

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BEDMAR, LLC,¹

Debtor.

Chapter 11

Case No.: 25-11027 (JKS)

Objection Deadline: June 20, 2025 at 4:00 p.m. (ET)

Hearing Date: June 26, 2025 at 10:00 a.m. (ET)

Related Docket No.: 4, 72

**PRESIDENT AND FELLOWS OF HARVARD COLLEGE’S SUPPLEMENTAL
OBJECTION TO MOTION OF DEBTOR FOR ENTRY OF AN
ORDER (I) AUTHORIZING (A) REJECTION OF CERTAIN
UNEXPIRED LEASES OF NONRESIDENTIAL PROPERTY AND
(B) ABANDONMENT OF ANY REMAINING PERSONAL PROPERTY
LOCATED AT THE LEASE SITES, AND (II) GRANTING RELATED RELIEF**

President and Fellows of Harvard College (“Harvard” or the “Landlord”), by and through its counsel, DLA Piper LLP (US), submits this supplemental objection and reservation of rights (the “Supplemental Objection”) to the *Motion of Debtor for Entry of an Order (I) Authorizing (A) Rejection of Certain Unexpired Leases of Nonresidential Real Property and (B) Abandonment of Any Remaining Personal Property Located at the Leased Sites, and (II) Granting Related Relief* [D.I. 4] (the “Motion”).² On June 20, 2025, Harvard filed an Objection to the Motion. [D.I. 72] In support of its Supplemental Objection, Harvard respectfully states as follows:

BACKGROUND

1. Since Debtor filed its Motion two weeks ago, Harvard has moved expeditiously to understand the hurried “Corporate Transactions” that preceded the filing of this chapter 11 case without any notice or warning to Harvard. It has issued informal and formal discovery, but to date,

¹ The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number is: Bedmar, LLC (5047). The Debtor’s mailing address is 3115 Merryfield Row, San Diego, CA 92121.

² Capitalized terms used in this Objection but not otherwise defined shall be given meaning as used in the Motion and Objection.

has only received a handful of documents, including two plans of division under Del. Code Ann. tit. 6, § 18-217: (1) a Plan of Division dividing National Resilience, LLC into National Resilience, LLC and Bedmar Holdco, LLC, dated June 3, 2025 (the “Resilience LLC Division”); and (2) a Plan of Division dividing Resilience US, LLC into Resilience US, LLC, AGS Holdco, LLC, RTP Manufacturing, LLC, Bedmar, LLC, and ENM, LLC, dated June 3, 2025 (the “Resilience US Division”) (the Resilience LLC Division and the Resilience US Division, together, the “Plans of Division”).

2. While Harvard continues to investigate the factual and legal issues involved in this novel case, the Plans of Division and circumstances suggest that the Debtor misused Delaware law to set up a “two-step” asset-stripping exercise for the sole purpose of applying the lease-rejection cap in section 502(b)(6) of the Bankruptcy Code for the benefit of the non-Debtor affiliates. In particular, the Plans of Division removed assets from Resilience US and Resilience LLC for no disclosed consideration; altered the structure of Resilience US from a C-corporation into limited liability companies (LLCs); caused Resilience US and Resilience LLC to “divide” into newly-formed entities—only to then merge with others, including two new companies that were joined to form the Debtor and wipe out guarantees; and then deposited lease liabilities into the new Debtor to get the benefit of the lease-rejection cap.

3. Harvard submits this Supplemental Objection to apprise the Court that, under Del. Code Ann. tit. 6, § 18-217(o), the two-step cannot work for the Harvard Lease because it was entered into prior to August 1, 2018, and, by its own terms and as expressly preserved under Delaware law, prohibits the assignment.

4. While the Delaware Code provides for a proper division procedure (except where it is undertaken as a fraudulent transfer),³ there is an exception to any division of liabilities where the agreement predated August 1, 2018 and contained restrictions on transfers:

All limited liability companies formed prior to August 1, 2018, shall be governed by this section; provided, that if the dividing company is a party to any written contract, indenture or other agreement entered into prior to August 1, 2018, that, by its terms, restricts, conditions or prohibits the consummation of a merger or consolidation by the dividing company with or into another party, or the transfer of assets by the dividing company to another party, then such restriction, condition or prohibition shall be deemed to apply to a division as if it were a merger, consolidation or transfer of assets, as applicable.

Del. Code Ann. tit. 6, § 18-217(o).

5. The Lease was originally entered into in 1992. It was then amended in 1995 and 1997, with a Consent and Agreement to sublet in 2002, and ultimately assigned with Harvard's consent to Resilience Boston, Inc. on March 1, 2021 (with a Guaranty from National Resilience, Inc., on the same date). [D.I.s 72-1, 72-2, 75].

6. Included in the original 1992 Lease, which was incorporated through the 2021 assignment, was an anti-assignment provision: "Tenant shall not assign this Lease, or sublet or license the Premises or any portion thereof . . . without obtaining, on each occasion . . . the prior consent of the Landlord." Ex. A, ¶ 5.1.11; *see also* Ex. A. Assignment and Assumption ¶ 1.

7. Here, the tenant did not give any prior notice to Harvard and did not request or receive consent by the Landlord to any purported assignments, mergers, or divisions in accordance with the Lease.⁴

³ Harvard is investigating whether the two-step was subject to this exception. *See* Del. Code Ann. tit. 6, § 18-217(l) (4)-(5) (debts, liabilities, and duties may be divided "so long as the plan of division does not constitute a fraudulent transfer under applicable law" and in the event it "constitute[s] a fraudulent transfer, each division company shall be jointly and severally liable on account of such fraudulent transfer notwithstanding the allocations made in the plan of division").

⁴ Debtor asserts that Resilience Boston, Inc. changed its name to Resilience US, Inc., which was then converted to Resilience US, LLC. Resilience US, LLC, was then divided into Bedmar, LLC, AGS, and Resilience US. The

8. Moreover, the Guaranty provides that “[n]o assignment or transfer of the Lease shall operate to extinguish or diminish the liability of Guarantor under the Guaranty.” Ex. B., ¶ 5.

9. Accordingly, the Debtor’s assumption, or assignment, of rights under the Lease violate the provisions of the Lease and Guaranty, therefore, the division did not validly transfer the Lease to the Debtor. *See* Under Del. Code Ann. tit. 6, § 18-217(o).

10. Moreover, the Delaware Code provides that “conversion of any other entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the other entity *incurred prior to its conversion* to a domestic limited liability company or the personal liability of any person incurred prior to such conversion. Del. Code Ann. tit. 6, § 18-214(e) (emphasis added). As such, the alleged conversion from Resilience US, Inc. into Resilience US, LLC did not relieve Resilience US, LLC of its obligations under the Lease. Since there is no effect on the obligations or liabilities incurred prior to the conversion, the anti-assignment provision in the original 1992 lease remains intact, and the division did not validly transfer the Lease to the Debtor.

11. Thus, the Lease and Guaranty are not assets or liabilities of the Debtor and the Debtor’s Motion must be denied.

RESERVATION OF RIGHTS

12. Nothing in this Objection is intended to be, or should be construed as, a waiver by Landlord of any of its rights under the Lease, the Guaranty, other agreements, documents and instruments related to the Lease and Guaranty, the Bankruptcy Code, or applicable law. Landlord expressly reserves all rights, including, without limitation, the right to: (i) challenge the propriety of the divisional merger under Delaware law against the Debtor and non-Debtors and assert claims

Harvard Lease was then “allocated” under the Plans of Division to Bedmar, LLC. Debtor has provided no evidence of the name change from Resilience Boston, Inc.

and causes of action arising from the purported implementation of the divisional merger; (ii) assert claims for breaches of the Lease accruing prior to and following the Petition Date; (iii) supplement and/or amend this Supplemental Objection and to assert additional objections to the proposed rejection of the Lease on any and all grounds; (iv) assert its rights to dispose of the Remaining Property and assert administrative or other claims for any costs incurred by Landlord; (v) amend the rejection damages amount; (vi) assert additional non-monetary defaults under the Lease; (vii) assert any rights for breaches of the Lease and Guaranty, indemnification or contribution by the Debtor or any other party that may be liable to Landlord, as applicable, jointly and severally, arising under the Lease, Guaranty or otherwise; (viii) assert any bad faith arguments with respect to this chapter 11 case and prosecute the consequences thereof; and (ix) assert any further objections as deemed necessary or appropriate. For the avoidance of doubt, the Landlord reserves all rights, claims, and defenses, including, without limitation, the right to raise additional objections or assert additional claims against the Debtor or any other party as may be appropriate upon completion of discovery.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, Harvard respectfully requests that the Court (a) deny the Motion; and (b) grant Landlord such other and further relief as the Court deems just and proper.

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Dated: June 25, 2025
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

/s/ Stuart M. Brown

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*Counsel for President and Fellows of Harvard
College*

CERTIFICATE OF SERVICE

I, Stuart M. Brown, hereby certify that on this 25th day of June, 2025, a true and correct copy of the foregoing *President and Fellows of Harvard College's Supplemental Objection to Motion of Debtor for Entry of an Order (I) Authorizing (A) Rejection of Certain Unexpired Leases of Nonresidential Property and (B) Abandonment of Any Remaining Personal Property Located at the Lease Sites, and (II) Granting Related Relief* was served via the Court's CM/ECF system upon the parties registered to receive such notifications in this case.

/s/ Stuart M. Brown
Stuart M. Brown (DE 4050)