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*Counsel to the Debtors and Debtors in Possession*

*Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 ALEXANDRIA DIVISION**

In re:	)	Chapter 11
ENVIVA INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 24–10453 (BFK)
Debtors.	)	(Jointly Administered)

**CERTIFICATION OF COUNSEL REGARDING STIPULATION  
 PERMITTING THE ADVANCEMENT OF DEFENSE EXPENSES UNDER THE  
 DEBTORS’ DIRECTORS’ AND OFFICERS’ LIABILITY INSURANCE POLICIES**

The undersigned counsel to the above-captioned debtors and debtors in possession (together, the “Debtors”) hereby certifies as follows:

1. On March 12, 2024 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Eastern District of Virginia (the “Court”).

<sup>1</sup> Due to the large number of Debtors in these jointly administered chapter 11 cases, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors’ proposed claims and noticing agent at [www.kccllc.net/enviva](http://www.kccllc.net/enviva). The location of the Debtors’ corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.



2. On March 25, 2024, the United States Trustee for the Eastern District of Virginia (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors (the “Committee”) [Docket No. 173].

**The Fagen Action**

3. On November 3, 2022, David Fagen filed a putative securities class action complaint against Enviva Inc. (“Enviva,” formerly known as Enviva Partners, LP), John K. Keppler (former Chairman and Chief Executive Officer), and Shai S. Even (former Executive Vice President and Chief Financial Officer) in the United States District Court for the District of Maryland (the “Fagen Action”). An amended complaint was filed on April 3, 2023 (the “Fagen Amended Complaint”).

4. The Fagen Amended Complaint added as defendants to the Fagen Action Jennifer Jenkins (former Vice President and Chief Sustainability Officer), Don Calloway (former Vice President, Equity, Inclusion and Impact), Michael A. Johnson (Vice President and Chief Accounting Officer), and Jason E. Paral (Vice President, Associate General Counsel and Secretary). The claims in the Fagen Amended Complaint were asserted on behalf of a putative class consisting of all persons and entities, other than defendants and their affiliates, who purchased or otherwise acquired Enviva common stock between December 18, 2018 and December 2, 2022.

5. The Fagen Amended Complaint alleged, among other things, that the defendants made false and/or misleading statements and/or failed to disclose that Enviva had misrepresented the environmental sustainability of its wood pellet production and procurement, omitted that it allegedly relied on environmentally destructive clear-cutting practices, and overstated the extent and effectiveness of its forest management practices. Enviva, John K. Keppler, Shai S. Even,

Jennifer Jenkins, Don Calloway, Michael A. Johnson, and Jason E. Paral filed a motion to dismiss the Fagen Amended Complaint on June 2, 2023.

6. The United States District Court for the District of Maryland granted the motion to dismiss the Fagen Action with prejudice on July 3, 2024.

### **The Dhatt Action**

7. On September 12, 2023, Taje Dhatt filed a putative securities class action in the United States District Court for the District of Maryland against Enviva, John J. Keppler, Shai S. Even, Thomas Meth (President and former CEO of Enviva, former COO of Enviva), and Michael A. Johnson (Vice President and CAO of Enviva) (the “Dhatt Action” and, together with the Fagen Action, the “Securities Actions”). On March 15, 2024, the plaintiff in the Dhatt Action voluntarily dismissed Enviva from the case. An amended complaint was filed on August 2, 2024 (the “Dhatt Amended Complaint”).

8. The Dhatt Amended Complaint alleged that, for the period from November 3, 2022 through November 8, 2023, the defendants in Dhatt Amended Complaint made materially false and misleading statements and failed to disclose material information about the financial condition of Enviva.

9. The defendants’ response to the Dhatt Amended Complaint is due on or before October 4, 2024. If the defendants move to dismiss the Dhatt Amended Complaint, the plaintiffs’ opposition is due December 5, 2024, and the defendants’ reply is due on or before January 10, 2025.

### **The Derivative Actions**

10. Prior to the Petition Date, two shareholder complaints were filed derivatively on behalf of Enviva, and are predicated on substantially similar allegations as those underlying the Securities Actions. These complaints named numerous current and former directors and officers of Enviva and alleged breaches of fiduciary duty, gross mismanagement, waste of corporate assets, unjust enrichment, and violations of Section 10(B) of the Exchange Act (*William Browning v. Ralph Alexander, et al.*, No. 1:23-cv-3293 (D. Md.) (the “Browning Action”) and *Darryl Williston v. Enviva, Inc., et al.*, No. 1:23-cv-3403 (D. Md.) (the “Williston Action,” and together with the Williston Action, the “Derivative Actions”). The Derivative Actions were consolidated on or about February 8, 2024, and were stayed and administratively closed pending these bankruptcy cases.

11. The parties to the Derivative Actions agreed to stay, by stipulation, the Derivative Actions prior to the Debtors’ filing their bankruptcy cases. The Derivative Actions were also later stayed by operation of the automatic stay.

### **The Policies**<sup>2</sup>

12. XL Specialty Insurance Company (the “XL Specialty”) previously issued (i) Executive and Corporate Securities Liability Insurance Policy No. ELU177562-21 to Enviva Partners, LP (n/k/a, Enviva), for the Policy Period of September 1, 2021 to December 31, 2027 (the “21-27 Policy”), and (ii) Executive and Corporate Securities Liability Insurance Policy No. ELU187727-2 to Enviva for the Policy Period of December 31, 2022 to December 31, 2024 (the “22-24 Policy” and together with the 21-27 Policy, the “Policies”). Under the Policies, XL

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<sup>2</sup> Capitalized terms used herein but not otherwise defined are defined as set forth in the Policies.

Specialty must advance Defense Expenses to Insured Persons against whom Claims have been made or may be made in the future.

13. The Insured Persons named as defendants in the Dhatt Amended Complaint are currently responding to the complaint and have incurred and are continuing to incur Defense Expenses, for which they are seeking coverage from XL Specialty under the 22-24 Policy. XL Specialty has acknowledged that the Dhatt Amended Complaint triggers the 22-24 Policy. Additionally, XL Specialty has acknowledged that the Fagen Action triggers the insuring agreement under the 21-27 Policy. Further, to the extent the claims in the Derivative Actions trigger or have triggered coverage under the Policies, XL Specialty seeks to pay the associated Defense Expenses of the Insureds.

14. The Debtors and XL Specialty (collectively, the “Parties”) have agreed to permit the advancement of covered Defense Expenses under the Policies pursuant to the terms set forth in the stipulation (the “Stipulation”), annexed as **Exhibit 1** to the proposed order (the “Proposed Order”), attached hereto as **Exhibit A**. The Committee does not oppose the advancement of covered Defense Expenses under the Policies pursuant to this Stipulation and reserves all rights with respect to any advancement or payment of Defense Expenses other than as expressly contemplated by this Stipulation. XL Specialty seeks to pay these Defense Expenses without liability, cost, or expense to the Debtors or their estates subject to all applicable terms, conditions, limitations, exclusions, and endorsements of the Policies.

15. The Debtors have shared the Proposed Order and Stipulation with: (i) the U.S. Trustee, (ii) counsel to the Committee, (iii) counsel to the Ad Hoc group of creditors (the “Ad Hoc Group”), and (iv) counsel to the Ad Hoc committee of holders of Enviva RWE claims (the “Ad Hoc RWE Committee”).

16. The U.S. Trustee, and counsel to each of the Committee, the Ad Hoc Group, and the Ad Hoc RWE Committee do not object to entry of the Proposed Order.

17. The Debtors, on behalf of the Parties, request that the Court enter the Proposed Order without further notice or a hearing. To the extent the Court has questions regarding the Proposed Order, Stipulation, or anything related thereto, the Parties' respective counsel are available at the Court's convenience.

*[Remainder of Page Intentionally Left Blank]*

Dated: September 13, 2024

Respectfully submitted,

/s/ Jeremy S. Williams

**KUTAK ROCK LLP**

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**EXHIBIT A**

**Proposed Order**



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*Counsel and Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 ALEXANDRIA DIVISION**

In re:	)	Chapter 11
ENVIVA INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 24–10453 (BFK)
Debtors.	)	(Jointly Administered)

**ORDER APPROVING STIPULATION PERMITTING THE ADVANCEMENT  
 OF DEFENSE EXPENSES UNDER THE DEBTORS’ DIRECTORS’  
 AND OFFICERS’ LIABILITY INSURANCE POLICIES**

Upon the Certification of Counsel filed by the Debtors, and upon review of such certification (the “Certification of Counsel”) and the Parties’ *Stipulation Permitting the Advancement of Defense Expenses Under the Debtors’ Directors’ and Officer’s Liability*

<sup>1</sup> Due to the large number of Debtors in these jointly administered chapter 11 cases, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors’ proposed claims and noticing agent at [www.kccllc.net/enviva](http://www.kccllc.net/enviva). The location of the Debtors’ corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.

*Insurance Policies* (the “Stipulation”),<sup>2</sup> attached hereto as **Exhibit 1**, and good and sufficient cause appearing;

**IT IS HEREBY ORDERED** that:

1. The Stipulation is granted on the terms set forth therein.
2. To the extent the automatic stay imposed under section 362(a) of the Bankruptcy Code applies, it is hereby modified as provided pursuant to section 362(d)(1) of the Bankruptcy Code solely to permit XL Specialty to advance Defense Expenses (with respect to the Securities Actions, the Derivatives Actions or any other action resulting from the Committee’s investigation into the Debtors’ prepetition conduct) under Executive and Corporate Securities Liability Insurance Policy Nos. ELU177562-21, issued to Enviva Partners, LP, for the Policy Period of September 1, 2021 to December 31, 2027 or Executive and Corporate Securities Liability Insurance Policy No. ELU187727-22, issued to Enviva Inc., for the Policy Period of December 31, 2022 to December 31, 2024 relating to defense of covered Claims to persons XL Specialty determines qualify as Insured Persons and/or their counsel.
3. XL Specialty is permitted to make the D&O Advancement in an amount not to exceed \$4,000,000 in the aggregate under the Policies (the “Initial Maximum”); *provided that* once XL Specialty has advanced \$3,500,000 pursuant to this Stipulation, the Parties shall consult with the Committee and the Ad Hoc Group to increase the Initial Maximum. To the extent consensus cannot be reached with respect to such increase, any Party may seek the Court’s permission with respect to further advancements under the Policies. If the Initial Maximum is increased with consent of the applicable parties, a notice of such increase shall be filed with the Court (a “Notice”).

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning given to such terms in the Certification of Counsel.

of Increase”). Any party in interest shall have 10 days to object to a Notice of Increase (an Objection”). Any Objection shall be resolved by the Court if it is not consensually resolved by the applicable parties. The provisions of this paragraph, including the Initial Maximum and the consultation requirements, shall fully terminate upon the Debtors’ emergence from bankruptcy.

4. The Stipulation is without prejudice to the rights of any party with respect to the Policies.

5. Nothing herein shall constitute a finding by the Court that the proceeds of the Policies are or are not property of the Debtors’ estates, and the Court makes no finding as to the applicability of the automatic stay imposed by Section 362(a) of the Bankruptcy Code to the proceeds of the Policies.

6. XL Specialty is hereby required to provide a report to the Committee, the Debtors, and the Ad Hoc Group setting forth the total amount advanced pursuant to this Stipulation every ninety days following entry of this Order; *provided that* XL shall not be required to provide any such reports following the Debtors’ emergence from bankruptcy.

7. Neither the Stipulation nor this Order alter any provision of the Policies, including, but not limited to, the priority of payment provisions. All Parties reserve their respective rights under the Policies and applicable law.

8. The fourteen day stay of the effective date of this Order imposed by Bankruptcy Rule 4001(a)(3) is hereby waived and this Order shall be effective immediately upon entry notwithstanding any provision of the Bankruptcy Code or Federal Rules of Bankruptcy Procedure to the contrary.

9. This Court shall retain exclusive jurisdiction to resolve any disputes or controversies arising from, or related to, the Stipulation or the implementation of this Order.

Dated: \_\_\_\_\_, 2024

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Brian F. Kenney  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**Stipulation**

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 Lewis R. Clayton (admitted *pro hac vice*)  
 Andrew M. Parlen (admitted *pro hac vice*)  
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*Counsel and Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 ALEXANDRIA DIVISION**

	)	
In re:	)	Chapter 11
	)	
ENVIVA INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 24–10453 (BFK)
	)	
Debtors.	)	(Jointly Administered)
	)	

**STIPULATION PERMITTING THE  
 ADVANCEMENT OF DEFENSE EXPENSES UNDER THE  
 DEBTORS’ DIRECTORS’ AND OFFICERS’ LIABILITY INSURANCE POLICIES**

The debtors (the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) and XL Specialty Insurance Company (the “XL Specialty,” and together with the Debtors, the “Parties”), by and through their undersigned counsel, hereby submit this stipulation (this “Stipulation”) permitting the advancement of covered defense expenses under certain directors’ and officers’ liability insurance policies between XL Specialty, as insurance

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<sup>1</sup> Due to the large number of Debtors in these jointly administered chapter 11 cases, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors’ proposed claims and noticing agent at [www.kccllc.net/enviva](http://www.kccllc.net/enviva). The location of the Debtors’ corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.

provider, and Enviva Inc. and Enviva Partners, LP, as policyholders. In support hereof, the Parties stipulate, agree, and state as follows:

**RECITALS**

**WHEREAS**, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on March 12, 2024, in the United States Bankruptcy Court in the Eastern District of Virginia (the “Court”);

**WHEREAS**, on March 25, 2024, the United States Trustee for the Eastern District of Virginia appointed the Official Committee of Unsecured Creditors (the “Committee”) [Docket No. 173];

**WHEREAS**, XL Specialty previously issued (i) Executive and Corporate Securities Liability Insurance Policy No. ELU177562-21 to Enviva Partners, LP (n/k/a Enviva), for the Policy Period of September 1, 2021 to December 31, 2027 (the “21-27 Policy”), and (ii) Executive and Corporate Securities Liability Insurance Policy No. ELU187727-2 to Enviva for the Policy Period of December 31, 2022 to December 31, 2024 (the “22-24 Policy” and together with the 21-27 Policy, the “Policies”).

**WHEREAS**, on November 3, 2022, David Fagen, individually and on behalf of all others similarly situated, filed a securities class action complaint against Enviva and certain former directors and officers of Enviva in the United States District Court for the District of Maryland (the “Fagen Action”), which was amended by a complaint filed on April 3, 2023. The Fagen Action was dismissed with prejudice on July 3, 2024.

**WHEREAS**, on September 12, 2023, Taje Dhatt, individually and on behalf of all others similarly situated, filed a securities class action complaint against Enviva and certain former directors and officers of Enviva in the United States District Court for the District of Maryland

(the “Dhatt Action,”), which was amended by a complaint filed on April 30, 2024 (the “Dhatt Amended Complaint”, together with the Fagen Action, the “Securities Actions”).

**WHEREAS**, two shareholder complaints were filed derivatively on behalf of Enviva naming numerous current and former directors and officers (together, the “Derivative Actions”). The Derivative Actions were consolidated on or about February 8, 2024. Upon the filing of the suggestion of bankruptcy, the Derivative Actions were stayed and administratively closed pending the bankruptcy proceedings.

**WHEREAS**, the current and former directors and officers named in the Securities Actions and the Derivative Actions (the “Insureds”) have incurred or may incur costs or expenses in connection with defending the Securities Actions, the Derivative Actions, and the current investigation being conducted by the Committee.

**WHEREAS**, the Insureds have requested or may in the future request that XL Specialty advance or reimburse defense expenses in connection with Securities Actions, the Derivative Actions, Investigation Demand or Interview, including, without limitation, the current investigation being conducted by the Committee and any Claims that may result from that investigation, without liability, cost or expense to the Debtors or their estates subject to all applicable terms, conditions, limitations, exclusions and endorsements of the Policies (the “D&O Advancement”).

**WHEREAS**, the Parties agree that the D&O Advancement shall be without prejudice to any further requests from the Insureds to advance defense expenses under the Policies in connection with the Securities Actions, the Derivative Actions, the current investigation being conducted by the Committee, or any other actions or claims covered by the Policies, subject to the terms of this Stipulation and the Order.



**WHEREAS**, a copy of this Stipulation has been shared with U.S. Trustee, and counsel to each of the Committee, Ad Hoc group of creditors (the “Ad Hoc Group”), and Ad Hoc committee of holders of Enviva RWE claims. None of these parties object to the relief set forth in this Stipulation.

**STIPULATION**

**NOW, THEREFORE**, in consideration of the foregoing recitals, it is hereby stipulated, consented, and agreed to by and among the Parties effective upon the Court’s approval of this Stipulation that:

1. XL Specialty is permitted to make the D&O Advancement in an amount not to exceed \$4,000,000 in the aggregate under the Policies (the “Initial Maximum”); *provided that* once XL Specialty has advanced \$3,500,000 pursuant to this Stipulation, the Parties shall consult with the Committee and the Ad Hoc Group to increase the Initial Maximum. To the extent consensus cannot be reached with respect to such increase, any Party may seek the Court’s permission with respect to further advancements under the Policies. If the Initial Maximum is increased with consent of the applicable parties, a notice of such increase shall be filed with the Court (a “Notice of Increase”). Any party in interest shall have 10 days to object to a Notice of Increase (an “Objection”). Any Objection shall be resolved by the Court if it is not consensually resolved by the applicable parties. The provisions of this paragraph, including the Initial Maximum and the consultation requirements, shall fully terminate upon the Debtors’ emergence from bankruptcy.

2. To the extent the automatic stay triggered by the commencement of the Chapter 11 Cases would otherwise prohibit the D&O Advancement, the automatic stay shall be modified to permit XL Specialty to issue the D&O Advancement.

3. The conditions under which the Defenses Expenses shall be repaid to XL Specialty by the Insured shall be governed solely by the Policies.

4. This Stipulation is without prejudice to the rights of any party with respect to the Policies, all of which are expressly reserved.

5. This Stipulation does not modify or alter any provision of the Policies, including, but not limited to, the priority of payment provisions.

6. The fourteen day stay of the effective date of the order approving this Stipulation imposed by Bankruptcy Rule 4001(a)(3) will be waived and the order shall be effective immediately upon entry notwithstanding any provision of the Bankruptcy Code or Federal Rules of Bankruptcy Procedure to the contrary.

7. This Court shall retain jurisdiction over all matters related to the implementation of this Stipulation.

Dated: September 13, 2024

/s/ William A. Clareman

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*/s/ Leland H. Jones IV*

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