

STATE OF VERMONT

SUPERIOR COURT  
WASHINGTON UNIT

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COMMISSIONER OF THE )  
DEPARTMENT OF FINANCIAL )  
REGULATION, )  
PLAINTIFF, )  
v. )  
NEELEY INCORPORATED CELL, )  
DEFENDANT. )

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CIVIL DIVISION  
DOCKET NO. 24-CV-00275

**AFFIDAVIT OF J. DAVID LESLIE, SPECIAL DEPUTY COMMISSIONER, IN  
SUPPORT OF PETITION FOR ORDER OF LIQUIDATION FOR THE NEELEY  
INCORPORATED CELL**

I, J. David Leslie, being sworn, hereby state as follows:

1. On January 23, 2024, the Commissioner of the Department of Financial Regulation (the “Commissioner”) sought and obtained on January 27, 2024 an Order (“Seizure Order”) from the Court that, among other things, directed him to take immediate possession and control of the property, books, accounts, documents and other records of the Neeley Incorporated Cell. The Commissioner appointed me Special Deputy Commissioner. I submit this Affidavit in support of the Commissioner’s “Petition for Order of Liquidation for the Neeley Incorporated Cell”. The facts and information set forth in this affidavit are either within my own knowledge and gained through my involvement in this matter, in which case I confirm they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information, and belief.

2. The Neeley Incorporated Cell (“Neeley” or the “Cell”) is an incorporated protected cell within AssureCap Indemnity, LLC (the “Sponsor”), a sponsored captive insurance company pursuant to Title 8, Chapter 141 of the Vermont Statutes Annotated. MarshMcLennan Agency is the Sponsor’s beneficial owner.

3. Pursuant to 8 V.S.A. §§ 6031-6039, a Vermont sponsored captive insurance company may establish protected cells within the Sponsor through participation agreements whereby the assets and liabilities of any one cell are financially and legally protected from the assets and liabilities of other cells. Should any individual cell become insolvent, its creditors will only have access to the assets of that specific cell and have no recourse against the assets of other cells within the sponsored captive insurance company. Neeley was formed to provide general and professional liability insurance to Petersen Health Care LLC (“Petersen” or “Participant”) and its affiliates and subsidiaries, primarily assisted living facilities and nursing homes in Illinois.

4. The records of the Department of Financial Regulation (the “Department”) show that the Cell was incorporated by the Vermont Secretary of State effective January 8, 2021, and on January 12, 2021, was authorized by the Department to conduct the business of an incorporated protected cell pursuant to its business plan and Title 8, Chapter 141 of the Vermont Statutes Annotated. The Cell’s sole shareholder is Neeley, LLC, a Delaware limited liability company created by Peterson for the sole purpose of the ownership of the Cell. The Cell itself is a “domestic insurer” within the meaning of 8 V.S.A. §§ 7055(a) and 7056.

5. The Department’s records show that the Sponsor and Cell utilize the services of third parties in the normal course of operation. AIG Insurance Management Services, Inc., Burlington, Vermont, is the captive management firm, whose responsibilities include but are not

limited to, accounting, reporting, and compliance matters. Michael Maglaras, Michael Maglaras & Company, is the program consultant and has been a board member of the Cell. Marsh McLennan Agency is the program administrator and insurance co-broker. HUB International is an insurance co-broker, M&T Bank and Wilmington Trust provide cash and investment services. Paul Frank + Collins, Burlington, Vermont, has provided legal services.

6. On December 13, 2023, the Department was notified by the Cell's consultants that Petersen failed to pay the premium due in accordance with the terms of the insurance policy issued by the Cell for the policy year January 1, 2023 through December 31, 2023, after repeated requests, including attempts to impose a payment schedule. The outstanding premium balance as of December 31, 2023 was \$1,401,947.60. Accordingly, the Cell did not issue a policy to Petersen for the policy year January 1, 2024 through December 31, 2024, so no coverage has been afforded to Petersen after December 31, 2023.

7. The Department was also advised on December 13, 2023 that Petersen had been generally non-responsive in matters related to the management and governance of the Cell. For example, Mark Petersen, the President of the Cell, failed to attend the Cell's annual Board of Directors meeting which had been scheduled for December 7, 2023. The original Board of Directors meeting was scheduled for November 28, 2023, and was rescheduled to December 7, 2023, at the request of Mark Petersen through HUB International. In addition, documents in preparation for the original meeting were sent to directors on November 20, 2023, with no response. Petersen's non-participation in the governance and administrative processes of the Cell has resulted in the inability to constitute a quorum or conduct any business related to corporate governance. Michael Maglaras resigned his Board position on December 7, 2023, when Mark Petersen did not attend the annual Board of Directors meeting of the Cell.

8. Upon my appointment, I reached-out to the third-party vendors described above, as well as Petersen, to provide notice of the Seizure Order and to request cooperation in compliance with that order. AIG Insurance Management Services, Inc. provided me with unaudited financial statements for the Cell as respects the period ending December 31, 2023 (“2023 Financial Statements”). (The 2023 Financial Statements are attached as Exhibit A hereto.) The 2023 Financial Statements treat the \$1,401,947.60 of unpaid 2023 Petersen premium as uncollectable and it is therefore written off as a bad debt. The 2023 Financial Statements report Total Shareholder Equity of \$339,960.45 as of December 31, 2023, which compares to \$1,448,173.47 as of December 31, 2022. Pursuant to its capital management plan, the Cell is required to maintain Total Shareholder Equity in a ratio of total loss reserves to Total Shareholder Equity of 5:1. The ratio of Total Shareholder Equity to total loss reserves reported in the 2023 Financial Statements is 8.5:1 and therefore significantly noncompliant with the capital plan.

9. I also consulted with Leslie Kaderavek, Vice President of MMA TPA Services (“MMA TPA”), who is responsible for managing the professional and general liability claims for the Cell. As described in the Affidavit of Leslie Kaderavek, which is also submitted in support of the Commissioner’s “Petition for Order of Liquidation for the Neeley Incorporated Cell” (“Kaderavek Aff.”), the policies issued by the Cell to Petersen had limits of \$500,000 per occurrence, subject to a \$100,000 indemnity only self-insured retention. Kaderavek Aff. ¶ 3. There are twenty-one active professional liability claims and one active general liability claim under the Neeley policies. Kaderavek Aff. ¶ 4. Petersen has been non-cooperative in authorizing reserve increases, granting settlement authority or funding an agreed settlement. Kaderavek Aff. ¶¶ 7-14. Petersen’s conduct severely inhibited MMA TPA’s ability to

effectively manage claims. Kaderavek Aff. ¶13. Petersen has in the past submitted at least one new Neeley claim (lawsuit) to MMA TPA per month but it has not submitted any claims since October 30, 2023. Kaderavek Aff. ¶¶ 15-16.

10. For the reasons described in paragraphs 8 and 9 above, I concluded that Neeley is in an impaired financial condition and that it is not presently possible to determine whether it is solvent due to Petersen's non-cooperation in facilitating the timely adjustment and resolution of claims. I am also concerned that there may well be unreported claims which means that the universe of Neeley's claim obligations is at present unknowable. A single new claim could exhaust the reported Total Shareholder Equity if it was in an amount equal to the policy per occurrence limit. There is also risk of adverse development beyond the loss reserve amounts carried at December 31, 2023. In general, the current situation prevents the timely determination of claims and the consequent calculation of Neeley's liabilities.

11. While a Seizure Order grants the Commissioner broad authority to investigate an insurer's financial and operational circumstances and prevent the dissipation of assets, it does not empower the Commissioner to take the proactive steps that are necessary in this situation – enjoin claims against Neeley and channel them into a Vermont liquidation proceeding, set a deadline for the submission of claims against Neeley, determine those claims, and distribute the available assets in accordance with the statutory priorities based on claims as allowed by the Court. It is possible that Neeley's assets may be adequate to fully fund all its obligations but that can only become known after its claim obligations are determined.

12. In my opinion, an effort to rehabilitate Neeley would be futile because it would not cause a crystallization of the Cell's liabilities; this would only occur in a liquidation. Also, a rehabilitation would not be in the best interest of Neeley's creditors because it would not resolve

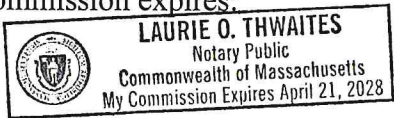
the claim administration and resolution “logjam” that currently exists. A liquidation proceeding will afford third-party claimants, who hold the principal claims against Neeley, an opportunity to have their claims adjudicated followed by a distribution of assets.

13. In order to facilitate the efficient determination of Neeley’s obligations, the Commissioner is proposing a Plan of Liquidation. Pursuant to the Plan of Liquidation, the liquidator would issue notice in the manner specified by statute and set a claim filing deadline not more than six months after entry of the liquidation order. The policyholder will be responsible for defending claims against it and paying all claims and defense costs. The policyholder may file a proof of claim for such claim and defense costs but it is expected that the Third-party claimants may submit their claims directly to the liquidator who would investigate and make a recommendation. As proofs of claim are received, the liquidator would review them and make determinations as to priority.<sup>1</sup> (The intention would be to have MMA TPA continue to adjust such claims but on behalf of the liquidator.)

Dated this 5<sup>th</sup> day of February 2024.

Subscribed and sworn before me  
this 15<sup>th</sup> day of February 2024.

Laurie O. Thwaites  
Notary Public  
My commission expires:



J. David Leslie  
J. David Leslie  
Special Deputy Commissioner

<sup>1</sup> A proposed Proof of Claim form and Notice of Liquidation are attached to the Plan of Liquidation.

**EXHIBIT A**

**Neeley Incorporated Cell  
A protected cell of AssureCap Indemnity, LLC  
Unaudited Financial Statements  
December 31, 2023**

Prepared by:

Kayla Norton

Reviewed by:

Raina Tripp

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**Neeley Incorporated Cell**  
**Unaudited Financial Statements**  
**For the Period Ending December 31, 2023**

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**Neeley Incorporated Cell**  
**Balance Sheet**  
**December 31, 2023**

	<u>2023</u>	<u>December 2022</u>
<b>Assets</b>		
Operating Account	\$ 90,446.02	\$ 16,960.16
Money Market Account	1.07	2,631.85
Escrow Account	-	-
Investment - Money Market	957,761.85	1,043,019.74
Investments - Mutual Funds & ETFs, at Fair Value	2,218,472.73	2,125,374.57
Premium Receivable	1,401,947.60	-
Allowance for Doubtful Accounts	(1,401,947.60)	-
Accrued Interest on Investments	4,225.57	3,503.68
Deferred Tax Asset	33,950.56	53,501.19
<b>Total Assets</b>	<b><u>\$ 3,304,857.80</u></b>	<b><u>\$ 3,244,991.19</u></b>
<b>Liabilities and Shareholder Equity</b>		
<b>Liabilities</b>		
Outstanding Loss Reserves	\$ 940,866.71	\$ 154,126.77
IBNR Loss Reserves	1,950,934.88	1,595,553.20
Losses & LAE Payable	12,889.55	(10,347.00)
Policy Acquisition Fees Payable	15,000.00	16,277.00
Premium Tax Payable	7,430.46	7,476.36
Accounts Payable and Other Liabilities	24,140.00	18,465.00
Federal Income Tax Payable	13,635.75	15,266.39
<b>Total Liabilities</b>	<b><u>2,964,897.35</u></b>	<b><u>1,796,817.72</u></b>
<b>Shareholder's Equity</b>		
Common Stock	275,000.00	275,000.00
Retained Earnings	1,173,173.47	582,707.75
Current Earnings (Deficit)	(1,108,213.02)	590,465.72
<b>Total Shareholder Equity</b>	<b><u>339,960.45</u></b>	<b><u>1,448,173.47</u></b>
<b>Total Liabilities and Shareholder Equity</b>	<b><u>\$ 3,304,857.80</u></b>	<b><u>\$ 3,244,991.19</u></b>

**Neeley Incorporated Cell  
Income Statement  
For the Period Ending December 31, 2023**

	<u>Current Quarter</u>	<u>Year to Date</u>	<u>Prior Year to Date</u>	<u>Year-to-Date Budget</u>
<b>Underwriting Income</b>				
Direct Premium Written	\$ -	\$ 1,955,289.00	\$ 1,969,329.00	\$ 1,955,289.00
Change in Unearned Premium	488,822.25	-	-	-
<b>Earned Premium</b>	<b>488,822.25</b>	<b>1,955,289.00</b>	<b>1,969,329.00</b>	<b>1,955,289.00</b>
<b>Underwriting Expenses</b>				
Paid Losses and Loss Adjustment Expenses	55,690.82	185,050.38	43,440.36	-
Change in Outstanding Loss Reserves	51,309.18	786,739.94	111,006.44	-
Change in IBNR Loss Reserves	224,793.00	355,381.68	645,553.20	1,327,172.00
Other Underwriting Expenses	108,455.29	388,821.10	340,720.45	348,832.00
<b>Total Underwriting Expenses</b>	<b>440,248.29</b>	<b>1,715,993.10</b>	<b>1,140,720.45</b>	<b>1,676,004.00</b>
<b>Net Underwriting Profit (Loss)</b>	<b>48,573.96</b>	<b>239,295.90</b>	<b>828,608.55</b>	<b>279,285.00</b>
Investment Income	150,403.32	208,630.54	(217,406.78)	-
General & Administrative Expenses	19,345.21	109,677.87	65,599.76	84,500.00
Bad Debt Expense	1,401,947.60	1,401,947.60	-	-
<b>Income (Loss) Before Taxes</b>	<b>(1,222,315.53)</b>	<b>(1,063,699.03)</b>	<b>545,602.01</b>	<b>194,785.00</b>
Federal Income Tax Expense (Benefit)	31,584.34	44,513.99	(44,863.71)	40,904.85
<b>Net Income (Loss)</b>	<b>\$ (1,253,899.87)</b>	<b>\$ (1,108,213.02)</b>	<b>\$ 590,465.72</b>	<b>\$ 153,880.15</b>

**Neeley Incorporated Cell  
Schedule of Investment Income  
For the Period Ending December 31, 2023**

	<u>Current Quarter</u>	<u>Year to Date</u>	<u>Prior Year to Date</u>
<b>Investment Income:</b>			
Dividend Income	\$ 26,027.97	\$ 72,432.77	\$ 48,316.95
Interest Income	7.71	68.38	60.39
Interest Income on Investments	12,866.09	51,827.17	7,814.26
Unrealized Gain (Loss)-Equities	113,022.65	93,098.16	(266,429.59)
Investment Expense	(1,521.10)	(8,795.94)	(7,168.79)
<b>Total Investment Income</b>	<u><u>\$ 150,403.32</u></u>	<u><u>\$ 208,630.54</u></u>	<u><u>\$ (217,406.78)</u></u>

**Neeley Incorporated Cell**  
**Schedule of General & Administrative Expenses**  
**For the Period Ending December 31, 2023**

	<b>Current Quarter</b>	<b>Year to Date</b>	<b>Prior Year to Date</b>	<b>Year-to-Date Budget</b>
<b>General &amp; Administrative Expenses</b>				
Bank Fees	\$ 1.71	\$ 102.03	\$ 15.76	\$ 3,000.00
Captive Management Fee Expense	10,000.00	40,000.00	40,000.00	40,000.00
Audit Expense	(2,125.00)	8,575.16	7,750.00	13,500.00
Actuarial Fee Expense	(3,200.00)	8,800.00	12,750.00	16,000.00
Legal Fee Expense	7,002.00	14,502.00	2,850.00	10,000.00
Miscellaneous & Tax Expense	7,666.50	37,698.68	2,234.00	2,000.00
<b>Total General &amp; Administrative Expenses</b>	<b>\$ 19,345.21</b>	<b>\$ 109,677.87</b>	<b>\$ 65,599.76</b>	<b>\$ 84,500.00</b>

**Neeley Incorporated Cell  
Inception to Date Underwriting Schedule  
For the Period Ending December 31, 2023**

	2021 Policy Year 2/5 - 12/31	2022 Policy Year	2023 Policy Year	Cumulative
<b>PREMIUMS:</b>				
Direct Premiums Written	1,930,765	1,969,329	1,955,289	5,855,383
Change in Unearned Premiums	-	-	-	-
<b>Direct Premiums Earned</b>	<b>1,930,765</b>	<b>1,969,329</b>	<b>1,955,289</b>	<b>5,855,383</b>
<b>UNDERWRITING EXPENSES:</b>				
<b>Losses:</b>				
Paid Losses	85,126	71,830	78,415	235,370
Outstanding Loss Reserves	201,111	328,170	411,585	940,867
IBNR Reserves	213,763	900,000	837,172	1,950,935
<b>Total Losses Incurred</b>	<b>500,000</b>	<b>1,300,000</b>	<b>1,327,172</b>	<b>3,127,172</b>
<b>Policy Expenses:</b>				
AUR Underwriting Expense	55,208	57,188	56,543	168,939
Unallocated Loss Adjustment Expense	36,000	32,000	75,000	143,000
Production & Account Servicing, Risk Management & Loss Control	216,425	237,328	243,212	696,965
Premium Tax Expense	7,337	7,483	7,430	22,250
Participation Fee Expense	19,667	6,721	6,636	33,024
<b>Total Policy Expenses</b>	<b>334,637</b>	<b>340,720</b>	<b>388,821</b>	<b>1,064,178</b>
<b>Total Underwriting Expenses</b>	<b>834,637</b>	<b>1,640,720</b>	<b>1,715,993</b>	<b>4,191,350</b>
<b>Underwriting Profit/(Loss)</b>	<b>1,096,128</b>	<b>328,609</b>	<b>239,296</b>	<b>1,664,033</b>
<b>Operating Ratios:</b>				
Loss Ratio	26%	66%	68%	53%
Expense Ratio	17%	17%	20%	18%
Combined Ratio	43%	83%	88%	72%
Aggregate Limit Per Policy Year	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000	
Percentage of Aggregate Used By Policy Year	17%	43%	44%	

Neeley Incorporated Cell  
Capital Ratio Calculation

	December 2021	December 2022	March 2023	June 2023	September 2023	December 2023		
<b>Assets</b>								
Operating Account	28,107	16,960	14,574	192,667	10,909	90,446		
Money Market Account	76,071	2,632	2,654	2,673	2,693	1		
Escrow Account	-	-	-	30,804	-	-		
Investment - Money Market	111,450	1,043,020	1,063,004	1,090,125	1,118,597	957,762		
Investments - Mutual Funds & EFTs, at Fair Value	1,674,912	2,125,375	2,180,925	2,167,285	2,105,450	2,218,473		
Premium Receivable	-	-	1,886,948	1,401,948	1,401,948	1,401,948		
Allowance for Doubtful Account	-	-	-	-	-	(1,401,948)		
Accrued Interest on Investments	3	3,504	4,095	4,464	6,018	4,226		
Deferred Premium Taxes	-	-	5,573	3,715	1,858	-		
Deferred Policy Acquisition Costs	-	-	251,066	167,378	89,939	-		
Deferred Tax Asset	-	53,501	41,836	44,700	57,685	33,951		
Prepaid Participation Fees	-	-	4,977	3,318	1,659	-		
<b>Total Assets</b>	<b>1,890,544</b>	<b>3,244,991</b>	<b>5,455,651</b>	<b>5,109,076</b>	<b>4,796,754</b>	<b>3,304,858</b>		
<b>Liabilities and Shareholder's Equity</b>								
<b>Liabilities</b>								
Outstanding Loss Reserves	43,120	154,127	303,746	853,313	889,558	940,867		
IBNR Loss Reserves	950,000	1,595,553	1,738,659	1,492,439	1,726,142	1,950,935		
Unearned Premium Reserves	-	-	1,466,467	977,645	488,822	-		
Losses & LAE Payable	-	(10,347)	(10,347)	(10,347)	(10,347)	12,890		
Policy Acquisition Fees Payable	-	16,277	301,224	143,243	64,123	15,000		
Premium Tax Payable	7,337	7,476	7,063	7,430	7,430	7,430		
Accounts Payable and Other Liabilities	25,750	18,465	80,700	26,220	20,900	24,140		
Deferred Tax Liability	2,449	-	-	-	-	-		
Federal Income Tax Payable	4,180	15,266	9,885	15,651	16,266	13,636		
<b>Total Liabilities</b>	<b>1,032,836</b>	<b>1,796,818</b>	<b>3,897,396</b>	<b>3,505,593</b>	<b>3,202,894</b>	<b>2,964,897</b>		
<b>Shareholder's Equity</b>								
Common Stock	275,000	275,000	275,000	275,000	275,000	275,000		
Retained Earnings (Deficit)	-	582,708	1,173,173	1,173,173	1,173,173	1,173,173		
Current Earnings (Deficit)	582,707	590,466	110,081	155,309	145,687	(1,108,213)		
<b>Total Shareholder's Equity</b>	<b>857,707</b>	<b>1,448,173</b>	<b>1,558,255</b>	<b>1,603,483</b>	<b>1,593,860</b>	<b>339,960</b>		
<b>Total Liabilities and Shareholder's Equity</b>	<b>1,890,544</b>	<b>3,244,991</b>	<b>5,455,651</b>	<b>5,109,076</b>	<b>4,796,754</b>	<b>3,304,858</b>		
<b>Ratio:</b>								
Long term Liabilities	993,121	1,749,680	2,042,405	2,345,752	2,615,699	2,891,802	Minimum Equity Target: 5 to 1 ratio of Loss Reserves to Equity	2,891,802
Shareholder's Equity	857,707	1,448,173	1,558,255	1,603,483	1,593,860	339,960	Target Capital to be Contributed, based upon December 31 financial standing:	578,360
Long term Liabilities to Shareholder's Equity	1.16	1.21	1.31	1.46	1.64	8.51		238,400