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

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

20  
21 Plaintiff,

22 vs.

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

25 Defendant.  
26  
27  
28

Case No. A-19-787325-B

Dept. No. 27

**THIRD 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.  
27 Lexicon Insurance Management LLC was the captive manager for the company (after Risk Services  
28

1 initially served in that role through circa July 2018). Chelsea Financial Group, Inc. provided premium  
2 financing services for the majority of Spirit’s policies. The company 10-4 Risk Management provided  
3 risk management and loss run services. The owner or ultimate controlling person for each of these  
4 entities is or was Thomas Mulligan.<sup>1</sup> All of these companies were taking a portion of the premium dollars  
5 from Spirit-issued policies.

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

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

- 15 1) that the Company’s in-force insurance policies are to be canceled effective on the earlier  
16 of April 15, 2019, or the date when the insured ceased making premium payments to  
17 Spirit;
- 18 2) that the Receiver may impose a full suspension on all disbursements owed by Spirit,  
19 including insurance policy disbursements, and costs related to the defense or adjudication  
20 of insurance policy claims;
- 21 3) that the receivership court has exclusive jurisdiction over all matters pertaining to Spirit  
22 and all persons are enjoined from commencing, bringing, maintaining, or further  
23 prosecuting any action at law, suit in equity, arbitration, or special or other proceeding  
24 against the Company, Receiver, or Special Deputy Receiver;

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26  
27 <sup>1</sup> See Schedule Y: Part 1A, to the Company’s 2018 Annual Statement, the “Detail of Insurance Holding Company  
28 System” (the Receiver’s First Status Report, Ex. B).



1 at the outset of receivership, and will continue to do so throughout the receivership. Future notices about  
2 Spirit’s receivership will be provided to interested parties in accordance with the Court’s Notice Order.

3 A number of interested parties have requested special notice of any subsequent pleadings filed  
4 in the receivership. Counsel for the Receiver has caused such parties to be added to the electronic service  
5 list for this matter. Due to the limited assets and resources of the estate, the Receiver has advised  
6 requesting parties that the estate’s ability to provide special notice to individuals does not extend beyond  
7 adding parties to the Court’s electronic service list for the pleadings filed in the receivership.

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

9 The Receivership Court has authorized the Receiver to establish a receivership claims and appeal  
10 procedure. The Receiver has developed a procedure in accordance with NRS Chapter 696B.330. The  
11 proposed Receivership Claims and Appeal Procedure for all Spirit claims, and the required Proof of  
12 Claim form, were submitted to the Court for approval on September 16, 2019, with the Receiver’s  
13 Motion.

14 The Motion was heard and granted on October 24, 2019. The Court entered an Order approving  
15 the proposed claim deadline and procedures which will take effect on November 6, 2019. Shortly after  
16 the Order takes effect, the Receiver will cause the approved claim forms and procedures to be posted to  
17 the Spirit web site. The Receiver will also begin mailing notices to all interested parties (as identified in  
18 the Notice Order) shortly thereafter. Additionally, notice will be published in the USA Today and the  
19 Las Vegas Review-Journal.

20 The Receiver retained the services of Spirit’s third-party claims administrator (“TPA”), Criterion,  
21 during the initial phase of the receivership. As reported on in prior status reports, the Receiver  
22 determined that it was necessary and appropriate to transition responsibility for the handling of Spirit’s  
23 claim-related matters to TRISTAR Risk Management (“TRISTAR”).<sup>3</sup> Due to the way that Spirit’s data  
24 was stored by the prior TPA (*i.e.*, commingled with the data of other clients and not in a format that  
25 could be made immediately available for transition), the transition took place over a number of weeks –

26 \_\_\_\_\_  
27 <sup>3</sup> On September 30, 2019, the Receiver put Criterion on notice of prior bad acts and other actionable claims of the  
28 Receiver resulting from Criterion’s pre-receivership claims handling and claim reserve practices, and this claim has been  
received by Criterion’s professional liability and/or errors & omissions insurance carrier.

1 with a final data file being transferred to the Receiver and TRISTAR in late October. TRISTAR has  
2 taken possession of the electronic and paper claims records from the former TPA, and is in the process  
3 of converting the data into its own claim system.

4 TRISTAR is currently in the process of assessing the outstanding policy claims liabilities of the  
5 estate and will advise the Receiver on these matters. TRISTAR will assist the Receiver in carrying out  
6 the Court-approved procedure for the efficient resolution of claims against the receivership estate.  
7 TRISTAR has also set up a customer service telephone line for Spirit and is handling inquiries regarding  
8 policy claims and other general inquiries about the receivership. Criterion is no longer authorized to  
9 handle such inquiries and has been directed to forward all telephone calls and correspondence to the  
10 Receiver and/or TRISTAR.

11 The policy data of Spirit is held in the Aspire Information System (“Aspire”), which was created  
12 by Maple Technologies. The Receiver has an agreement with Maple Technologies whereby the Receiver  
13 will continue to have access to this system for a time, for the purposes of conducting an evaluation of  
14 Spirit’s operations and policies. TRISTAR staff and receivership staff have been trained to use this  
15 system in order to research and review Spirit policy and claim matters.

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

19 Calhoun, Thompson & Matza, L.L.P. is a CPA firm that has been hired by the Receiver to file  
20 and bring all Spirit tax returns current, as Spirit had not filed federal and state tax returns for 2017 or  
21 2018 prior to being placed into receivership.

22 PALOMAR FINANCIAL, LC (“Palomar”) is an affiliated company of the Special Deputy Receiver  
23 and performs financial and technical administrative support services for Spirit in receivership—and  
24 those services are now being performed by Palomar. Palomar is being used to facilitate the  
25 receivership’s administration of financial matters.

26 The Receiver has continued to receive notice from time to time of lawsuits filed against Spirit in  
27 violation of the Court’s Permanent Receivership Order. The Receiver will continue its established  
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1 procedure of writing to the parties involved to inform them of the injunctions of the Permanent  
2 Receivership Order, and to request a voluntary dismissal of Spirit from the matter. Thus far the majority  
3 of counsel have been amenable to such requests. In limited cases and only when absolutely necessary,  
4 the Receiver will engage outside counsel to address ongoing or repeated violations of this Court's orders.

5 **C. Records**

6 The Receiver has made efforts to secure Spirit's electronic records from third parties, being that  
7 Spirit had no office space or employees of its own and very few physical files. The Receiver will  
8 continue with her evaluation of the Company and will continue gathering the Company's records and  
9 data.

10 As discussed in the Introduction section of this report, Spirit is part of an Insurance Holding  
11 Company System. The Receiver has made document and information requests of the various companies  
12 in that system – particularly regarding supporting documentation that is needed to evaluate, reconcile,  
13 and validate Spirit's accounting records. At this time, based on the responses to the Receiver's requests,  
14 it appears that Spirit may be lacking documentation for a number of its transactions. However, additional  
15 records were recently received that CTC has represented provides the information previously requested.  
16 The Receiver is in the process of reviewing the same. Additionally, the Receiver, to the extent practical,  
17 will continue its inquiry and pursuit of records in this regard.

18 As mentioned above, Spirit's policy data is held in the Aspire system. The claims data was  
19 previously hosted by the DXC Insurance RISKMASTER™ claims management system, a product of  
20 Computer Sciences Corporation ("RiskMaster"). The Receiver was advised by Criterion that the  
21 RiskMaster contract is with Criterion and not with Spirit. The Receiver obtained a full back-up of the  
22 claims data held by RiskMaster after the outset of the receivership. As noted above, TRISTAR has  
23 received a final file extract from RiskMaster and is converting the claims data to its own claim system.  
24 The Receiver also received a copy of the final RiskMaster data extract. Criterion has received a litigation  
25 hold notice from the Receiver, and therefore will not be deleting any of Spirit's data from the RiskMaster  
26 system until further notice.

1           **D.     Actuarial Reports**

2           The Receiver is evaluating policy information, claims data, and litigation information for Spirit  
3 and is compiling this information for the outside actuarial firm, Oliver Wyman Actuarial Consulting,  
4 Inc. (“Oliver Wyman”). Oliver Wyman has been engaged to prepare actuarial estimates for Spirit’s  
5 claims and future losses for years 2018 and 2019. The Oliver Wyman firm will provide its findings in a  
6 report to the Receiver, documenting the work performed and the conclusions made. A detail of Oliver  
7 Wyman’s costs and rates is included as Exhibit 1.

8           The Receiver has requested information necessary to complete this work from the Company’s  
9 former captive manager, and from Company leadership (*i.e.*, the current captive manager at the onset of  
10 receivership, and others). Much of this is basic information that should be readily available or  
11 obtainable, and yet the Receiver has not yet been provided with the requested information. As  
12 mentioned, additional records were recently received from CTC, which represents that such information  
13 provides the information previously requested. The Receiver is in the process of reviewing the recently-  
14 produced information from CTC. The Receiver will keep the Court apprised of its efforts in this regard.

15           **E.     Reinsurance**

16           The Receiver continues to evaluate reinsurance matters for Spirit, including the one known active  
17 reinsurance treaty, with Wesco Insurance Company (“Wesco”). The Receiver is still reviewing the  
18 Wesco reinsurance contract information and is evaluating if additional obligations are owed by Spirit  
19 under the reinsurance agreement, including what obligations may be owed by Wesco. Eide Bailly is  
20 assisting the Receiver in reconciling the amounts purportedly owed between Spirit and Wesco.

21           **F.     Receivership Assets and Liabilities**

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

- 26           1)     CTC owes a large balance to Spirit (currently estimated to be over \$30M, but the actual  
27                 amount is unknown). The Receiver is vigorously pursuing the return of these balance  
28



1 funds, and is working with the assistance of outside counsel, Greenberg Traurig, in this  
2 matter. A forensic accounting firm, FTI Consulting, Inc. of New York, New York, was  
3 engaged to investigate the missing funds, and CTC has cooperated with this effort thus  
4 far. To further this work, records have been requested from Chelsea Financial Group,  
5 Inc. (the affiliated premium finance company that received Spirit premiums and paid  
6 them to CTC). However, thus far the requested records have not been provided. The  
7 Receiver will continue to keep the Court apprised of developments in this area, including  
8 any reports by the forensic accounting firm as to its findings.

- 9 2) The cash assets of the Company were approximately as follows as of September 30, 2019:
- 10 a. Cash Accounts: \$720,407.45
  - 11 b. Investments, held at Fidelity, fair market value of \$ \$42,427,703.36
- 12 3) Gross Loss and Loss Adjustment Expense and General Liability Losses: The gross loss  
13 and loss adjustment amounts will be further evaluated and projected by the outside  
14 actuaries for Spirit as noted above.
- 15 4) Other Assets: The Special Deputy Receiver is still evaluating other potential asset  
16 recoveries for the benefit of the receivership estate. There is no known tangible personal  
17 property or real property owned by the Company.

18 We are enclosing the consultants and Special Deputy Receiver bills and payments since  
19 receivership initiated. Detailed billings are submitted *in camera*, and summaries of such bills are  
20 submitted as Exhibit 2 to this report.<sup>4</sup> The Receiver is including, as Exhibit 3 attached hereto, reports

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21 <sup>4</sup> The *in-camera* materials are being submitted in a separate envelope that reflect paid invoices. Certain billings  
22 submitted to the Court are appropriate for *in camera* review (as opposed to being made part of a public filing). More  
23 particularly, and as discussed in further detail below, certain consultants in this matter will provide expert witness related  
24 services. As such, the billing entries relating thereto should be considered confidential and/or otherwise not subject to  
25 discovery.

26 In this regard, courts have held that the bills of legal counsel and experts may be withheld from legal discovery and  
27 are not subject to legal disclosure, as this information may provide indications or context concerning potential litigation  
28 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  
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

1 for July, August, and September of 2019 reflecting the account balances and the cash receipts and  
2 disbursements for Spirit.

3 **III.**

4 **CONCLUSION**

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

8 DATED this 4<sup>th</sup> day of November 2019.

9 Respectfully submitted:

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

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

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24 *Counsel for Barbara D. Richardson,*  
25 *Commissioner of Insurance,*  
26 *as the Permanent Receiver for Spirit*  
27 *Commercial Auto Risk Retention Group, Inc.*

28 \_\_\_\_\_  
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**

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this 4<sup>th</sup> day of November 2019, I caused a true and correct copy of the forgoing ***Third Status Report*** to be e-filed and e-served on the upon the parties all parties registered for e-service. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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