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25 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
26 **CLARK COUNTY, NEVADA**

27 STATE OF NEVADA, EX REL. COMMISSIONER
28 OF INSURANCE, IN HER OFFICIAL CAPACITY
AS STATUTORY RECEIVER FOR DELINQUENT
DOMESTIC INSURER,

Plaintiff,

vs.

SPIRIT COMMERCIAL AUTO RISK RETENTION
GROUP, INC., a Nevada Domiciled Association
Captive Insurance Company,

Defendants.

Case No. A-19-787325-B

Dept. No. 27

SECOND STATUS REPORT

1 COMES NOW, Commissioner of Insurance and Receiver, Barbara D. Richardson, and CANTILO
2 & BENNETT, L.L.P., Special Deputy Receiver (“SDR”), and files this quarterly Status Report (“Report”)
3 in the above-captioned receivership. In accordance with the orders of this Court and the Nevada Revised
4 Statutes (“NRS”) Chapter 696B, the Receiver makes this “true report[s] in summary form of the insurer’s
5 affairs under the receivership and of progress being made in accomplishing the objectives of the
6 receivership.” NRS 696B.290(7).

7 **I.**

8 **INTRODUCTION**

9 Spirit Commercial Auto Risk Retention Group (“Spirit” or the “Company”) is an association
10 captive insurance company organized under the insurance laws of Nevada and the Liability Risk
11 Retention Act of 1986. Spirit received its Certificate of Authority on February 24, 2012, and operates
12 under the authority of NRS Chapter 694C. Spirit transacted commercial auto liability insurance
13 business. Within that line, Spirit specialized in serving commercial truck owners.

14 Pursuant to NRS 679A.160, Spirit is subject to Nevada laws in Chapters 694C and 695E that
15 pertain to captive insurers (as “captive insurer” is defined in NRS 694C.060) and risk retention groups
16 (as “risk retention group” is defined in NRS 695E.110) that have a Certificate of Authority from the
17 Division. Spirit is considered an association captive insurer (as “association captive insurer” is defined
18 in NRS 694C.050). As a risk retention group (“RRG”), Spirit is subject to the federal Liability Risk
19 Retention Act of 1986. RRGs domiciled in Nevada do not participate in the Nevada Guaranty
20 Association. Pursuant to NRS 695E.140(1)(a), Spirit is also subject to all laws that pertain to traditional
21 liability insurers (with exceptions given in Bulletin 14-008).

22 As discussed in the Receiver’s First Status Report, Spirit is part of an Insurance Holding
23 Company System and in large part it only did business with other members of that system. CTC
24 Transportation Insurance Services of Missouri, LLC (“CTC”), with offices in Missouri, New Jersey, and
25 California, served as the program administrator and managing general agent for Spirit. Criterion Claims
26 Solutions of Omaha, Inc. (“Criterion”) was the third-party claims administrator (“TPA”) for Spirit.

1 Lexicon Insurance Management LLC was the captive manager for the company (after Risk Services
2 initially served in that role through circa July 2018). Chelsea Financial Group, Inc. provided premium
3 financing services for the majority of Spirit’s policies. The company 10-4 Risk Management provided
4 risk management and loss run services. The owner or ultimate controlling person for each of these
5 entities is or was Thomas Mulligan.¹ All of these companies were taking a portion of the premium dollars
6 from Spirit-issued policies, and thus, not all of the Spirit premium dollars were paid to Spirit.

7 The Commissioner initially filed her first petition to put the Company into receivership on
8 January 11, 2019, and her efforts to protect the policyholders and other creditors of the estate were
9 vigorously contested by the Company. On February 27, 2019, this Court entered its Permanent
10 Receivership Order. Barbara D. Richardson, Commissioner of Insurance (“Commissioner”), in her
11 capacity as Receiver for Spirit appointed the firm of CANTILO & BENNETT, L.L.P. as the Special Deputy
12 Receiver of the Companies. The “Receiver” and “Special Deputy Receiver” are referred to collectively
13 herein as the “Receiver.”

14 In brief, the Permanent Receivership Order establishes the following key points for the initial
15 phase of the Spirit receivership:

- 16 1) that the Company’s in-force insurance policies are to be canceled effective on the earlier
17 of April 15, 2019, or the date when the insured ceased making premium payments to
18 Spirit;
- 19 2) that the Receiver may impose a full suspension on all disbursements owed by Spirit,
20 including insurance policy disbursements, and costs related to the defense or adjudication
21 of insurance policy claims;
- 22 3) that the receivership court has exclusive jurisdiction over all matters pertaining to Spirit
23 and all persons are enjoined from commencing, bringing, maintaining, or further
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26 ¹ See Schedule Y: Part 1A, to the Company’s 2018 Annual Statement, the “Detail of Insurance Holding Company
27 System” (the Receiver’s First Status Report, Ex. B).

- 1 prosecuting any action at law, suit in equity, arbitration, or special or other proceeding
2 against the Company, Receiver, or Special Deputy Receiver;
- 3 4) that the Receiver is vested with exclusive title both legal and equitable to all of Spirit's
4 property wherever located, to administer under the general supervisions of the Court;
- 5 5) that the Receiver may change to her own name the name of any of Spirit's accounts, funds
6 or other property or assets, held with any bank, savings and loan association, other
7 financial institution, or any other person, wherever located, and may withdraw such
8 funds, accounts and other assets from such institutions or take any lesser action necessary
9 for the proper conduct of the receivership; and
- 10 6) that the Receiver is authorized to establish a receivership claims and appeal procedure,
11 for all receivership claims. The receivership claims and appeals procedures shall be used
12 to facilitate the orderly disposition or resolution of claims or controversies involving the
13 receivership or the receivership estate.

14 II.

15 RECEIVERSHIP ADMINISTRATION

16 A. Notice of Receivership

17 The Receiver has distributed Notices of Receivership which contain contact information for the
18 submission of questions, claims, and correspondence, as well as details regarding the discontinuation of,
19 and the need to replace, all Spirit policies after April 15, 2019. The Receiver has mailed and e-mailed
20 such notices to interested parties of Spirit, based upon contact information that the Receiver has been
21 able to obtain thus far through a review of records provided by third parties upon request. The Receiver
22 has worked to develop notice lists for Spirit based on information obtained from third parties, and
23 particularly Spirit's key service providers: program administrator CTC and claims administrator
24 Criterion.

25 The address lists provided by Spirit's key service providers do not appear to be complete or one-
26 hundred percent accurate. Spirit has only e-mail addresses, and no other contact information, for many
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1 of its interested parties. As the Receiver discovers additional interested parties, or receives inquiries,
2 notice and information about the receivership will be provided as needed. Additionally, the Receiver
3 has revised Spirit’s web site at <https://spiritinsure.com> to include up-to-date information about the
4 receivership. The Receiver has worked to further develop and improve the Company’s contact lists, and
5 will continue to do so throughout the receivership.

6 The Receiver has mailed a notice of the receivership to all fifty state divisions of insurance and
7 transportation. The Receiver has also shared this notice in response to individual inquiries by various
8 state agencies. The notice informs state agencies and offices of the receivership, the correct contact
9 information for any correspondence or notices intended for Spirit, and that the Receiver is evaluating the
10 operations of the Company and will address state agency filings (*e.g.*, premium tax filings) in due course.
11 The notice also explains that there will soon be a procedure established for the filing of claims in the
12 receivership, and that states will need to file claims with the estate for any amounts incurred pre-
13 receivership that are owed by Spirit.

14 The Receiver has recently filed a Motion for Instructions seeking the Court’s approval of
15 proposed notice procedures in the receivership going forward, and particularly as relates to notices
16 regarding any court-approved procedures and deadlines for the filing of claims in the estate.

17 **B. Claims Administration and Third-Party Support Services**

18 The Receivership Court has authorized the Receiver to establish a receivership claims and appeal
19 procedure. The Receiver has developed a procedure in accordance with NRS Chapter 696B.330. The
20 proposed Receivership Claims and Appeal Procedure for all Spirit claims, and the required Proof of
21 Claim form, will be submitted to this Court for approval once the above-mentioned Motion for
22 Instructions on proposed notice procedures has been heard and ruled on by the Court.

23 The Receiver retained the services of Criterion during the initial phase of the receivership to
24 assist in distributing information to interested parties, providing loss runs for policyholders, policy
25 cancellations, MCS-90 filing terminations, and for fielding inquiries on the customer service telephone
26 line for Spirit. Criterion has also handled the intake of new claims.

1 As of July 31, 2019, there were 1,620 open claims, and of this amount, around two hundred ninety-five
2 (295) claims are in active litigation against Spirit insureds.² The number of open claims has continued
3 to increase during the receivership, and for reference there were 1,586 open claims as of May 23, 2019,
4 and 1,512 open claims as of March 20, 2019.

5 The Receiver has determined that it is necessary and appropriate to transition from Criterion to a
6 new third-party claims administrator (“TPA”). As part of the Receiver’s evaluation of Spirit, it is
7 necessary to conduct an objective evaluation of the claims practices and the services provided to Spirit
8 prior to receivership. Among Criterion’s other clients and related persons are affiliated entities and
9 parties of Spirit, some of whom owe money to Spirit.

10 The Receiver has selected TRISTAR to assess and advise upon the outstanding policy claims
11 liabilities of the estate and to assist in the carrying out of a procedure for the efficient resolution of claims
12 against the receivership estate. TRISTAR is in the process of a data conversion to take over the electronic
13 and paper claims records from the former TPA. TRISTAR has also set up a customer service telephone
14 line for Spirit and will handle inquiries regarding policy claims and other general inquiries about the
15 receivership.

16 The policy data of Spirit is held in the Aspire Information System (“Aspire”), which was created
17 by Maple Technologies. The Receiver is in the process of negotiating an agreement with Maple
18 Technologies whereby the Receiver will continue to have access to this system for a time, for the
19 purposes of conducting an evaluation of Spirit’s operations and policies.

20 Eide Bailly LLP is a certified public accounting and business advisory firm that has been retained
21 by the Receiver to assist in the evaluation of Spirit’s business information (*i.e.*, claims, insurance
22 reserves, premiums, and accounting information).

23 PALOMAR FINANCIAL, LC (“Palomar”) is an affiliated company of the Special Deputy Receiver
24 and performs financial and technical administrative support services for Spirit in receivership—and

25 ² The number of claims involved in active litigation is provided by Criterion and is based on claims file research
26 requested by the Receiver. This figure may be subject to some adjustment after further evaluation, as it was not regularly
27 tracked by the Company or Criterion prior to receivership.

1 those services are now being performed by Palomar. Palomar is being used to facilitate the
2 receivership’s administration of financial matters.

3 In some cases, outside counsel has been engaged to address lawsuits filed against Spirit, or
4 lawsuits that are continuing to proceed against Spirit, outside the Receivership Court and in violation of
5 the Permanent Receivership Order. The Receiver will continue its established procedure of writing to
6 the parties involved to inform them of the injunctions of the Permanent Receivership Order, and to
7 request a voluntary dismissal of Spirit from the matter. Thus far the majority of counsel have been
8 amenable to such requests. In limited cases and only when absolutely necessary, the Receiver will
9 engage outside counsel to address violations of this Court’s orders.

10 **C. Records**

11 The Receiver reported in the First Status Report efforts to secure Spirit’s electronic records from
12 third parties, being that Spirit had no office space or employees of its own and very few physical files.
13 The Receiver will continue with her evaluation of the Company and will continue gathering the
14 Company’s records and data.

15 As mentioned above, Spirit’s policy data is held in the Aspire system. The Receiver is
16 negotiating an agreement to continue Spirit’s access to this system and its analytical reporting features,
17 until such time that an evaluation of Spirit’s operations can be completed. In the meantime, the Receiver
18 has taken a back-up copy of all the policy documents held in the Aspire system.

19 The claims data is hosted by the DXC Insurance RISKMASTER™ claims management system,
20 a product of Computer Sciences Corporation (“RiskMaster”). The Receiver has been advised by
21 Criterion that the RiskMaster contract is with Criterion and not with Spirit. The Receiver has nonetheless
22 obtained a full back-up of the claims data held by RiskMaster.

23 **D. Actuarial Reports**

24 The Receiver is evaluating policy information, claims data, and litigation information for Spirit
25 and is compiling this information for the outside actuarial firm, Risk & Regulatory Consulting, LLC
26 (“RRC”).
27

1 The Receiver has requested information necessary to complete this work from the Company’s
2 former captive manager, and from Company leadership (*i.e.*, the current captive manager at the onset of
3 receivership, and others). Much of this is basic information that should be readily available or
4 obtainable, and yet the Receiver has not yet been provided with the requested information. The Receiver
5 will keep the Court apprised of its efforts in this regard.

6 **E. Reinsurance**

7 The Receiver continues to evaluate reinsurance matters for Spirit, including the one known active
8 reinsurance treaty, with Wesco Insurance Company (“Wesco”). Part of this work will be to complete
9 year-end reinsurance reporting and the accounting work for this reporting, which Spirit had not done at
10 the outset of the receivership. As mentioned in the First Status Report, the Receiver has determined that
11 the Company appears to owe approximately \$3.1M in reinsurance premiums to Wesco as of year-end
12 2018 and this Wesco liability was not previously disclosed to the Nevada insurance regulators or
13 recorded by Spirit in financials filed with the Commissioner. The Receiver is still reviewing the Wesco
14 reinsurance contract information and is evaluating if additional obligations are owed by Spirit under the
15 reinsurance agreement, including what obligations may be owed by Wesco.

16 **F. Receivership Assets and Liabilities**

17 The Receiver has been gathering information and evaluating the assets and liabilities of Spirit.
18 A further preliminary liability analysis will be determined after TRISTAR further evaluates claims and
19 an actuary prepares an updated estimate of Spirit’s liabilities. Below is an overview of some key assets
20 and liability matters thus far identified by the Receiver.

- 21 1) CTC owes a large balance to Spirit (currently estimated to be over \$30M). The Receiver
22 is vigorously pursuing the return of these balance funds, and is working with the
23 assistance of outside counsel, Greenberg Traurig, in this matter. Attempts are being
24 made to avoid the expense of litigating this matter; however, litigation may become
25 necessary if the CTC balance is not satisfactorily resolved. At this point, CTC is
26 cooperating with an investigation into what appear to be “missing” funds. The Receiver
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1 is working with a forensic accountant to trace the money, and it does appear at this time
2 that amounts owing to Spirit have been misallocated to related entities and persons. The
3 Receiver is evaluating its options and will continue to keep the Court apprised of
4 developments in this area.

- 5 2) Commerce Bank Letter of Credit: Spirit applied for, and Commerce Bank issued, an
6 Irrevocable Standby Letter of Credit (“LOC”) for the benefit of the Nevada Division of
7 Insurance in the amount of \$3,000,000. The LOC was collateralized by a bank account
8 of Spirit. On June 25, 2019, the Commissioner presented a sight draft to Commerce Bank
9 to draw down on this LOC for the benefit of the Spirit estate. Commerce Bank wired the
10 funds, per the Commissioner’s request, on July 3, 2019, to an account with Fidelity
11 Investments.
- 12 3) Accredited LPT Refund: Accredited wired \$34,258,451.44 to Spirit, representing a return
13 of all premiums paid by Spirit under the LPT (discussed above) less any payments made
14 by Accredited for losses. Pursuant to an agreement and Stipulated Order with Accredited,
15 the Receiver had until June 2, 2019, to complete a review and reconciliation of this and
16 any other amounts owed to Spirit by Accredited. The Receiver completed a review ahead
17 of the deadline, and did not dispute the amount that was owed to Spirit.
- 18 4) Accredited Claims Funds Held Account, managed by Criterion: The Receiver demanded
19 that Criterion return the funds remaining in this account, and a net balance amount of
20 \$177,686.60 was wired to Spirit’s bank account on May 8, 2019. The account was in
21 Criterion’s name and has now been closed by Criterion.
- 22 5) Subrogation and Other Recoveries: The Receiver has allowed Spirit’s pre-receivership
23 counsel to continue working collections cases³ on a contingency fee basis.⁴ The

24 _____
25 ³ This includes, among other things, reimbursements from third parties for MCS-90 claims and Underinsured
26 Motorists coverage paid by Spirit. The recoverability of these claims varies widely.

27 ⁴ Spirit did not have engagement agreements in place with its attorneys on these matters, but the Receiver has signed
28 agreements with formal terms that take into account the receivership.

1 Receiver's approval is required for any settlement offers received by counsel on these
2 matters. Recoveries, if any, will be reflected in Spirit's Cash Receipts and Disbursements
3 reports under the category of "Salvage, Subrogation, Recoveries." Since the previous
4 status report, Spirit has collected \$111,451.27 (including income in May and June of
5 2019).

- 6 6) The cash assets of the Company were approximately as follows as of June 30, 2019:
- 7 a. Cash Accounts: \$848,053.55
 - 8 b. Cash, separate account held in bank for Letter of Credit: \$3,013,549⁵
 - 9 c. Investments, held at Fidelity, fair market value of \$ 39,215,982.07
- 10 7) Gross Loss and Loss Adjustment Expense and General Liability Losses: The gross loss
11 and loss adjustment amounts will be further evaluated and projected by the outside
12 actuaries for Spirit as noted above.
- 13 8) Other Assets: The Special Deputy Receiver is still evaluating other potential asset
14 recoveries for the benefit of the receivership estate. There is no known tangible personal
15 property or real property owned by the Company.

16 We are enclosing the consultants and Special Deputy Receiver bills and payments since the first
17 status report. Detailed billings are submitted *in camera*, and summaries of such bills are submitted as
18 Exhibit 1 to this report.⁶ The Receiver is including, as Exhibit 2 attached hereto, reports for May and
19 June of 2019 reflecting the account balances and the cash receipts and disbursements for Spirit.

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21 ⁵ As noted, the assets are reported as of June 30, 2019. In July, these LOC funds were wired to a Fidelity Investments
account for Spirit. In the next status report, these funds will be reflected in the Investments total held at Fidelity Investments.

22 ⁶ The *in-camera* materials are being submitted in a separate envelope that reflect paid invoices. Certain billings
23 submitted to the Court are appropriate for *in camera* review (as opposed to being made part of a public filing). More
24 particularly, and as discussed in further detail below, certain consultants in this matter will provide expert witness related
services. As such, the billing entries relating thereto should be considered confidential and/or otherwise not subject to
discovery.

25 In this regard, courts have held that the bills of legal counsel and experts may be withheld from legal discovery and
26 are not subject to legal disclosure, as this information may provide indications or context concerning potential litigation
strategy and the nature of the expert services being provided. *See, e.g., Avnet, Inc. v. Avana Technologies Inc.*, No. 2:13-cv-
00929- GMN-PAL, 2014 WL 6882345, at *1 (D. Nev. Dec. 4, 2014) (finding that billing entries were privileged because

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III.

CONCLUSION

In compliance with this Court’s instructions for a status report regarding the affairs of the Company, the Receiver has submitted the aforementioned status report and requests that the Court approve this Second Status Report and the actions taken by the Receiver.

DATED: August 6, 2019.

Respectfully submitted:

Barbara D. Richardson, Commissioner of Insurance of the State of Nevada, in her Official Capacity as Statutory Receiver of Delinquent Domestic Insurer

By: /s/ CANTILO & BENNETT, L.L.P.
Special Deputy Receiver
By Its Authorized Representative
Mark F. Bennett

Respectfully submitted by:

/s/ Kara Hendricks
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as the Permanent Receiver for Spirit Commercial Auto Risk Retention Group, Inc.*

they reveal a party’s strategy and the nature of services provided); *Fed. Sav. & Loan Ins. Corp. v. Ferm*, 909 F.2d 372, 374-75 (9th Cir. 1990) (considering whether or not fee information revealed counsel’s mental impressions concerning litigation strategy). Other courts that have addressed this issue have recognized that the “attorney-client privilege embraces attorney time, records and statements to the extent that they reveal litigation strategy and the nature of the services provided.” *Real v. Cont’l Grp., Inc.*, 116 F.R.D. 211, 213 (N.D. Cal. 1986).

The *in-camera* review should apply not only to documentation concerning attorney fees, but it also extends to “details of work revealed in [an] expert’s work description [which] would relate to tasks for which she [or he] was compensated[.]” a situation which is “analogous to protecting attorney-client privileged information contained in counsel’s bills describing work performed.” *See DaVita Healthcare Partners, Inc. v. United States*, 128 Fed. Cl. 584, 592-93 (2016); *see also Chaudhry v. Gallerizzo*, 174 F.3d 394, 402 (4th Cir. 1999) (recognizing that “correspondence, bills, ledgers, statements, and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law,” are protected from disclosure) (quoting *Clarke v. Am. Commerce Nat’l Bank*, 974 F.2d 127, 129 (9th Cir. 1992)).

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August, 2019, a true and correct copy of the foregoing ***Second Status Report*** was filed with the Clerk of the Court using the Odyssey eFileNV Electronic Service system and served on all parties with an email-address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

The date and time of the electronic proof of service is in place of the date and place of deposit in the U.S. Mail.

/s/ Andrea Lee Rosehill
An employee of Greenberg Traurig, LLP