

3. **The Court's Instructions on the Receivership.** On the Record at the June 1, 2018 hearing, Plaintiff Sultzbaugh and Defendant Naylor agreed to mediate in June, 2018. Although the *Order Appointing Receiver* calls for a liquidation of the LLCs, the Court instructed Receiver to maintain oversight and control over the LLCs' operations, until the members mediated in June, 2018.

4. **The Unilateral Adjustment of the Mediation Schedule.** On June 7, 2018, an attorney for Plaintiff Sultzbaugh e-mailed that there would be no Mediation in June or July, 2018.¹ Your Receiver requested that Counsel immediately correct the Record, since just a week before, the Court instructed Receiver based on Counsel's representations that Mediation would occur in June, 2018.

5. **Are we at the Last Resort?**² Your Receiver was to begin liquidation of the LLCs after mediation in June. It is clear to your Receiver that the Court gave the members a limited time to agree to the future of the LLCs, and then liquidation would begin. The Receiver has informed the members of the LLCs that the Receivership is now in liquidation mode. However, once your Receiver starts

¹ More specifically:

there is no way this case will be ready for mediation in 7-10 days... While we may be able to look into dates in August, **it will more likely be September.**

Emphasis added.

² See *Mueller v. Beamalloy, Inc.*, 994 S.W.2d 855, 859 (Tex. App.—Houston [1st Dist.] 1999, no pet.) (Recognizing liquidation as a “last resort”).

winding up procedures under Texas Business Organizations Code §11.052(a)(1) (ceasing to carry on the business), the following appear to be likely:

- Employees will be immediately terminated, or needed for only a short period;
- The LLCs will be subject to possible breach of contract claims (unless there is an immediate assignment of the contracts to a person or entity capable of performing until the end of each contract). This may also delay payment of remaining accounts receivable;
- Tangible and intangible personal property will be sold for significantly less value than if used by the LLCs as a going concern;
- Some delays, inconvenience, higher costs or hardship to Regen Medicine's Providers (and possibly patients of those Providers).³

6. **The whole is greater than the sum of its parts.** The LLCs – as a going concern – appear to be worth far more than the sum of their parts. Your Receiver's administration of claims and wind up procedures could take several months (and perhaps years). But once your Receiver ceases to carry on the business of the LLCs, they will immediately end. The members stand to lose significant value of their interests in the liquidation of the LLCs because of their failure to present alternatives (either to each other, or to the Court).

7. **Last Clear Chance < Liquidation.** Therefore, given the risk and magnitude of loss to the members of the LLCs by liquidation, your Receiver requests further instructions – to give the Court a sort of “last clear chance” – to make sure the Court

³ This may be inevitable, but agreements between the members could result in alternatives that mitigate these negative consequences.

wants liquidation to occur now. Or, whether the Court will order the parties to a mediation on a date certain, with the understanding that:

without an agreement between the members over the continuing operation or termination of the business and affairs of the LLCs (as a result of mediation on that date certain), Receiver will proceed to wind up the business and affairs of the LLCs through the liquidation Receivership.

PRAYER

In the interest of justice, your Receiver requests any further instructions about the Receivership, including when and how the Court wishes liquidation to proceed.

Respectfully submitted,

By: Andrew R. Korn

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RECEIVER

CERTIFICATE OF CONFERENCE

No Certificate of Conference is required on this Motion. However, attorneys for the members of the LLCs are unopposed to Receiver obtaining any further instructions from the Court.

Certified to on June 11, 2018.

By: Andrew R. Korn

ANDREW R. KORN

CERTIFICATE OF SERVICE

On June 11, 2018, this instrument was served in compliance with Rules 21 and 21a of the TEXAS RULES OF CIVIL PROCEDURE via the court's electronic filing system, and by e-mail, as follows:

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