



1 **MOT**
AARON D. FORD
2 Attorney General
RICHARD PAILI YIEN, Bar No. 13035
3 Deputy Attorney General
STATE OF NEVADA
4 **BUSINESS AND TAXATION DIVISION**
100 N. Carson Street
5 Carson City, NV 89701
Telephone: (775) 684-1129
6 Facsimile: (775) 684-1156
Email: ryien@ag.nv.gov

ENTERED
100

7
8 MARK E. FERRARIO, Bar No. 1625
KARA B. HENDRICKS, Bar No. 7743
9 TAMI D. COWDEN, Bar No. 8994
GREENBERG TRAUIG, LLP
10 10845 Griffith Peak Drive, Suite 600
Las Vegas, NV 89135
11 Telephone: (702) 792-3773
12 Facsimile: (702) 792-9002
13 Email: ferrariom@gtlaw.com
hendricksk@gtlaw.com
cowdent@gtlaw.com

14 *Attorneys for the Plaintiff*

15
16 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
17 **CLARK COUNTY, NEVADA**

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

21 Plaintiff,

22 vs.

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

26 Defendant.

Case No. A-19-787325-B

Dept. No. 27

[HEARING REQUESTED]

**MOTION FOR INSTRUCTIONS
ON ORDER SHORTENING TIME**

1 COMES NOW, Barbara D. Richardson, Commissioner of Insurance (“Commissioner”) and
2 Receiver (“Receiver”), and CANTILO & BENNETT, L.L.P., Special Deputy Receiver (“SDR”), by and
3 through their counsel of record, Greenberg Traurig, LLP, pursuant to Nevada Revised Statute
4 (“NRS”) 696B.220, and respectfully moves this Court for instructions specifying notice requirements
5 relating to the anticipated filing of a Motion seeking a Final Order of Liquidation; Motion seeking
6 Approval of the Claims Process and Claims Filing Deadlines; any orders issued relating to the same;
7 and notice required regarding subsequent filings. The term “Receiver” herein refers collectively to
8 the Receiver and SDR.

9 This Motion for Instruction is based on these papers and any oral argument requested by the
10 Court and a hearing is requested on shortened time to expedite the process that will allow claims to
11 be submitted and processed.

12 DATED this 1st day of August, 2019.

13 **GREENBERG TRAURIG, LLP**

14
15 

16 MARK E. FERRARIO, Bar No. 1625
17 KARA B. HENDRICKS, Bar No. 7743
18 TAMI D. COWDEN, Bar No. 8994
19 10845 Griffith Peak Drive, Suite 600
20 Las Vegas, NV 89135

21 *Attorneys for Plaintiff*

22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 ORDER SHORTENING TIME

2 Plaintiff, having filed a request to shorten time to its Motion for Instruction and good cause
3 appearing therefore,

4 IT IS HEREBY ORDERED that the above entitled matter be heard on an Order Shortening
5 Time on the 14th day of August, 2019 at 9:30 a.m. in Department 27,
6 of the above-entitled Court.

7 IT IS SO ORDERED this 2 day of Aug, 2019.

8
9 Nancy L. Allie
10 DISTRICT COURT JUDGE

11 Respectfully Submitted by:

12 **GREENBERG TRAURIG, LLP**

13
14 Kara B. Hendricks

15 MARK E. FERRARIO, Bar No. 1625
16 KARA B. HENDRICKS, Bar No. 7743
17 TAMI D. COWDEN, Bar No. 8994
10845 Griffith Peak Drive, Suite 600
Las Vegas, NV 89135

18 *Attorneys for Plaintiff*

19
20
21
22
23
24
25
26
27
28

**DECLARATION OF KARA B. HENDRICKS, ESQ. IN SUPPORT OF
MOTION FOR INSTRUCTIONS ON ORDER SHORTENING TIME**

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Kara B. Hendricks, hereby declare:

1. I am an attorney of record for Plaintiff Barbara D. Richardson, Commissioner of Insurance (“Commissioner”) and Receiver (“Receiver”), and CANTILO & BENNETT, L.L.P., Special Deputy Receiver (“SDR”) in the above-captioned matter.

2. I am a shareholder at the law firm of Greenberg Traurig, LLP, am in good standing as a member of the Nevada Bar, and am admitted to practice before this Court.

3. I make this declaration in support of Plaintiff’s Motion for Instructions on Order Shortening Time (“Motion”).

4. Good cause exists to hear this Motion on shortened time as the Receiver is in the process of preparing and expects to file in the near future certain motions that will have a large impact on these proceedings and seeks clarification from the Court regarding what notice is required with the filing of the same.

5. Specifically, the Receiver intends to file a Motion seeking a final order of liquidation of Spirit, as well as a Motion setting the claims filing deadline and seeking approval of forms related to the same.

6. The Receiver seeks approval of proposed notice requirements in advance of filing the related motions in an effort to be transparent and to ensure the Court is satisfied with the proposed notice in advance of the filings and to allow the Receiver to be sufficiently prepared to effectuate the required service.

7. As the motions described above are of great import to the case and will allow for a mechanism for policy holders and parties owed money from Spirit to submit claims for review and approval, it is reasonable for this Court to set a hearing relating to the notice deadlines to avoid unnecessary delay and to allow the claims process to move forward forthwith.

///

1 8. On behalf of the Receiver, I respectfully request that this Motion be set for hearing on
2 shortened time.

3 I declare under penalty of perjury that the foregoing statements are true and correct to the best
4 of my knowledge and belief.

5 DATED this 1st day of August, 2019.

6 
7 KARA B. HENDRICKS, ESQ.

8

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. BACKGROUND**

11 Spirit Commercial Auto Risk Retention Group (“Spirit” or the “Company”) is an association
12 captive insurance company organized under the insurance laws of Nevada and the Liability Risk
13 Retention Act of 1986. Spirit received its Certificate of Authority on February 24, 2012, and operates
14 under the authority of NRS Chapter 694C. Spirit transacted commercial auto liability insurance.
15 Within that line, Spirit specialized in serving commercial truck owners. Pursuant to NRS 679A.160,
16 Spirit is subject to Nevada laws in Chapters 694C and 695E that pertain to captive insurers (as
17 “captive insurer” is defined in NRS 694C.060) and risk retention groups (as “risk retention group” is
18 defined in NRS 695E.110) that have a Certificate of Authority from the Nevada Division of Insurance
19 (“Division”). Spirit is considered an association captive insurer (as “association captive insurer” is
20 defined in NRS 694C.050). As a risk retention group (“RRG”), Spirit is subject to the Federal
21 Liability Risk Retention Act of 1986. RRGs domiciled in Nevada do not participate in the Nevada
22 Guaranty Association.

23 The Commissioner filed her first petition to put the Company into receivership on January 11,
24 2019. On February 27, 2019, this Court issued its Permanent Injunction and Order Appointing
25 Commissioner as Permanent Receiver of Spirit Commercial Auto Risk Retention Group, Inc. (the
26 “Permanent Receivership Order”). The Commissioner, in her capacity as Receiver for Spirit, appointed
27 the firm of CANTILO & BENNETT, L.L.P. as the Special Deputy Receiver (“SDR”) of Spirit, in
28 accordance with NRS 696B. The term “Receiver” herein refers collectively to the Receiver and SDR.

1 The Receiver is the process of preparing and expects to file in the near future certain motions
2 that will have a large impact on these proceedings. Specifically, the Receiver intends to file a Motion
3 seeking a final order of liquidation of Spirit as well as a Motion setting the claims filing deadline and
4 seeking approval of forms related to the same. Due to the import of such motions and the anticipated
5 orders that will follow, the Receiver is seeking through the instant motion approval of notice
6 requirements associated with the same and clarification regarding notice requirements going forward.

7 **II. ARGUMENT, GROUNDS FOR INSTANT MOTION, AND PROPOSED NOTICE**

8 This Court has original jurisdiction of the subject matter of this action pursuant to NRS 696B.
9 NRS Chapter 696B deals with the conservation, rehabilitation, and liquidation of delinquent insurers
10 such as Spirit. NRS Chapter 696B provides that notice should be given to creditors of the time to file
11 claims (*i.e.* the claim filing deadline), and the chapter also provides guidance regarding the notices
12 required for claim determinations and the appeals of such determinations.¹ NRS Chapter 696B does
13 not specify what, if any, notice is required of the filing of a motion for liquidation and a motion to
14 approve the Receiver's proposed claims and appeals procedures. The Receiver has filed this Motion
15 in advance of those described above in order to first assure the Court's satisfaction with the
16 transparency and due process of these proceedings. The Receiver seeks the Court's approval of the
17 proposed notice procedures described herein.

18 **A. NOTICE FOR MOTIONS AND RELATED BRIEFS**

19 Based on the foregoing, the Receiver proposes to provide service of the Motion for
20 Liquidation, Motion for Approval of the Claims Deadlines and Claims Process, as well as any related
21 filings made on the Receiver's behalf to: (1) all individuals and interested parties denoted on this
22 Motion's certificate of service list in the means specified; and (2) posting a copy of the same on the
23 Company's website (<https://www.spiritinsure.com>). This will allow all parties that have requested
24 notice of filings to have advance notice of the hearing. Additionally, posting a copy of the Motion
25 and Notice of Hearing on Spirit's website will provide sufficient notice to the public.

26 Notably, Spirit's website is already online and accessible to the public, and receivership
27 information is being routinely posted to this web site. By utilizing notice via web site, the receivership

28 _____
¹ NRS 696B.330; NRS 696B.460.

1 estate will save thousands of dollars and avoid notifying thousands of parties that may have little to
2 no further interest in the affairs of Spirit and specifically the filed motions. The Receiver has been,
3 and intends to continue, posting on the web site relevant documents and notice of significant
4 receivership developments, including updates of relevant court filings and orders.²

5 The Receiver requests that this same notice process be approved in regard to future briefs
6 submitted to the Court by the Receiver.

7 **B. NOTICE FOR FINAL ORDERS OF LIQUIDATION AND CLAIMS**
8 **PROCEDURES AND FORMS**

9 Any final orders issued by the Court placing Spirit into Liquidation and approving the claims
10 deadline and claims process (including any receivership appeal process) will be served by: (1) mailing
11 and/or emailing notice, to the categories of persons described below; (2) by newspaper publication;
12 and (3) through the Company's web site.³ The Receiver believes that providing service of these
13 orders, in the manner described below, would be fair, reasonable, and sufficient, and would comport
14 with the requirements of Nevada law and due process.

15 **1. Notice by Mail and Email**

16 When final orders are obtained relating to liquidating Spirit and setting forth the claims
17 procedures and deadlines, the Receiver proposes that notice of the Order be sent by First Class U.S.
18 mail as follows:

- 19 a. All known persons identified as actively insured by Spirit on the date of
20 receivership;
- 21 b. All known persons identified as ever having previously been insured by a
22 Spirit policy;

23 ///

24 _____
25 ² This request to approve notice by posting on the web site does not extend to parties already on (or to be added
26 later) to the existing case service list, the posting of claimant-specific notices of claim determinations, or
27 requests or responses concerning specific appeals, or claim-specific payment information. Notices for these
28 specific parties and instances will be sent by First Class and/or Certified U.S. Mail, where possible.

³ The Receiver anticipates filing both the Motion seeking liquidation and the Motion seeking approval of the
claims process simultaneously in hopes that any subsequent orders will entered at or near the same point in
time and allowing service of such orders do be done in one mailing and/or publication to save costs and
conserve resources.

- 1 c. All persons identified as having submitted claims to Spirit or its third-party
- 2 claims administrator that have, as of the date of receivership, not been
- 3 resolved and/or settled;
- 4 d. All attorneys currently or previously representing claimants or insureds of
- 5 Spirit;
- 6 e. All known present and former agents, brokers, and reinsurers of the
- 7 company;
- 8 f. All known general creditors and vendors;
- 9 g. Government agencies with potential or known claims against Spirit,
- 10 including the Internal Revenue Service, the Centers for Medicare and
- 11 Medicaid Services, the Federal Motor Carrier Safety Administration, State
- 12 Departments of Transportation, the United States Department of Justice,
- 13 the Nevada Attorney General, and any other regulatory departments and
- 14 agencies which have corresponded with Spirit and mentioned pending
- 15 claims;
- 16 h. Financial institutions with a history of business with Spirit; and
- 17 i. All other persons who request in writing to receive this notice or
- 18 information regarding the receivership claim process.

19 The Receiver wrote in the First Status Report to the Court that Spirit had no office or
20 employees of its own, and that Spirit business was conducted largely through third parties that hold
21 the records of the Company. The Receiver has worked to obtain company records through document
22 requests to these third parties, and this extends to address lists for interested parties. The address lists
23 provided by Spirit's key vendors do not appear to be complete or one-hundred percent accurate. Spirit
24 has only e-mail addresses, and no other contact information, for many of its interested parties.

25 The Receiver has worked to further develop and improve the Company's address lists and has
26 tracked contact information from the inquiries received since the outset of the receivership. The forms
27 of notice described below are intended to compensate, to the extent reasonably possible, for any gaps
28 and/or errors in the Company's records. Whenever possible, the Receiver will send notice of any

1 final orders relating to Spirit’s liquidation and claims procedures by First Class U.S. Mail. But when
2 there is no mailing address available, the Receiver requests that this Court approve e-mail (in
3 combination with the methods of notice described below) as a sufficient form of notice of any Final
4 Order.

5 **2. Notice by Publication**

6 The Receiver also proposes to cause publication of notice of final orders that are obtained
7 relating to liquidating Spirit and setting forth the claims procedures and deadlines at least once a week
8 for two (2) consecutive weeks in USA Today and the Las Vegas Review-Journal.

9 Such notice would be reasonably calculated to inform any unknown creditors of those matters
10 and afford them an opportunity to file their claims with the Receiver. The notice would be in the
11 form of the attached **Exhibit 1**. The Receiver requests, as part of the notice procedures approved by
12 this Court, that notice of publication will serve as a substitute for any interested party of Spirit that
13 does not receive actual and/or timely notice of the entry of this Court’s order. Publication will begin
14 within fifteen (15) business days after the Court has entered orders on the applicable motions.

15 **3. Notice Through the Company Website**

16 The Receiver proposes to provide notice of the Court’s final orders relating to liquidating
17 Spirit and setting forth the claims procedures and deadlines on Spirit’s website and will post the same
18 no later than five (5) business days after Notices of Entry of the requested orders are filed with the
19 Court.

20 As stated above, the website is already online and accessible to the public, and receivership
21 information is being routinely posted to this web site.⁴

22 **III. CONCLUSION**

23 Due to the evolving and dynamic nature of the Spirit receivership, and the need for the
24 Receiver to take prompt action when necessary, requiring mailed notice to thousands of interested
25 parties for every Motion and/or matter of requested relief before this Court, would create time and
26 resource constraints, and financial drain on an already burdened receivership estate. The streamlining

27 _____
28 ⁴ The mailing, print publication, and web site publication notices will be similar except that non-substantive text edits and formatting adjustments will be made to make each notice conform to its applicable medium (for instance, the word “enclosed” in a mail notice may be changed to “see link below,” for the web posting).

1 of notices, which is directed to those parties truly interested in the affairs of Spirit, would reduce
2 expenses and assist the Receiver's ongoing efforts to manage Spirit's affairs in a timely, diligent, and
3 cost-efficient manner.

4 For these reasons, the Receiver submits respectfully that permitting web site notice, as set
5 forth in this Motion, is appropriate and necessary.

6 DATED this 1st day of August, 2019.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GREENBERG TRAURIG, LLP



MARK E. FERRARIO, Bar No. 1625
KARA B. HENDRICKS, Bar No. 7743
TAMI D. COWDEN, Bar No. 8994
10845 Griffith Peak Drive, Suite 600
Las Vegas, NV 89135

Attorneys for Plaintiff

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 1st day of August, 2019, a true and correct copy of the foregoing
3 ***MOTION FOR INSTRUCTIONS ON ORDER SHORTENING TIME*** was filed with the Clerk of
4 the Court using the Odyssey eFileNV Electronic Service system and served on all parties with an
5 email-address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

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

8
9 */s/ Andrea Flintz*
10 An employee of Greenberg Traurig, LLP

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “1”

EXHIBIT “1”

EXHIBIT 1: Mailing, Website, and Publication Notice

**IMPORTANT NOTICE OF LIQUIDATION AND CLAIMS FILING
DEADLINE TO ALL PERSONS INTERESTED IN THE AFFAIRS OF
SPIRIT COMMERCIAL AUTO RISK RETENTION GROUP, INC. (“SPIRIT”)**

This notice provides important information regarding the liquidation of Spirit. On February 27, 2019, Spirit Commercial Auto Risk Retention Group, Inc. (“**Spirit**”) was placed in receivership by order (“**Permanent Receivership Order**”) of the Eighth Judicial District Court of the State of Nevada (the “**Receivership Court**”). Barbara D. Richardson, the Nevada Commissioner of Insurance, is the Receiver of Spirit and CANTILO & BENNETT, L.L.P., is the appointed Special Deputy Receiver (“**SDR**”) of Spirit. On _____, the Receivership Court issued its Final Order Placing Spirit into Liquidation (the “**Liquidation Order**”); and on _____, the Receivership Court entered its Order Approving Notice, Setting Claims Filing Deadline, and Adopting Receivership Claims and Appeals Procedures (“the **Claims Order**”). The orders are enclosed and should be read in their entirety rather than just reading this notice.

The Claims Order approves a Proof of Claim (“**POC**”) process for filing claims against Spirit and establishes _____, 2020 as the **Claims Filing Deadline** for the submission of such claims. All claims against Spirit will be handled as claims against the Spirit receivership estate, and all proceedings are governed by applicable Nevada law. All claims must be submitted on the approved POC form (enclosed herein). Late-filed POCs will be barred from sharing in any distribution of Spirit’s assets. In order for a POC to be considered timely-filed, it must be postmarked or delivered to the SDR on or before _____, 2020. In addition to being timely filed, claims must also be non-contingent and liquidated in amount by the Claims Filing Deadline to share in any distribution of Spirit’s assets. Claims that remain contingent and unliquidated after _____, 2020 will also be barred.¹

Please read, and follow the instructions within, the enclosed Receivership Claims and Appeals Procedure. Failure to complete the POC form according to the instructions may cause your claim to be delayed or disallowed. Please also note that although your claim may be approved in whole or in part, the receivership estate may only be able to pay a portion of your approved claim depending on the remaining assets of the estate.

The Liquidation Order directs the Receiver to liquidate and wind-down the affairs of Spirit. The Liquidation Order also provides that all future receivership notices will be made through the Spirit website (www.spiritinsure.com) as a cost-savings measure, except in the limited circumstances described in the Liquidation Order. This notice and its enclosures can be downloaded from the Spirit website. You may wish to check the site on an ongoing basis to stay informed. You may also request copies of the enclosed documents by calling 512-478-6000, or by writing to Cantilo and Bennett, L.L.P., Special Deputy Receiver, P.O. Box 184, Austin, Texas 78767. You are responsible for keeping the SDR apprised of any change in your address, to assure your receipt of any mailed notices or correspondence.

Una versión en español de este aviso será publicada en www.spiritinsure.com (“a Spanish version of this notice will be posted at www.spiritinsure.com”).

¹ Except to the extent that such claims may be protected by NRS 696B.400 and 696B.450, and which it is in the SDR’s sole discretion to determine.