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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

In re:) Case No. 19CV54124
)
GRIDWORKS LAB, INC., an Oregon) RECEIVER’S MOTION FOR ORDER
corporation,) GRANTING LIMITED RELIEF FROM
) THE AUTOMATIC STAY OF ORS 37.220
Petitioner.)
)

MOTION

Clyde A. Hamstreet & Associates, LLC, the court-appointed receiver in the above-referenced case (the “Receiver” and the “Receivership”) hereby moves the court for an order granting limited relief from the automatic stay of ORS 37.220. This Motion is for the purpose of authorizing Health Share of Oregon (“Health Share”) and Health Share’s insurance company, Aspen Specialty Insurance Company (“Aspen”), respectively, to present and assert economic claims and/or subrogation claims to recover for alleged monetary damages and financial losses they have incurred or may sustain in the future resulting from a November 2019 incident concerning the theft of a laptop computer containing unencrypted information from Petitioner Gridworks Lab, Inc. dba Gridworks IC (“Gridworks”) (the “Data Breach Incident”); only to the extent of insurance coverage for such claims that may be available under Insuring Agreement B. “Cyber” in the Technology, Cyber, Data Risk, and Media Insurance Policy, Policy No. MPL 4098029.19 (the “Data Breach Policy”) issued to Gridworks by and through Certain Underwriters at Lloyds, London (“Underwriters”) and Hiscox ClearTech (“Hiscox ClearTech”) (collectively “Gridworks’ Data Breach Insurers”). Through this Motion the Receiver asks the court

1 to grant limited relief from the automatic stay in order to allow Health Share and/or Aspen to
2 present economic claims and/or subrogation claims, as well as to collect monetary recoveries on
3 such claims, for financial losses resulting from the “Data Breach Incident,” and to authorize the
4 third-party administrator for Gridworks’ Data Breach Insurers, Hiscox USA, to investigate,
5 evaluate, adjust, and coordinate payment as appropriate under the Data Breach Policy on claims
6 by Health Share and/or Aspen resulting from the “Data Breach Incident”; only to the extent of the
7 Cyber Limit of Liability, for Insuring Agreement B. “Cyber,” and subject to the other terms,
8 conditions, limitations, and exclusions in the Data Breach Policy issued to Gridworks. In support
9 hereof, the Receiver relies upon the Declaration of Maren Cohn accompanying this Motion (“Cohn
10 Decl.”) and the following Points and Authorities:

11 **POINTS AND AUTHORITIES**

12 1. On December 18, 2019, the court entered a Stipulated Order Appointing Receiver
13 (the “Receivership Order”) in the above-referenced case, commencing the receivership and
14 appointing the Receiver to take charge of and manage all assets of GridWorks for the purposes set
15 forth in the Receivership Order and the Oregon Receivership Code ORS 37.010 *et seq.* The
16 Receiver took possession of all known assets after entry of the Receivership Order and has
17 continued to possess and manage the receivership property since approximately December 18,
18 2019. Cohn Decl. ¶ 2. As memorialized in the Notice of Receivership and Automatic Stay in the
19 Receivership, dated and filed on behalf of the Receiver on January 14, 2020, under the terms of
20 the Receivership Order, the Receiver was not required to establish a claims-bar date or provide for
21 a claims process for creditors holding unsecured claims unless the Receiver determined there is a
22 prospect of payment to such creditors after payment of the costs and expenses of the receivership
23 and all claims secured by assets of the receivership estate. Accordingly, under the Receivership
24 Order, creditors were not required to file a notice of claim by a certain date and no claims could
25 be presented unless and until a claims process is first established by the Receiver.

26 2. The Receiver is informed and believes that in November 2019, a GridWorks’ laptop

1 computer containing certain unencrypted Protected Health Information (“PHI”) and Personally
2 Identifiable Information (“PII”) of Health Share client-members was stolen from Gridworks’
3 office by a third-party. Cohn Decl., ¶ 3. As a result, Health Share and Aspen seek mitigation and
4 contractual indemnification of financial losses and monetary damages resulting from the Data
5 Breach Incident from Gridworks and Gridworks’ Data Breach Insurers.

6 3. The Receiver is informed and believes that Gridworks maintained the Data Breach
7 Policy, which may provide insurance coverage for some of the economic claims and/or
8 subrogation claims asserted by Health Share and/or Aspen resulting from the Data Breach Incident.
9 Cohn Decl., ¶ 4.

10 4. The Receiver is informed and believes that: the Cyber Limit of Liability, under
11 Insuring Agreement B. “Cyber,” in the Data Breach Policy is \$5,000,000.00 for “Each Claim or
12 Event”; Gridworks’ Cyber Retention amount under the Data Breach Policy is \$50,000.00; and the
13 Data Breach Incident constitutes a single “Claim” or “Event” for purposes of applying the Data
14 Breach Policy’s “Cyber Limit of Liability” and “Cyber Retention.” Also, the Receiver is informed
15 and believes that the Data Breach Incident occurred and was timely reported to Hiscox USA and
16 Gridworks’ Data Breach Insurers during the policy period under the Data Breach Policy for the
17 discovery and reporting of covered claims for losses resulting from a data breach. Cohn Decl.,
18 § 5.

19 5. The Receiver is informed and believes that Health Share and/or Aspen have
20 submitted or in the future will submit to Hiscox USA and Gridworks’ Data Breach Insurers
21 economic claims and/or subrogation claims for monetary damages and financial losses resulting
22 from the Data Breach Incident constituting: (a) certain “Breach Costs,” *i.e.*, such as legal costs,
23 notification costs, call-center costs and identity-protection services; and (b) certain “Claim
24 expenses” and “Damages” due to third-party claims, *i.e.*, such as fees, costs and expense (including
25 the fees of attorneys and forensic or other experts) incurred in the investigation and defense of
26 third-party claims, as well as monetary judgments or awards that Health Share becomes legally

1 obligated to pay third-party claimants (including pre- or post-judgment interest and third-party
2 claimants' attorney fees) or, alternatively, suitable and mutually agreed upon settlements of third-
3 party claims asserted against Health Share. Cohn Decl., ¶ 6.

4 6. Any and all policies of insurance issued to Gridworks, including the Data Breach
5 Policy, became property and/or assets of the Receivership estate as of December 18, 2019.

6 7. The Receivership has not yet concluded or terminated and the automatic stay
7 provided by ORS 37.220 continues to be in effect as to:

8 a. Any act to obtain possession of estate property from the Receiver, or to
9 interfere with, or exercise control over, estate property, ORS 37.220(1)(c); and

10 b. Any act to create, perfect, or enforce any lien or claim against estate
11 property, to the extent that the lien secures a claim against the owner that arose before the entry of
12 the order of appointment, ORS 37.220(1)(d).

13 8. With respect to certain actions against Gridworks itself as the "owner," however,
14 the automatic stay expired on approximately June 18, 2020, and was not extended. The actions no
15 longer stayed with respect to the "owner" are set forth in ORS 37.220(1)(a), (b), and (e) and include
16 any act to collect, assess, or recover a claim against the owner that arose before the entry of the
17 order of appointment.

18 9. The court has authority to grant the relief requested herein pursuant to
19 ORS 37.220(3), which provides that the court may grant relief from the automatic stay pursuant to
20 a motion for "good cause shown."

21 10. So long as relief from the automatic stay is limited to the presentation and collection
22 of economic claims to recover for alleged financial losses by Health Share and/or Aspen resulting
23 from the Data Breach Incident, and is also limited to the investigation, evaluation, adjustment, and
24 payment of such claims by or on behalf of Hiscox USA and/or Gridworks' Data Breach Insurers,
25 and only to the extent of any applicable insurance coverage under Gridworks' Data Breach Policy—
26 and if such relief does not extend to any other property of the Receivership estate – the Receiver

1 believes granting relief is appropriate to afford relief to Health Share and/or Aspen as well as to
2 Hiscox USA and to Gridworks' Data Breach Insurers. The Receiver stipulates that, with the
3 foregoing limitations, good cause exists to grant limited relief from the automatic stay of
4 ORS 37.200.

5 **THEREFORE, NOTICE IS HEREBY GIVEN** that unless objections to this Motion are
6 filed with the court within fourteen (14) days of the filing date hereof and served upon Susan S.
7 Ford, counsel for the Receiver, at Sussman Shank LLP, 1000 S.W. Broadway, Suite 1400,
8 Portland, Oregon 97205, the undersigned will proceed to submit an order granting the relief
9 requested herein, substantially in the form attached hereto as Exhibit A, without further notice or
10 hearing.

11 **WHEREFORE**, the Receiver requests that the court enter an order granting limited relief
12 from stay as set forth above in this Motion: (a) authorizing Health Share and Aspen, respectively,
13 to present and assert economic claims and/or subrogation claims to recover under Gridworks' Data
14 Breach Policy for alleged monetary damages and financial losses incurred or that may be sustained
15 in the future resulting from the Data Breach Incident to the extent of any insurance coverage for
16 such claims that may be available under Insuring Agreement B. "Cyber" in the Data Breach Policy;
17 and (b) authorizing Hiscox USA and Gridworks' Data Breach Insurers to investigate, evaluate,
18 adjust and coordinate payment as appropriate under the Data Breach Policy to the extent of the
19 Cyber Limit of Liability, for Insuring Agreement B. "Cyber," and subject to the other terms,
20 conditions, limitations and exclusions in the Data Breach Policy issued to Gridworks.

21 DATED this 27th day of October, 2020.

22 SUSSMAN SHANK LLP

23 *s/ Susan S. Ford*

24 By: _____
Susan S. Ford, OSB No. 842203

25 sford@sussmanshank.com

26 Thomas W. Stilley, OSB No. 883167

tstilley@sussmanshank.com

Counsel for Clyde A. Hamstreet & Associates, LLC, Receiver

*22537-003\MOTION FOR ORDER GRANTING LIMITED RELIEF FROM STAY (FINAL) (03591942);1

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
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In re:) Case No. 19CV54124
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GRIDWORKS LAB, INC., an Oregon) ORDER GRANTING LIMITED RELIEF
corporation,) FROM THE AUTOMATIC STAY OF
) ORS 37.220
Petitioner.)
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This matter comes before the Court on the motion of Clyde A. Hamstreet & Associates, LLP, the court-appointed receiver for GridWorks Lab, Inc. (“GridWorks”) (hereinafter, the “Receiver”) for an order granting limited relief from stay for the purpose of authorizing Health Share of Oregon (“Health Share”) and Health Share’s insurance company, Aspen Specialty Insurance Company (“Aspen”), respectively, to present and assert economic claims and/or subrogation claims to recover for alleged monetary damages and financial losses they have incurred or may sustain in the future resulting from a November 2019 incident concerning the theft of a laptop computer containing unencrypted information from GridWorks (the “Data Breach Incident”); only to the extent of insurance coverage for such claims that may be available under Insuring Agreement B. “Cyber” in the Technology, Cyber, Data Risk, and Media Insurance Policy, Policy No. MPL 4098029.19 (the “Data Breach Policy”) issued to Gridworks by and through Certain Underwriters at Lloyds, London (“Underwriters”) and Hiscox ClearTech

1 (“Hiscox ClearTech”) (collectively “Gridworks’ Data Breach Insurers”). The Court having
2 considered the Motion, the supporting Declaration of Maren Cohn, and the Court’s records and
3 files, and finding that notice of the Motion as required and appropriate under the circumstances
4 was given, and further finding that the Motion is well taken and the relief requested therein
5 should be granted, it is

6 ORDERED:

- 7 1. The Motion is granted;
- 8 2. Health Share and Aspen, respectively, are authorized to present and assert
9 economic claims and/or subrogation claims to recover under Gridworks’ Data Breach Policy for
10 alleged monetary damages and financial losses incurred or that may be sustained in the future
11 resulting from the Data Breach Incident to the extent of any insurance coverage for such claims
12 that may be available under Insuring Agreement B. “Cyber” in the Data Breach Policy; and

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1 3. Hiscox USA and Gridworks' Data Breach Insurers are authorized to investigate,
2 evaluate, adjust, and coordinate payment as appropriate under the Data Breach Policy to the
3 extent of the Cyber Limit of Liability, for Insuring Agreement B. "Cyber," and subject to the
4 other terms, conditions, limitations and exclusions in the Data Breach Policy issued to
5 Gridworks.

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11 _____
12 PRESENTED BY:

13 SUSSMAN SHANK LLP
14

15 By: _____
16 Susan S. Ford, OSB No. 842203
17 sford@sussmanshank.com
18 Thomas W. Stilley, OSB No. 883167
19 tstilley@sussmanshank.com
20 Counsel for Clyde A. Hamstreet & Associates, LLC, Receiver
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CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2020 I caused to be served a full and exact copy of the foregoing **RECEIVER’S MOTION FOR ORDER GRANTING LIMITED RELIEF FROM THE AUTOMATIC STAY OF ORS 37.220** on the following persons:

Douglas Pahl Perkins Coie LLP 1120 N.W. Couch Street, 10 th Floor Portland, OR 97206 Attorneys for Petitioner Gridworks Lab, Inc.	Joseph M. VanLeuven Davis Wright Tremaine LLLP 1300 S.W. Fifth Ave., St. 2400 Portland, OR 97201 Attorneys for Health Share of Oregon
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C. Ross Peterson GridWorks Lab, Inc. 8950 SW Midea Ln Portland, OR 97225 Interested Party	Kimberley Hanks McGair Farleigh Wada Witt 121 SW Morrison Street, Suite 600 Portland, OR 97204 Attorneys for First Transit, Inc.
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Greg Kelminson American Medical Response c/o Global Medical Response 209 Texas 121 Frontage Rd Suite 21 Lewisville, TX 75067	Gridworks Lab, Inc. 715 SW Morrison St Ste 400 Portland, OR 97205-3123
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Randy Arthur Lloyd Bernstein Bullivant Houser One SW Columbia Street, Suite 800 Portland, OR 97204	Gridworks Labs, Inc. c/o WSCJ BUSINESS SERVICES, INC., Registered Agent 805 SW Broadway STE 2440 Portland, OR 97205
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Joseph Schramm
FisherBroyles, LLP
100 Overlook Center 2nd Floor
Princeton, NJ 08540

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1 by the following indicated method(s):

- 2 First Class Mail, postage prepaid, deposited in the US mail at Portland, OR
- 3 Hand delivery
- 4 Facsimile transmission
- 5 Overnight delivery
- 6 Email (where indicated)
- 7 Electronic filing notification

8 Dated: October 27, 2020

9 *s/ Susan S. Ford*
10 _____
11 Susan S. Ford, OSB No. 842203