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*Proposed Attorneys for the Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*¹

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)
(Emergency Hearing Requested)

**DEBTORS' EMERGENCY MOTION FOR ENTRY
OF AN ORDER (I) AUTHORIZING THE DEBTORS
TO (A) CONTINUE THEIR PREPETITION INSURANCE
COVERAGE AND SATISFY PREPETITION OBLIGATIONS
RELATED THERETO AND (B) RENEW, SUPPLEMENT, AND ENTER
INTO NEW INSURANCE POLICIES, AND (II) GRANTING RELATED RELIEF**

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors' service address is 2155 Park Boulevard, Palo Alto, California 94306.



Emergency relief has been requested. Relief is requested not later than 1:30 p.m. prevailing Central Time on April 3, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on April 3, 2024 at 1:30 p.m. prevailing Central Time in Courtroom 1, Floor 14, 1100 Commerce Street, Dallas, TX 75242-1496.

You may participate in the hearing either in person or by an audio and video connection.

Audio communication will be by use of the Court’s dial-in facility. You may access the facility at 1.650.479.3207. Video communication will be by use of the Cisco WebEx platform. Connect via the Cisco WebEx application or click the link on Judge Jernigan’s home page. The meeting code is 479

393 582. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of electronic hearings. To make your appearance, click the “Electronic Appearance” link on Judge Jernigan’s home page. Select the case name, complete the required fields and click “Submit” to complete your appearance.

The debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) state as follows in support of this motion:²

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”): (a) authorizing the Debtors to (i) continue their prepetition insurance coverage and satisfy prepetition obligations related thereto and (ii) renew, supplement, or enter into new insurance coverage in the ordinary course of business on a post-petition basis; and (b) granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Northern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to

² A detailed description of the Debtors and their business, and the facts and circumstances supporting this motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of David Apelian in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the First Day Declaration.

rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the Court’s entry of a final order in connection with this motion.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a), 363(b), 503, 1107(a), 1108, and 1112(b) of title 11 of the United States Code (the “Bankruptcy Code”), and Bankruptcy Rules 6003 and 6004, rules 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Northern District of Texas (the “Bankruptcy Local Rules”) and section B of the Procedures for Complex Cases in the Northern District of Texas.

Background

5. The Debtors are a commercial-stage biopharmaceutical company focused on the development of innovative therapies for hepatitis delta virus (HDV) and other serious diseases. All of the Debtors’ rare disease programs have FDA Breakthrough Therapy designation.

6. On the date hereof (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these cases, and no statutory committee has been appointed.

The Insurance Policies and Related Payment Obligations

I. The Insurance Policies and Related Payment Obligations.

7. The Debtors maintain sixteen (16) insurance policies (collectively, the “Insurance Policies”) that are administered by ten (10) third-party insurance carriers (collectively, the “Insurance Carriers”). In connection with the operation of their businesses and management of

their properties, the Insurance Policies provide the Debtors with coverage for, among other things, commercial automobile insurance, general liability insurance, foreign package insurance, workers compensation, cyber insurance, pollution liability insurance, property insurance, marine/ware insurance, life science liability coverage among other coverage policies. In addition, the Insurance Policies include several layers of excess liability coverage. The Debtors likewise maintain appropriate directors' and officers' liability insurance coverage. A detailed list of the Insurance Policies is attached hereto as **Exhibit B**,³ which is incorporated herein by reference.

II. Premium Payments.

8. The Debtors paid an aggregate amount of approximately \$3,400,000 in premiums with respect to the Insurance Policies for the preceding 12 months.⁴ All of the Insurance Policies are renewed annually. The payments for premiums under these Insurance Policies (collectively, the "**Premium Payments**") are made in advance of their renewal date. The Debtors work with one broker to evaluate, procure, and administer cost-efficient Insurance Policies.

9. To the extent any such prepetition amounts remain outstanding, and to ensure uninterrupted coverage under the Insurance Policies, the Debtors seek authority to pay and/or reimburse any amounts owed on account of the Insurance Policies in the ordinary course of business.

III. Deductibles.

10. Some of the Insurance Policies require the Debtors to pay a per-incident deductible (collectively, "**Deductibles**"). Generally, if a claim is made against the Insurance Policies, the

³ The descriptions of the Insurance Policies set forth in **Exhibit B** constitute a summary only. The actual terms of the Insurance Policies and related agreements will govern in the event of any inconsistency with the descriptions in this Motion. The Debtors request relief with respect to the Insurance Policies payable to all Insurance Carriers, regardless of whether such Insurance Policy is specifically identified on **Exhibit B**.

⁴ The aggregate amount of premiums excludes taxes, fees, and surcharges.

Debtors' Insurance Carrier will administer the claim and make payments in connection therewith. The Deductible, if any, is offset against such payments. There is significant variation in the amount of Deductibles, which range from \$0 to \$125,000. The Debtors seek authority to continue honoring any Deductible that may exist currently or arise under the Insurance Policies in the ordinary course of business and to ensure uninterrupted coverage under the Insurance Policies.

IV. Insurance Broker Fees.

11. The Debtors obtain Insurance Policies through an insurance broker, Newfront Insurance, Inc. (the "Insurance Broker"). The Insurance Broker assists the Debtors in obtaining comprehensive insurance coverage and advises the Debtors with respect to accounting and actuarial methodology.

12. The Insurance Broker helps the Debtors with the procurement and negotiation of the Insurance Policies, enabling the Debtors to obtain the Insurance Policies on advantageous terms and at competitive rates. The Insurance Broker Fees are built into the policy Premiums. As of the Petition Date, the Debtors do not believe there are any unpaid prepetition obligations due and owing to the Insurance Broker. Out of an abundance of caution, the Debtors seek authority to honor any amounts owed to the Insurance Broker in the ordinary course of business to ensure uninterrupted coverage under the Insurance Policies.

13. In aggregate, the Debtors estimate that there are no prepetition amounts owing on account of the Insurance Policies, and the Debtors do not expect to pay any premiums during the Interim Period. Continuation and renewal of the Insurance Policies and entry into new Insurance Policies is essential to preserving the value of the Debtors' businesses, properties, and assets. In many cases, the coverage provided by the Insurance Policies is also required by applicable regulations, laws, credit documents, customer contracts, and other arrangements that govern the

Debtors' operations, as well as the Bankruptcy Code and the requirements of the Office of the United States Trustee for the Northern District of Texas (the "U.S. Trustee").

BASIS FOR RELIEF REQUESTED

I. The Bankruptcy Code and U.S. Trustee Guidelines Require the Debtors to Maintain Insurance Coverage and Satisfy Their Insurance Obligations.

14. The Insurance Policies provide a comprehensive range of protection for the Debtors' businesses, properties, and assets. It is essential that the Debtors' insurance coverage continues in full force and effect during the course of these chapter 11 cases. Under section 1124(b)(4)(C) of the Bankruptcy Code, "failure [of a debtor] to maintain appropriate insurance [where such failure] poses a risk to the estate or to the public" is "cause" for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1124(b)(4)(C). Similarly, certain of the Insurance Policies are required by various contractual obligations of the Debtors and industry regulations applicable to the Debtors.

15. To ensure that the Debtors comply with section 1124(b)(4)(C) of the Bankruptcy Code and applicable state and federal regulations, the Debtors request authority to honor obligations arising under the Insurance Policies and, if necessary, to renew, supplement, purchase, or enter into new insurance coverage on a post-petition basis in the ordinary course of business

II. Renewing, Supplementing, Purchasing, or Entering Into New Policies and Paying Obligations Related to the Insurance Policies in the Ordinary Course of Business Are Each Warranted.

16. In authorizing payments of certain insurance obligations, courts have relied on sections 105(a), 363(b), 503, 1107(a), and 1108 of the Bankruptcy Code. Pursuant to these sections of the Bankruptcy Code, the Court may authorize the Debtors to maintain the Insurance Policies and to renew or enter into new policies on a post-petition basis because the relief requested is consistent with the value preservation policy objective of chapter 11 of the Bankruptcy Code.

17. Courts in the Fifth Circuit have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., in re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002).

18. Section 503(b)(1)(A) of the Bankruptcy Code also provides that “[a]fter notice and a hearing, there shall be allowed, administrative expenses[,] including . . . the actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b)(1)(A). The Court may authorize the Debtors to use estate funds to pay any obligations under the Insurance Policies arising during or relating to the period after the Petition Date. In addition, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). The debtor in possession has the obligation to “protect and preserve the estate, including an operating business’s going concern value.” *Id.*

19. The Court may also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a), which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Under section 105(a), courts may permit payments of prepetition obligations when essential to the continued operation of a debtor’s business. The Court’s power under section 105(a) to authorize payment of prepetition obligations is often referred to as the “necessity of payment” or “doctrine of necessity” rule and has been recognized in the Fifth Circuit. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 492–93 (Bankr. N.D. Tex. 2002).

20. There is sufficient business justification to grant the relief requested herein because failure to pay the Premium Payments and other related insurance expenses when due will harm the Debtors' estates in several ways. The Insurance Carriers may refuse to renew the Insurance Policies, which will require the Debtors to obtain replacement policies and possibly reconfigure their risk management program. Obtaining replacement policies would require the Debtors to commit significant resources and could result in less favorable coverage or terms from the Debtors' insurers. The Insurance Carriers could also attempt to terminate the Debtors' existing Insurance Policies or deny coverage. Any disruption in insurance coverage could threaten the Debtors' ability to continue operating their businesses as the Debtors are subject to myriad regulatory and contractual obligations to maintain specific amounts and types of insurance coverage.

21. This is also in the best interests of the Debtors' estates to have the ability to revise, extend, supplement, or change insurance coverage, as necessary, on a post-petition basis pursuant to sections 105(a), 363(b)(1), 503, 1107, and 1108 of the Bankruptcy Code. The Insurance Policies are essential to the preservation of the value of the Debtors' businesses, properties, and assets and their ability to successfully prosecute these chapter 11 cases. In the event any of the Insurance Policies lapse or new coverage is required or necessary, it would be imperative that the Debtors be able to renew, supplement, purchase, or enter into new insurance coverage on a post-petition basis in the ordinary course of business. The Insurance Policies protect the Debtors and other parties in interest from losses caused by casualty, natural disaster, fraud, or other unforeseen events.

EMERGENCY CONSIDERATION

22. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." Failure to receive the relief requested in this motion during the first twenty-one days of

these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture, jeopardizing the Debtors' ability to run a value maximizing sale process for the benefit of its creditors and parties in interest. The Debtors have satisfied the "immediate and irreparable" harm standard in Bankruptcy Rule 6003 and request that the Court approve the relief requested on an emergency basis.

WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)

23. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen-day stay period under Bankruptcy Rule 6004(h), which is necessary to implement the relief requested in this motion.

RESERVATION OF RIGHTS

24. Nothing contained herein or any action taken pursuant to relief requested is intended to be or shall be construed as (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any party in interest's rights to dispute any claim or interest on any grounds; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested in this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (f) a request for or approval to assume, adopt, or reject any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not

intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute such claim.

NOTICE

25. The Debtors will provide notice of this motion to the following: (a) the U.S. Trustee for the Northern District of Texas; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) Innovatus Life Sciences Lending Fund I, LP, as agent to the Debtors' secured lenders, and counsel thereto; (d) the United States Attorney's Office for the Northern District of Texas; (e) the Food and Drug Administration; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; (h) the state attorneys general for the states in which the Debtors conduct business; (i) Insurance Carriers; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. No other or further notice is needed in light of the nature of the relief requested.

[Remainder of page intentionally left blank.]

The Debtors respectfully request entry of the Order granting the relief requested herein and granting such other relief as the Court deems appropriate under the circumstances.

Dated: April 1, 2024
Dallas, Texas

SIDLEY AUSTIN LLP

/s/ Thomas R. Califano

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Proposed Counsel to the Debtors and Debtors in Possession

Certificate of Service

I certify that on April 1, 2024, 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 Northern District of Texas.

/s/ Thomas R. Califano

Thomas R. Califano

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*¹

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)
(Emergency Hearing Requested)

**ORDER (I) AUTHORIZING THE DEBTORS
TO (A) CONTINUE THEIR PREPETITION INSURANCE
COVERAGE AND SATISFY PREPETITION OBLIGATIONS
RELATED THERETO AND (B) RENEW, SUPPLEMENT, AND ENTER
INTO NEW INSURANCE POLICIES, AND (II) GRANTING RELATED RELIEF**

Upon the motion (“Motion”)² of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), for entry of an order (this “Order”)
(a) authorizing the Debtors to (i) continue their prepetition insurance coverage and satisfy

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors’ service address is 2155 Park Boulevard, Palo Alto, California 94306.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Motion.

prepetition obligations related thereto and (ii) renew, supplement, or enter into new insurance coverage in the ordinary course of business on a post-petition basis, and (b) granting related relief, each as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and opportunity for a hearing on the Motion having been given; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

HEREBY ORDERED THAT:

1. The Debtors are authorized to continue the Insurance Policies in the ordinary course of business and to pay any prepetition or post-petition obligations related thereto, including, without limitation, any amounts owed to the Insurance Carriers and Insurance Broker, with respect to Premium Payments, Deductibles, and Insurance Broker Fees (including payment of premiums related thereto) to the extent that the Debtors determine that such payment is necessary or appropriate.

2. The Debtors are authorized to renew, supplement, modify, purchase, or enter into new Insurance Policies to the extent that the Debtors determine that such action is in the best interest of their estates; *provided* that the Debtors will notify the U.S. Trustee and any statutory committee appointed in these chapter 11 cases if the Debtors renew, amend, supplement, extend,

terminate, replace, increase, or decrease existing Insurance Policies, change Insurance Carriers, enter into any new premium financing agreements, or obtain additional insurance.

3. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any person to whom any obligations under the Insurance Policies are owed.

4. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Order shall be deemed (a) an admission as to the amount of, basis for, priority, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any party in interest's rights to dispute any claim or interest on any grounds; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) an implication or admission that any particular claim is of a type specified or defined in this order or any other order granting the relief requested in this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (f) an approval to assume, adopt, or reject any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Any payment made pursuant to this order is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented

for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved in this Interim Order.

6. The Debtors are authorized to issue post-petition checks or to effect post-petition fund transfer requests in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. The Debtors are authorized to take all such reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

10. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

Submitted By:

SIDLEY AUSTIN LLP

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*Proposed Counsel to the Debtors and Debtors
in Possession*

Exhibit B

Insurance Policies

Insurer	Coverage	Last 6 Digits of Policy Number	Expiration Date (mm/dd/yyyy)
Falvey Insurance Group	Cyber Resultant Cargo Damage Insurance	CPB-FAL-23PNGF	11/18/2024
The Travelers Indemnity Company Of Connecticut	Commercial Automobile	2-23-I6-G	11/18/2024
Falvey Insurance Group	Marine/War Insurance	FAL-23PNGF	11/18/2024
Chubb	Primary Commercial Crime Insurance	968082	11/18/2024
Travelers Property Casualty Co. Of America	Property Coverage; Commercial General Liability Coverage; Employee Benefits Liability Coverage	41-23-I6	11/18/2024
Travelers Property Casualty Co. Of America	Umbrella Liability Policy	61-23-I6	11/18/2024
Arch Specialty Insurance Company; Ascot Specialty Insurance Company; Fireman's Fund Indemnity Corporation; Fortegra Specialty Insurance Company	Coalition Cyber Policy	38160	11/18/2024
Lloyd's of London	Excess Social Engineering Policy	230101	11/18/2024
Travelers Property Casualty Co. Of America	Foreign Package Policy	1A-23-I6	11/18/2024
Evanston Insurance Company	Life Sciences Liability Coverage	000284	11/18/2024
Lloyd's of London	Marine/War Insurance	001079	11/18/2024
XL Professional Insurance	Executive And Corporate Securities Liability Insurance Policy	8750-23	09/15/2024
XL Professional Insurance	Excess Directors And Officers And Corporate Liability	301184	09/15/2024
Chubb	Excess Directors And Officers And Corporate Liability	70 006	09/15/2024
Hudson Insurance Company	Directors And Officers Liability Insurance	032223	09/15/2024
XL Insurance Company SE	Commercial Management Liability	1BL23A	03/22/2024