

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

In re:

HEALTH DIAGNOSTIC LABORATORY,  
INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No.: 15-32919-KRH

Jointly Administered

**MOTION OF THE HDL LIQUIDATING TRUST OVERSIGHT  
COMMITTEE AND THE LIQUIDATING TRUSTEE TO  
(I) APPOINT PERMANENT LIQUIDATING TRUSTEE AND  
(II) EXTEND DEADLINE TO OBJECT TO CLAIMS**

The HDL Liquidating Trust Oversight Committee (the “**Oversight Committee**”) and Richard Arrowsmith, in his capacity as Liquidating Trustee of the HDL Liquidating Trust (the “**Liquidating Trustee**”), appointed pursuant to the confirmed Modified Second Amended Plan of Liquidation (the “**Plan**”)<sup>2</sup> in these jointly administered bankruptcy cases (the “**Chapter 11 Cases**” or the “**Cases**”), by and through their undersigned counsel, hereby moves the Court (the “**Motion**”) for entry of an order substantially in the form annexed hereto as **Exhibit A**, (i) granting the motion

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are: Health Diagnostic Laboratory, Inc. (0119), Central Medical Laboratory, LLC (2728), and Integrated Health Leaders, LLC (2434).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

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to appoint a permanent liquidating trustee and (ii) extending Claims Objection Deadline.<sup>3</sup> In support of the Motion, the Oversight Committee and the Liquidating Trustee respectfully state as follows:

### **JURISDICTION**

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Venue in this Court is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This Motion is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). This Court has continuing jurisdiction over the Plan and its implementation as set forth in this Court's *Order Confirming Debtors' Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [Docket No. 1095] (the "**Confirmation Order**").

2. The relief sought in this Motion is predicated upon Bankruptcy Rule 2007.1 and Sections §§ 105(a) and 1104(a) of the Bankruptcy Code.

### **PRELIMINARY STATEMENT**

3. The appointment of Richard Arrowsmith as permanent liquidating trustee is the most practicable and economically prudent choice due to his intimate involvement in the Chapter 11 Cases. It would take time and significant estate resources to bring a new candidate current on all matters necessary to administer the estate properly. Accordingly, the appointment of Richard Arrowsmith as permanent liquidating trustee is the most appropriate course of action.

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<sup>3</sup> As defined in the Plan, the Claims Objection Deadline means "the last day for seeking to subordinate Claims, including without limitation by commencing a contested matter or an adversary proceeding to subordinate Claims, or for filing objections to Claims, including without limitation by commencing a contested matter or an adversary proceeding to object to Claims, other than Administrative Claims and Fee Claims, which day shall be the later of (a) two hundred ten (210) days after the Effective Date or (b) such other date as the Court may order. The filing of a motion to extend the Claims Objection Deadline shall automatically extend the Claims Objection Deadline until a Final Order is entered on such motion; provided that any hearing on said motion is held on or before the date that is no more than thirty (30) days after the Claims Objection Deadline. In the event that such motion to extend the Claims Objection Deadline is denied, the Claims Objection Deadline shall be the later of the current Claims Objection Deadline (as previously extended, if applicable) or thirty (30) days after the Court's entry of an order denying the motion to extend the Claims Objection Deadline.

4. Additionally, cause exists to extend the Claims Objection Deadline of January 2, 2018 to July 1, 2018. It is imperative for the Liquidating Trustee to have adequate time to review, reconcile and resolve the hundreds of claims that have been filed against the Debtor. The holders of such claims will not be prejudiced by such an extension, and in fact will benefit from the additional time afforded to the Liquidating Trustee to evaluate all claims adequately.

### **RELEVANT BACKGROUND**

5. On June 7, 2015, each of the Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the Bankruptcy Code with this Court, commencing the Chapter 11 Cases. On June 9, 2015, the Court entered an order authorizing the joint administration of these Chapter 11 Cases, pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure [Docket No. 42].

6. On June 16, 2015, the Office of the United States Trustee for the Eastern District of Virginia, Richmond Division, appointed the Official Committee of Unsecured Creditors (the “**Creditors’ Committee**”), pursuant to Section 1102 of the Bankruptcy Code.

7. On November 5, 2015, the Court entered the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and Certain Administrative Claims, (II) Approving the Form and Manner of Notice Thereof, and (III) Providing Certain Supplemental Relief* [Docket No. 640], establishing December 22, 2015 as the bar date (the “**Bar Date**”) by which proofs of claim against the Debtors must be filed.

8. On May 12, 2016, the Court entered the Confirmation Order, confirming the Plan.

9. Pursuant to the Plan and Confirmation Order, Richard Arrowsmith was appointed as Liquidating Trustee of the HDL Liquidating Trust on an interim basis. *See* Confirmation Order ¶ 54; Plan § 1.74. The Plan requires the Oversight Committee to select a permanent liquidating

trustee within 210 days of the Effective Date. *See* Plan § 1.74.

10. The Confirmation Order further provided that the Liquidating Trust Oversight Committee shall be permitted to seek appointment of an appropriate permanent liquidating trustee who is not from the Agreed List, if the appointment of a permanent liquidating trustee from the Agreed List no longer is practicable after commercially reasonable efforts. *See* Confirmation Order ¶ 54; Plan § 1.74.

11. The Plan also requires the Liquidating Trustee to file objections to Claims on “the later of (a) two hundred ten (210) days after the Effective Date or (b) such other date as the Court may order.” Plan, § 1.24.

12. On November 30, 2016, this Court entered its *Order Granting Motion of the HDL Liquidating Trust Oversight Committee and the Liquidating Trustee to Extend Deadline to (I) Select Permanent liquidating trustee and (II) to Object to Claims* [Docket No. 1614], thereby extending (i) the Permanent Trustee Deadline until such date as the Oversight Committee determines to be in the best interest of the beneficiaries of the HDL Liquidating Trust, but not later than 18 months from the Effective Date (or by November 13, 2017), as well as (ii) the Claims Objection Deadline for an additional 210 days (to July 6, 2017).

13. On June 22, 2017, the Court entered the second *Order Granting Second Motion of the HDL Liquidating Trust Oversight Committee and the Liquidating Trustee to Extend the Deadlines to (I) Select Permanent Liquidating Trustee and (II) Object to Claims* [Docket No. 3243], extending to January 2, 2018 both (i) the deadline to appoint a permanent liquidating trustee and (ii) the Claims Objection Deadline.

**RELIEF REQUESTED**

14. By this Motion, the oversight Committee and the Liquidating Trustee seek entry

of an order (i) approving the appointment of Richard Arrowsmith as permanent liquidating trustee and (ii) extending the Claims Objection Deadline to July 1, 2018.

**BASIS FOR RELIEF REQUESTED**

**I. Appointment of Richard Arrowsmith as Permanent Liquidating Trustee Represents the Most Practical Resolution and Should Be Approved**

15. Section 1104(a)(2) of the Bankruptcy Code provides, in pertinent part, that “[t]he court shall order the appointment of a trustee . . . if such appointment is in the interests of creditors...”

16. Pursuant to the Plan, the Liquidating Trustee is the employee or fiduciary responsible for implementing the applicable provisions of the Plan, administering the Liquidating Trust, and making Distributions from the proceeds of the HDL Liquidating Trust in accordance with the Plan. *See* §§ 1.72, 6.5(c).

17. The Plan sets forth that the permanent liquidating trustee will be selected from the Agreed List, which consists of three candidates proposed by the Debtors, plus up to three candidates proposed by the Creditors’ Committee. *See* Plan § 1.4. However, the Plan explicitly states that “if after commercially reasonable efforts of the Liquidating Trust Oversight Committee, appointment of a permanent liquidating trustee from the Agreed List is no longer practicable, the Liquidating Trust Oversight Committee shall be permitted to seek relief from the Court...to appoint an appropriate permanent liquidating trustee who is not from the Agreed List.” Plan § 1.72.

18. Although Mr. Arrowsmith is not included on the Agreed List, the Oversight Committee maintains that Mr. Arrowsmith is the most practicable choice for permanent liquidating trustee due to his familiarity and experience with these Chapter 11 Cases and hundreds of adversary proceedings related to the same. Moreover, his appointment as permanent liquidating trustee would be appropriate given the economic benefits to the estate.

19. Mr. Arrowsmith has been deeply involved with the Chapter 11 Cases since his appointment as interim Liquidating Trustee, including, *inter alia*, in the following:

- Commencing adversary proceeding number 16-03271 against a wide range of individuals and entities, including but not limited to, the former officers, directors, and certain shareholders of the Debtors, and various associated entities (the “**D&O Action**”), which has entailed responding to a substantial number of pretrial motions, including thirteen motions to dismiss, motions to withdraw reference, the filing of an amended complaint, formulating and constructing the various procedural orders, preparing extensive mediation statements for the scheduled mediation, engaging in settlement negotiations, and preparing for various hearings, among many other duties and obligations required to effectively litigate the D&O Action;
- Responding to AIG’s Interpleader Complaint and Counterclaim;
- Negotiating terms of sale of real property owned by Biotec Building LLC;
- Commencing an adversary proceeding against the federal and state taxation authorities;
- Reaching settlements with Randox Laboratories, C3 Nexus LLC, Cigna Health and Life Insurance Company, Metabolon/CRG, GeneNews, Lemberg Law, LLC, Connecticut General Life Insurance Company and several defendants in the D&O Action, resulting in the recovery of millions of dollars for the estate;
- Reaching settlement with LeClairRyan after months of extensive negotiations, followed by litigation of the subsequent appeals filed by defendants in the D&O Action, currently still pending;

- Engaging in extensive litigation with True Health Diagnostics, LLC (APN 16-03011);
- Engaging in rigorous discovery across all proceedings;
- Analyzing and evaluating close to 600 filed proofs of claim, formulating objections when necessary; and
- Filing over fourteen hundred and fifty adversary proceedings to avoid fraudulent and preferential transfers, resulting in the aggregate recovery of over \$6 million for the Liquidating Trust thus far.

20. The foregoing tasks have required extensive time and resources on the part of the Liquidating Trustee. To appoint a different candidate as permanent liquidating trustee would cause the estate to expend significant administrative costs to ensure the new trustee is fully apprised of the intricacies and complexities of this massive litigation.

21. Furthermore, selecting a different candidate as permanent liquidating trustee would cause significant delays in the progress of the Chapter 11 Cases. In order to appropriately administer the estate, the permanent Trustee would have to be familiar with virtually every document on the 3,500 plus docket and others not publicly filed. It would take months, possibly years, to bring an individual up to speed on events of the past two and a half years, setting to one side the additional time it would take to read and absorb all complaints, counterclaims, answers, discovery, settlement negotiations, emails, appeal documents, motions, exhibits, transcripts, and all other relevant paperwork and filings.

22. The working relationships forged over months among the Liquidating Trustee and his counsel, in addition to counsel for opposing parties, would be erased for purposes of these Chapter 11 Cases, and precious time would be spent rebuilding those relationships with a new

trustee.

23. Appointment of a permanent trustee does not remove any such person from continued oversight by the Oversight Committee. Nothing in the Trust Agreement prohibits the Oversight Committee from replacing the Liquidating Trustee in the event of changing circumstances. Given that any permanent Liquidating Trustee may be replaced at the will of the Oversight Committee, his performance and function is subject to the continued review and consideration of the Oversight Committee as the case proceeds.

24. Counsel for the Oversight Committee has communicated with certain candidates on the Agreed List and, based on those discussions, does not believe a replacement for Mr. Arrowsmith is commercially reasonable or viable at this time. Lastly, the financial arrangement currently brokered with Mr. Arrowsmith at \$15,000 per month is economically favorable to the estate, considering the tremendous amount of hours necessary to perform the responsibilities and obligations demanded of the Liquidating Trustee.

25. The Oversight Committee submits that the appointment of Richard Arrowsmith as permanent liquidating trustee is the most economical and efficient resolution available to the HDL Liquidating Trust and its creditor constituents.

**II. The Claims Objection Deadline Should Be Extended to Allow Adequate Review of All Claims Filed**

26. Bankruptcy Rule 9006(b) permits a court, in its discretion, to enlarge the period of time when an act is required to be done for good cause shown. *See* Fed. R. Civ. P. 9006(b). In addition, the Confirmation Order allows this Court to take any action as may be necessary for the implementation, execution, performance and consummation of the Plan. *See* Confirmation Order, ¶ 65(b). Although Bankruptcy Rule 9006 does not define “cause,” it has been noted that “courts should be liberal in granting extensions of time sought before the period to act has elapsed, as long



as the moving party has not been guilty of negligence or bad faith and the privilege of extensions has not been abused . . . .” 10 *Collier on Bankruptcy* (15<sup>th</sup> ed. rev. 2008 at 9006-14).

27. In the context of determining whether “cause” exists regarding extensions of time, courts have considered such factors as the size and complexity of the issues involved, the good faith progress in resolving issues, the amount of time elapsed in the case, and whether any prejudice will result to the creditors. See, e.g., *In re Lichtin/Wade, L.L.C.*, 478 B.R. 204, 209 (Bankr. E.D.N.C. 2012); *In re Grand Traverse Dev. Co., Ltd.*, 147 B.R. 418 (Bankr. W.D. Mich. 1992); *In re McLean Indus., Inc.*, 87 B.R. 830 (Bankr. S.D.N.Y. 1988).

28. Cause exists to extend the Claims Objection Deadline for an additional 180 days from January 2, 2018, to July 1, 2018.

29. To date, approximately 600 proofs of claim have been filed against the Debtors, collectively asserting more than \$3.1 billion in aggregate liabilities.

30. Since the Bar Dates, the Liquidating Trustee has made significant progress in reviewing and reconciling Claims. Of the \$3.1 billion in aggregate liabilities claimed, the Liquidating Trustee has reduced the amount of claims allowed to \$110,394,789.81, a reduction of over \$2.9 billion.

31. Additionally, the Liquidating Trustee has filed three omnibus claims objections to expunge, disallow, or modify over 135 claims. See Docket Nos. 1162, 1532, 2543. The Omnibus Complaint also seeks the disallowance of proofs of claim filed by the defendants in the D&O action. The Liquidating Trustee is reviewing, reconciling, and resolving claims filed before the additional administrative claim bar date of June 13, 2016, that was established under the Plan. See Plan, § 2.3

32. While the claims reconciliation process is well underway, the Liquidating Trustee

requires additional time to effectively evaluate the remaining Claims, prepare and prosecute objections to Claims and, where possible, consensually resolve the Claims. The Liquidating Trustee submits that the holders of Claims will not be prejudiced by such an extension. To the contrary, failing to grant the requested extension could result in certain creditors being overpaid for claims that should otherwise be reduced or disallowed, thereby diluting the amounts that should be paid to legitimate creditors.

### **NOTICE**

33. Notice of this Motion is being provided to parties-in-interest in accordance with the Case Management Procedures. Due to the nature of this request, the Liquidating Trustee and the Oversight Committee submit no further notice is required.

WHEREFORE, the Liquidating Trustee respectfully requests that this Court enter an order, a form of which is attached hereto as **Exhibit A**, (1) granting the Liquidating Trustee's Motion to Appoint a Permanent Liquidating Trustee; (2) extending the Claims Objection Deadline to July 1, 2018; and (3) granting the Oversight Committee and Liquidating Trustee such other and further relief as the Bankruptcy Court deems proper and just.

Dated: December 7, 2017

Respectfully submitted,

/s/ Cullen D. Speckhart

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