IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	**CHAPTER 11**
LIMETREE BAY SERVICES, LLC, *et al.*,[1]	**CASE NO.: 21-32351**
Debtors.	**(Jointly Administered)**

SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.'S OBJECTION TO DEBTOR'S EMERGENCY MOTION FOR TURNOVER OF RECORDS PURSUANT TO BANKRUPTCY CODE SECTION 542(e)

TO THE HONORABLE DAVID R. JONES,
CHIEF U.S. BANKRUPTCY JUDGE:

Sedgwick Claims Management Services, Inc. ("Sedgwick") objects to Limetree Bay Refining, LLC's (the "Limetree Refining," or the "Debtor") *Emergency Motion for Turnover of Records Pursuant to Bankruptcy Code Section 542(e) from Sedgwick Claims Management Services, Inc.* ("Motion for Turnover") [Doc. No. 506], and respectfully submits the following:

I. INTRODUCTION

1. The Debtor is not entitled to turnover relief under Section 542(e) of the Bankruptcy Code ("Section 542(e)") for several reasons. First, Sedgwick was retained by and did work for Limetree Bay Terminals, LLC ("Terminals"), a non-debtor entity. Therefore, and as more fully discussed below, the so-called "Sedgwick Data" is not property of the Debtor's bankruptcy estate. Additionally, the Debtor's attempt to procure the Sedgwick Data for no consideration is an improper attempt to expand Section 542(e) beyond its intended purpose. More specifically, Section 542(e)'s legislative history, as cited by the Debtor in the Motion for Turnover, is clear that Section 542(e) is intended to protect a debtor from the attorneys,

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Limetree Bay Services, LLC (1866); Limetree Bay Refining Holdings, LLC (1776); Limetree Bay Refining Holdings II, LLC (1815); Limetree Bay Refining, LLC (8671); Limetree Bay Refining Operating, LLC (9067); Limetree Bay Refining Marketing, LLC (9222). The Debtors' mailing address is Limetree Bay Services, LLC, 11100 Brittmoore Park Drive, Houston, TX 77041.

accountants, and other professionals **that it hired** prior to its bankruptcy filing. Applying Section 542(e) to professionals that were not retained by a debtor on a prepetition basis essentially allow debtors to seize a non-creditor third-party's property for no consideration. Such a result would constitute an impermissible taking under federal law.

2. Likewise, the Debtor cannot use Section 542(e) to essentially require a third-party to provide a post-petition service for the benefit of the Debtor *for free.* The turnover of its Raw Data (as defined below) will require Sedgwick and its employees to divert time from their other projects in order to gather and conduct a limited compilation of the Raw Data. In the same vein, producing a final product to the Debtor as Sedgwick would have under its contract with Terminals will take a tremendous amount of time and labor, which Sedgwick estimates to cost $400,000 to complete. Accordingly, Sedgwick is entitled to an administrative expense claim to the extent that it is required to provide a post-petition service to the Debtor.

3. Moreover, the Debtor is currently engaged in mediation with, among other parties, certain "excess insurers" (the "Insurers") to address issues related to, among other things, the Exigent Health and Safety Issues set forth in the Motion. To the extent that the Insurers agree that they have liability under their policies, such policies potentially require that the excess insurers pay defense costs, which typically include an adjuster's fees. Accordingly, to the extent that the Debtor and Insurers continue to mediate and intend to use the Raw Date to benefit their negotiations, Sedgwick should be included in the mediation in order to preserve its right to be paid under the applicable policies – especially to the extent the Raw Data is used to enter into a settlement(s).

4. For these reasons, and the reasons discussed below, the Court should deny the Debtor's Motion for Turnover.

II. BRIEF BACKGROUND

5. As discussed above, Sedgwick was retained by Terminals in response to the May 12th incident (the "Incident"). In fact, Terminals and Sedgwick commenced discussions on May 13th, 2021 — just one day after the Incident – and immediately mobilized and deployed a team of adjusters to assist Terminals with accessing the damage. Sedgwick and Terminals had previously entered into a Short Form Services Agreement (contract number: LTS-314) dated July 21, 2020 (the "Agreement"), which evidences Sedgwick's engagement by Terminals. *See* **Exhibit A**.[2]

6. Relying on the Agreement, Sedgwick visually inspected close to 2,000 properties in a matter of six weeks (the "Project"). The first visual inspection was conducted on May 18, 2021 (*i.e.*, 6 days after the May 12th incident), and the last visual inspection was on June 26, 2021.

7. On July 26,, 2021, Sedgwick discontinued its work on the Project as a result of Terminal's non-payment. As a result of the discontinuation of Sedgwick's work, the data gathered by Sedgwick in connection with the Project (the "Raw Data") was not complied into a usable form. Such Raw Data includes: (i) claim number; (ii) adjuster assigned to each claim; (iii) claim file number; (iv) date of visual inspection; (v) address of property inspected; (vi) name of property owner; (vii) contact information for the property owner; (viii) whether a settlement was reached on the property owner's claim; and (ix) the amount of the settlement.

8. Sedgwick was in the process of compiling the Raw Data into final, usable form for Terminals, which, for each claim, would have included: (i) a completed/finalized report

[2] Prior to the Petition Date, Sedgwick and Terminals were circulating drafts of an addendum to the Agreement which would have added Limetree Refining to the Agreement, effective as May 13, 2021. This addendum was never finalized or signed by Limetree Refining despite Sedgwick's efforts to constantly contact the Debtor regarding the status of the addendum and timing for its execution. *See* **Exhibit B** (referencing original agreement).

setting forth the observed damage for each claimant; (ii) back-up pictures to support the report; and (iii) a signed release form from each claimant that becomes effective upon payment of the agreed settlement amount.

9. After the Petition Date, certain executives that are employed by both Terminals and the Debtor's approached Sedgwick's executives to discuss obtaining access to the Raw Data. During the discussions between the parties, Sedgwick informed Terminals / the Debtor's executives that it would be willing to compile the Raw Data and sell it to the Debtor in completed form in exchange for payment of the amount Sedgwick was owed under the Agreement.

10. On or around mid-August, Sedgwick's counsel emailed Debtor's counsel to discuss the sale to the compiled Raw Data to the Debtor.

11. Despite initial indications that the parties could reach a consensual resolution (subject to this Court's approval), Debtors' counsel went silent despite multiple follow-ups by Sedgwick's counsel.

12. Now, in an unfortunate turn of events, Debtors' counsel lobs this *Emergency Motion for Turnover* – seeking an emergency hearing in less than 24 hours in order to use Sedgwick's work product (i.e., the Raw Data) in the ongoing mediation with the insurers for no consideration.[3] In other words, the Debtor is proposing to simply take Sedgwick's product despite the fact that Sedgwick never assumed the risk of non-payment as a result of the Debtor filing for bankruptcy.

[3] In fact, and upon request by Debtors' counsel, Lloyd Lim briefly attended the mediation (by telephone) to answer some of Judge Isgur's questions regarding Sedgwick's work. Sedgwick remains available to Judge Isgur for any additional questions regarding Sedgwick's work. Sedgwick has not been invited to be part of the mediation, despite Debtor's insistence that it needs its data/work product.

III. OBJECTION

13. As stated above, the Debtor is not entitled to the turnover of Sedgwick's Raw Data pursuant to Section 542(e). Sedgwick was retained by Terminals, a non-debtor entity, and has no contractual relationship with the Debtor before or after the bankruptcy was filed. Therefore, Section 542(e) does not provide a basis for the Debtor to take Sedgwick's work product for its post-petition use without compensation.

14. As noted by the Debtor in the Motion, the legislative history of Section 542(e) indicates that the "purpose of the statute was to prevent attorneys and accountants from placing liens **on clients' files** under state law and using that leverage to ensure they were paid ahead of other creditors." *In re Crescent Res., LLC*, 457 B.R. 506, 515 (Bankr. W.D. Tex. 2011) (emphasis added) *citing Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 351 (1985)). Notably, all of the cases cited by Debtor appear to involve an accountant, lawyer, or other professional that was retained by the debtor to complete a *prepetition* service. That is not the situation here. Sedgwick does not have a pre-petition claim against the Debtor. Sedgwick was retained by Terminals, a non-debtor entity, and never assumed the risk of nonpayment as a result of the Debtor filing for bankruptcy. Expanding Section 542(e) beyond its legislatively intended scope impermissibly and inequitably allows the Debtor to take Sedgwick's property in order to benefit itself and the other parties to the mediation at Sedgwick's expense.

15. To the extent that the Debtor is now asking Sedgwick to in any way compile the Raw Data (a *post-petition* service), Sedgwick is entitled to an administrative expense claim. To be clear, Sedgwick has Raw Data on the approximately 2,000 sites that it visually inspected. Compiling the Raw Data into usable form will take a significant amount of time and cost

approximately $400,000 to complete.[4] Moreover, to the extent that the Debtor is allowed to use Sedgwick's work product for a post-petition purpose and for the benefit of the bankruptcy estate and its constituents, Sedgwick should receive compensation in the form of an administrative claim.

16. Finally, to the extent that the Debtor and Insurers continue to mediate and intend to use the Raw Date to benefit their negotiations, Sedgwick should be included in the mediation in order to preserve its right to be paid under the applicable policies – especially to the extent the Raw Data is used to enter into a settlement(s).

17. Sedgwick is willing to finalize its Raw Data, and deliver a final product to the Debtor. Again, this will take a tremendous amount of labor from Sedgwick due to the volume of claims – but it will likely prove to be more valuable to the Debtor and, ultimately, to the Insurers. Sedgwick remains willing to work with Debtor on identifying what information it needs, but Sedgwick is entitled to compensation for performing any post-petition services.

IV. RESERVATION OF RIGHTS

18. Sedgwick reserves the right to supplement its objection and raise any argument not asserted in this Objection before or during the hearing on the Debtor's Motion for Turnover. Additionally, Sedgwick reserves the right to seek an administrative claim against the Debtor's estate and/or seek recovery of the amount owed to it under the Agreement from Terminals and/or the Insurers.

V. CONCLUSION

For these reasons, Debtor's Motion for Turnover should be denied. However, to the extent that Sedgwick is required to produce either it's Raw Data (which will take time to do) or

[4] There are thousands of documents, and Sedgwick's employees will have to pull and compile all of the documents in an orderly fashion. Even then, Sedgwick is unsure as to whether the Debtor will find this information useful in completing its mediation.

convert its Raw Data into usable/final form, Sedgwick should be entitled to an administrative expense claim for its value the Raw Data provides to the estate and/or for its post-petition work.

Date: September 2, 2021

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Certificate of Service

I certify that on September 2, 2021, 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 Southern District of Texas and on the following party via email:

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