

Item # 61

ADDITIONAL MATERIAL
Regular Meeting
May 18, 2021

SUBMITTED AT THE REQUEST OF

OFFICE of the COUNTY
ATTORNEY

The Board's consideration of this item is based on the following two-part motion:

A. MOTION TO AUTHORIZE the County Attorney to execute the settlement agreement attached to the supplemental agenda item on behalf of the County in the matter of *Jennifer Orsi v. SP Plus Corporation, et al.*, 17th Judicial Circuit Court Case No. CACE-19-022989 (13).

B. MOTION TO AUTHORIZE the County Attorney to execute on behalf of the County a settlement agreement and mutual release with its insurer Beazley USA Services, in substantially the form attached to this additional material distribution, to facilitate settlement of the Orsi class action; and further authorizing the County Attorney to modify the draft attached settlement agreement and mutual release upon determining such modification will not materially increase the County's legal risk or financial exposure.

NOTE: Part B is required to settle related but separate litigation filed by the County against its cyber liability insurer; the attached draft is a near-final version but the language is expected to change based on continuing negotiations.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the “Agreement”) is made and entered into by and between Broward County, a political subdivision of the State of Florida (“Broward”), Certain Underwriters at Lloyd’s, London, Syndicates 2623 and 623 (“Beazley”), HUB Parking Technology USA, Inc. (“HUB”), and SP Plus Corporation (“SP Plus”). Broward, Beazley, HUB, and SP Plus are collectively referred to herein as the “Parties,” and each, individually, is sometimes referred to herein as a “Party.”

RECITALS

WHEREAS, Jennifer Orsi filed the purported class action lawsuits captioned *Jennifer Orsi v. SP Plus Corporation, et al.*, Case No. 18-cv-62589-PMH (S.D. Fla.) and *Jennifer Orsi v. SP Plus Corporation, et al.*, Case No. CACE19-22989 (Broward County, Florida) against Broward, HUB, and SP Plus (collectively, the “Orsi Action”) alleging violations of the Fair and Accurate Credit Transactions Act in connection with parking receipts issued at certain locations at the Fort-Lauderdale Hollywood International Airport;

WHEREAS, Beazley issued Breach Response Policy No. W13EDF180601 to Broward for the November 4, 2018 to November 4, 2019 Policy Period (the “Policy”);

WHEREAS, Broward tendered the Orsi Action to Beazley for coverage under the Policy;

WHEREAS, a dispute arose between Broward and Beazley regarding coverage under the Policy for the Orsi Action;

WHEREAS, Broward filed the lawsuit captioned *Broward County v. Beazley USA Services, Inc. a/k/a Syndicate 2623/623*, Case No. 0:19-cv-63007-RKA (S.D. Fla.) against Beazley (the “Coverage Action”);

WHEREAS, Beazley filed a Third-Party Complaint against HUB and SP Plus in the Coverage Action for a declaratory judgment, claiming, *inter alia*, that HUB and SP Plus have indemnity obligations to Broward in connection with the Orsi Action that are primary to any potential coverage under the Policy (the “Third-Party Complaint”);

WHEREAS, Broward, HUB, and SP Plus have reached an agreement with Plaintiff, on behalf of herself and a proposed class, in the Orsi Action to settle the Orsi Action under the terms and conditions as reflected in Exhibit A hereto; and

WHEREAS, the Parties have reached an agreement to settle their dispute in the Coverage Action and Third-Party Complaint contingent upon final court approval of the settlement in the Orsi Action on the terms set forth herein;

NOW, THEREFORE, for full and valuable consideration and on the terms, conditions and covenants contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the foregoing Recitals, which are incorporated into and form part of this Agreement, the Parties agree as follows:

1. Payment by Beazley

Within thirty (30) days after (1) full execution of this Agreement, (2) receipt of a W-9 and pursuant to payment instructions to be provided by HUB, and (3) final court approval of the settlement of the Orsi Action, Beazley shall pay Fifty Thousand Dollars (\$50,000) on behalf of Broward toward the settlement of the Orsi Action (the "Beazley Payment"). The Beazley Payment shall constitute "Loss" under the Policy and apply against and reduce the aggregate limit of the Policy. It is agreed by and among Broward, Beazley and HUB that the Beazley Payment, once received, shall comprise the full amount Beazley and/or the County are, or ever will be, required to contribute to the settlement of the Orsi Action. Broward further agrees and acknowledges that upon issuance of the Beazley Payment, Beazley shall have no further payment obligations under the Policy or otherwise in connection with, arising out of, or related to the Orsi Action. HUB and SP Plus agree and acknowledge that neither of them or their respective Related Persons and Entities (as defined below) can or will seek any payment from Beazley under the Policy or otherwise in connection with, arising out of, or related to the Orsi Action.

2. Dismissal of the Coverage Litigation

Within five (5) days of full execution of this Agreement, the Parties shall notify the Court in the Coverage Litigation that the Parties have reached a settlement of the Coverage Litigation, including the Third-Party Complaint, contingent upon final court approval of the settlement in the Orsi Action and that the Coverage Litigation, including the Third-Party Complaint, should remain stayed with no further action by the Court pending the filing of a dismissal with prejudice of the Coverage Litigation and Third-Party Complaint, with each Party to bear its own costs and attorneys' fees.

Within five (5) days of Beazley making the Beazley Payment set forth in paragraph 1 above, the Parties shall file a Joint Stipulation to Dismiss the Coverage Litigation, including the Third-Party Complaint, with prejudice, each Party to bear its own costs and attorneys' fees.

3. Release

a. In consideration of the promises and other consideration in this Agreement, Broward on behalf of itself and to the fullest extent permitted by law, on behalf of its predecessors and successors in interest, affiliates, subsidiaries, parents, and divisions, and each of the foregoing entities' past, present and future legal representatives, owners, heirs, assigns, insurers (other than Beazley), shareholders, creditors, liquidators, administrators, trustees, debtors in possession, receivers, executors, partners, principals, managers, management entities, directors, officers, employees, independent contractors, attorneys, agents, members, and persons acting by, through, under or in concert with any of the foregoing (the "Broward Related Persons and Entities"), hereby releases, remises, acquits and forever discharges Beazley and its predecessors and successors in interest, affiliates, subsidiaries, parents, and divisions, and each of the foregoing entities' past, present and future legal representatives, owners, heirs, assigns, insurers, reinsurers, shareholders, creditors, liquidators, administrators, trustees, debtors in possession, receivers, executors, partners, principals, directors, officers, employees, attorneys, agents, members, and persons acting by, through, under or in concert with any of the foregoing; but not including Broward in any capacity (the "Beazley Related Persons and Entities"), separately and jointly, of and from any and all claims, debts, liens, contracts, agreements, promises, demands, payments, rights, obligations, loss, judgments, awards, attorneys' fees, costs, expenses,

interests, damages, liabilities, benefits and causes of action, at law or in equity, of whatever kind or character, known or unknown, suspected, fixed, or contingent, that Broward and/or the Broward Related Persons and Entities have, have had, or may have in the future against Beazley and/or the Beazley Related Persons and Entities based on, arising out of, or in any way involving (i) the Orsi Action, including the facts and circumstances alleged therein; (ii) the defense and/or settlement of the Orsi Action; (iii) any claim for coverage under the Policy with regard to the Orsi Action; (iv) any claim relating to Beazley's adjusting or handling of Broward's claim for coverage under the Policy for the Orsi Action; (v) the Beazley Payment; and/or (vi) the Coverage Litigation and Third-Party Complaint, including the facts and circumstances alleged therein. Notwithstanding the foregoing, this release shall not extend to claims for breach of this Agreement or the warranties or representations contained herein.

b. In consideration of the promises and other consideration in this Agreement, Beazley and the Beazley Related Persons and Entities hereby release, remise, acquit and forever discharge Broward and the Broward Related Persons and Entities, separately and jointly, of and from any and all claims, debts, liens, contracts, agreements, promises, demands, payments, rights, obligations, loss, judgments, awards, attorneys' fees, costs, expenses, interests, damages, liabilities, benefits and causes of action, at law or in equity, of whatever kind or character, known or unknown, suspected, fixed, or contingent, that Beazley and/or the Beazley Related Persons and Entities have, have had, or may have in the future against Broward and/or the Broward Related Persons and Entities based on, arising out of, or in any way involving (i) the Orsi Action, including the facts and circumstances alleged therein; (ii) the defense and/or settlement of the Orsi Action; (iii) coverage under the Policy for the Orsi Action; (iv) the Beazley Payment; and/or (v) the Coverage Litigation and Third-Party Complaint, including the facts and circumstances alleged therein. Notwithstanding the foregoing, this release shall not extend to claims for breach of this Agreement or the warranties or representations contained herein.

c. In consideration of the promises and other consideration in this Agreement, (1) HUB and its predecessors and successors in interest, affiliates, subsidiaries, parents, and divisions, and each of the foregoing entities' past, present and future legal representatives, owners, heirs, assigns, insurers shareholders, creditors, liquidators, administrators, trustees, debtors in possession, receivers, executors, partners, principals, directors, officers, employees, attorneys, agents, members, and persons acting by, through, under or in concert with any of the foregoing (the "HUB Related Persons and Entities") and (2) SP Plus and its predecessors and successors in interest, affiliates, subsidiaries, parents, and divisions, and each of the foregoing entities' past, present and future legal representatives, owners, heirs, assigns, insurers, reinsurers, shareholders, creditors, liquidators, administrators, trustees, debtors in possession, receivers, executors, partners, principals, directors, officers, employees, attorneys, agents, members, and persons acting by, through, under or in concert with any of the foregoing (the "SP Plus Related Persons and Entities") hereby release, remise, acquit and forever discharge Beazley and the Beazley Related Persons and Entities, separately and jointly, of and from any and all claims, debts, liens, contracts, agreements, promises, demands, payments, rights, obligations, loss, judgments, awards, attorneys' fees, costs, expenses, interests, damages, liabilities, benefits and causes of action, at law or in equity, of whatever kind or character, known or unknown, suspected, fixed, or contingent, that (1) HUB and/or the HUB Related Persons and Entities and/or (2) SP Plus and/or the SP Plus Related Persons and Entities have, have had, or may have in the future against Beazley and/or the Beazley Related Persons and Entities based on, arising out of, or in any way involving (i) the Orsi Action, including the facts and circumstances alleged therein; (ii) the defense and/or settlement of the Orsi Action; (iii)

coverage under the Policy for the Orsi Action; (iv) the Beazley Payment; and/or (v) the Coverage Litigation and Third-Party Complaint, including the facts and circumstances alleged therein. Notwithstanding the foregoing, this release shall not extend to claims for breach of this Agreement, the warranties or representations contained herein, or to any separate policy of insurance issued by Beazley or any Beazley Related Person or Entity to any HUB Related Persons or Entities or any SP Plus Related Persons and Entities placed from January 1, 2020 forward for matters unrelated to the Orsi Action.

d. In consideration of the promises and other consideration in this Agreement, Beazley and the Beazley Related Persons and Entities hereby release, remise, acquit and forever discharge (1) HUB and the HUB Related Persons and Entities and (2) SP Plus and the SP Plus Related Persons and Entities, separately and jointly, of and from any and all claims, debts, liens, contracts, agreements, promises, demands, payments, rights, obligations, loss, judgments, awards, attorneys' fees, costs, expenses, interests, damages, liabilities, benefits and causes of action, at law or in equity, of whatever kind or character, known or unknown, suspected, fixed, or contingent, that Beazley and/or the Beazley Related Persons and Entities have, have had, or may have in the future against (1) HUB and/or the HUB Related Persons and Entities and/or (2) SP Plus and/or the SP Plus Related Persons and Entities based on, arising out of, or in any way involving (i) the Orsi Action, including the facts and circumstances alleged therein; (ii) the defense and/or settlement of the Orsi Action; (iii) coverage under the Policy for the Orsi Action; (iv) the Beazley Payment; and/or (v) the Coverage Litigation and Third-Party Complaint, including the facts and circumstances alleged therein. Notwithstanding the foregoing, this release shall not extend to claims for breach of this Agreement or the warranties or representations contained herein.

e. Notwithstanding the foregoing, the releases contained in the paragraph 3(a)-3(d) shall not extend to any class members who opt out of the settlement in the Orsi Action. The Parties mutually reserve all rights against one another under the law, in equity, and arising out of or relating to the Policy or any contract between the Parties in connection with any claims by class members who opt out of the settlement of the Orsi Action.

4. Unknown Claims

With respect to the releases set forth in Paragraph 3 of this Agreement, the Parties expressly understand, acknowledge and assume the risk that claims and/or liabilities may exist but presently be unknown, or that losses resulting from such claims or liabilities may presently be unknown or overestimated or underestimated in amount or severity, and the Parties have taken the possibility of unknown, underestimated or overestimated claims and liabilities into account in determining the amount of consideration to be paid in exchange for the releases provided herein. The Parties, on their own behalves and on behalf of their respective Related Persons and Entities, expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of any statute or principle of common law of the United States or any other state, territory or country, which narrowly construes releases purporting by their terms to release such unknown or underestimated or overestimated claims and/or liabilities in whole or in part, restricts or prohibits the releasing of such claims and/or liabilities or otherwise relates to the release of unknown claims.

5. No Admission of Liability or Coverage

The Parties acknowledge and agree that this Agreement is entered into for the sole purpose of resolving certain disputes with respect to the Orsi Action, the Coverage Litigation, the

Third-Party Complaint, and the Policy, and that neither the execution nor the performance of any of the terms of this Agreement will constitute or be construed as an admission by any Party of any liability, an admission of coverage or lack of coverage under the Policy, or an admission of the validity or enforceability of any matters that are released pursuant to this Agreement. The Parties also acknowledge and agree that this Agreement will not be taken or used, nor will this Agreement be admissible in evidence, in any action, cause of action or proceeding, except in an action to enforce the terms of this Agreement.

6. No Assignment

The Parties represent and warrant that they have not sold, assigned or otherwise transferred any interest in the claims, demands, rights, actions, causes of action or liabilities that are the subject of the releases contained in this Agreement.

7. Authority

The undersigned individuals executing this Agreement represent and warrant that they are authorized to enter into and execute this Agreement on behalf of the entity on whose behalf they purport to execute the Agreement, that the appropriate corporate resolutions or other consents have been passed and/or obtained, and that this Agreement will be binding upon those entities.

8. Construction of Agreement

This Agreement will not be construed against any Party by reason of having been drafted by such Party. The Parties agree that this Agreement will be binding upon and inure to the benefit of the Parties and their respective Related Persons and Entities and any corporation, partnership or other entity into which any corporate Party to this Agreement may merge, consolidate or reorganize.

9. Voiding of the Agreement

This Agreement will be voided in the event that the court in the Orsi Action denies the motion seeking final approval of the settlement of the Orsi Action and the Parties shall be returned to the positions they were in as of the day the last Party executed this Agreement.

10. Entire Agreement

This Agreement constitutes the entire agreement among the Parties with respect to the matters addressed herein and supersedes all prior oral or written agreements with respect to the matters released, except that this Agreement shall not be deemed to supersede, amend, alter, or modify, or waive any rights or obligations in, any separate written contract or agreement currently in effect between or among Broward, HUB and SP Plus, or any of them, arising out of or relating to the Orsi Action or the settlement of such action. This Agreement will not be amended, altered, or modified, except by an instrument in writing signed by the Party against whom enforcement of the amendment, alteration or modification is sought.

11. Advice of Counsel

This Agreement is made and executed by each Party with the advice of counsel, and no Party has been coerced or induced to enter into this Agreement by any improper action of the other Party.

12. Headings and Captions

The headings and captions used in this Agreement are for convenience only, are not a part of this Agreement, and will not alter or determine any rights or obligations under this Agreement.

13. Execution in Counterparts

This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which, together, will constitute but one and the same instrument, which instrument will for all purposes be sufficiently evidenced by any such counterpart. Execution by facsimile or by an electronically transmitted signature shall be fully and legally binding on the Parties. This Agreement will become effective on the date it has been executed by all Parties.

IN WITNESS WHEREOF, each undersigned Party has caused this Agreement to be duly executed on its behalf.

Dated: _____

Broward County, a political subdivision of the State of Florida

By: _____

Title: _____

Dated: _____

Certain Underwriters at Lloyd's, London, Syndicates 2623 and 623

By: _____

Title: _____

Dated: _____

HUB Parking Technology USA, Inc.

By: _____

Title: _____

DRAFT (5.17.21)
SUBJECT TO FURTHER REVISIONS BY THE PARTIES

Dated: _____

SP Plus Corporation

By: _____

Title: _____