prerequisite to the entry of a default judgment." *Avdeef v. Royal Bank of Scotland, P.L.C.*, 616 F. App'x 665, 672 (5th Cir. 2015). Because Coverys has never been served with a summons and Complaint, the Plaintiff is unable to meet this jurisdictional prerequisite and the First Application for Entry of Default and the Second Application for Entry of Default should each be denied.

III. Reservation of Rights

15. In addition to the above, there are many other reasons why granting First Application for Entry of Default or the Second Application for Entry of Default under these circumstances would be improper and unavailable to the Plaintiff, some of which have been identified by other defendants in this adversary proceeding. Coverys reserves the right to assert additional bases in opposition at a later time and does not waive any bases not yet asserted.

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[2] *See Summons in an Adversary Proceeding Executed on [**Centurion of Arizona**]* [AP Dkt. No. 6]; *Summons in an Adversary Proceeding Executed on **Betty Ullibari*** [AP Dkt. No. 7]; *Summons in an Adversary Proceeding Executed on **Beecken Petty O'Keefe & Company*** [AP Dkt. No. 8]; *Summons in an Adversary Proceeding Executed on **Sara Tirschwell*** [AP Dkt. No. 9]; *Summons in an Adversary Proceeding Executed on **Joseph Scott Conlon*** [AP Dkt. No. 10]; *Summons in an Adversary Proceeding Executed on **Struck Wienke & Love PLC*** [AP Dkt. No. 11]; *Summons in an Adversary Proceeding Executed on **Michael E. Gottfried*** [AP Dkt. No 12]; *Summons in an Adversary Proceeding Executed on **Jones Skelton Hochuli*** [Dkt. No 13]; *Summons in an Adversary Proceeding Executed on **Renaud Drury Mesaros PA*** [AP Dkt. No. 14]; *Summons in an Adversary Proceeding Executed on **Weber Gallagher Simpson Stapleton Fires & Newby LLP*** [AP Dkt. No. 15]; *Summons in an Adversary Proceeding Executed on **Quintairos Prieto Wood & Boyer*** [AP Dkt. No. 16]; *Summons in an Adversary Proceeding Executed on **M2 HoldCo LLC*** [AP Dkt. No. 17]; *Summons in an Adversary Proceeding Executed on **M2 EquityCo LLC*** [AP Dkt. No. 18]; *Summons in an Adversary Proceeding Executed on **Diane Boschuweicz*** [AP Dkt. No. 19]; *Summons in an Adversary Proceeding Executed on **Wexford Health Sources, Inc.*** [AP Dkt. No. 20]; *Summons in an Adversary Proceeding Executed on **Broening Oberg Woods & Wilson PC*** [AP Dkt. No. 21]; *Summons in an Adversary Proceeding Executed on **Valitas Intermediate Holdings Inc.*** [AP Dkt. No. 22]; *Summons in an Adversary Proceeding Executed on **Corizon Inc.*** [Dkt. No. 23]; and *Summons in an Adversary Proceeding Executed on **M2 LoanCo LLC*** [Dkt. No. 24].

16. This Objection is also 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 Second Application for Entry of Default, 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

As Plaintiff failed to serve the Summons and Complaint upon the Coverys, this Court lacks jurisdiction over the Coverys, and the Court should deny Plaintiff's First Application for Entry of Default and Second Application for Entry of Default.

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Dated: September 12, 2023
Boston, Massachusetts

Respectfully submitted,

VERRILL DANA LLP

By: */s/Thomas O. Bean*

Thomas O. Bean (admitted *pro hac vice*)
VERRILL DANA, LLP
One Federal Street, 20th Floor
Boston, Massachusetts 02110
Tel: 617-309-2606
E-mail: tbean@verrill-law.com

- and -

Nathaniel R. Hull (admitted *pro hac vice*)
VERRILL DANA, LLP
One Portland Square
Portland, Maine 04101
Tel: 207-253-4726
E-mail: nhull@verrill-law.com

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