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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,

Defendant.

Case No. A-19-787325-B
Dept. No. 27

FIFTH STATUS REPORT

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

I.

INTRODUCTION

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

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

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

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.¹ All of these companies were taking a portion of the premium
5 dollars 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 established the following key points for the Spirit
14 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;

27 ¹ 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).

- 4) that the Receiver is vested with exclusive title both legal and equitable to all of Spirit's property wherever located, to administer under the general supervisions of the Court;
- 5) that the Receiver may change to her own name the name of any of Spirit's accounts, funds or other property or assets, held with any bank, savings and loan association, other financial institution, or any other person, wherever located, and may withdraw such funds, accounts and other assets from such institutions or take any lesser action necessary for the proper conduct of the receivership; and
- 6) that the Receiver is authorized to establish a receivership claims and appeal procedure, for all receivership claims. The receivership claims and appeals procedures shall be used to facilitate the orderly disposition or resolution of claims or controversies involving the receivership or the receivership estate.

On September 16, 2019, the Receiver filed a consolidated motion for a Final Order Placing Spirit Commercial Auto Risk Retention Group into Liquidation, and for an Order Setting a Claims Filing Deadline, and Granting Related Relief (the "Consolidated Motion"). The Consolidated Motion was heard and granted on October 24, 2019. On November 6, 2019, the Court entered its Final Order Placing Spirit into Liquidation (the "Liquidation Order") and its Final Order Setting Claims Filing Deadline for Spirit and Related Relief ("the Claims Order"). The Claims Order established a Claims Filing Deadline of **October 31, 2020**, and procedures for filing claims against Spirit, which is discussed further below. The Liquidation Order also granted the Receiver's request to formally place Spirit into liquidation effective on November 6, 2019.

II.

RECEIVERSHIP ADMINISTRATION

A. Notice of Developments in Receivership

The Receiver initially distributed notices regarding the Permanent Receivership Order to all interested parties of Spirit, as detailed in the Receiver's prior quarterly status reports. On August 19, 2019, the Court entered its Order Regarding Motion for Instructions Including Notice Requirements (the "Notice Order"). The Receiver, pursuant to the requirements of the Notice Order, has given notice to

1 interested parties of the Liquidation Order, the Claims Order, and the approved procedures for filing
2 claims against Spirit in receivership.² Future notices about Spirit’s receivership will be provided to
3 interested parties in accordance with the Court’s Notice Order.

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

5 TRISTAR Risk Management (“TRISTAR”) is assisting the Receiver in evaluating the incoming
6 POCs. Five hundred sixty-four (564) POC submissions have already been received. POCs must pass a
7 *prima facie* review before being processed further by the Receiver and TRISTAR. For instance, a POC
8 may be rejected if it is: a duplicate submission, unsigned, not notarized, substantially incomplete, and/or
9 lacking sufficient documentation or explanation to allow the claim to be determined. When a POC must
10 be rejected, the Receiver will send a written notice to the submitting party explaining the reasons why
11 the POC cannot be processed. The claimant will then have a chance to correct and re-submit the POC
12 in advance of the **October 31, 2020**, Claims Filing Deadline.

13 TRISTAR is currently also in the process of assessing the outstanding policy claims liabilities of
14 the estate and will advise the Receiver on these matters. TRISTAR has also set up a customer service
15 telephone line for Spirit and is handling inquiries regarding policy claims, the POC process, and other
16 general inquiries about the receivership.

17 The United States has filed a proof of claim (“POC”) in the receivership, asserting the priority of
18 its claims—if any (they are unknown at this time according to the POC)—over and above any other
19 claims against the estate pursuant to 31 U.S. Code § 3713, also known as the government “superpriority”
20 statute. It may be necessary to resolve this legal issue before distributions are made for approved claims
21 of estate creditors. The Receiver will report further on this matter in subsequent status reports.

22 The policy data of Spirit is held in the Aspire Information System (“Aspire”), which was created
23 by Maple Technologies. The Receiver has an agreement with Maple Technologies whereby the Receiver
24 will continue to have access to this system for a time, for the purposes of conducting an evaluation of
25

27 ² The Receiver’s Fourth Status Report (available at www.spiritinsure.com) provides a detailed description of the
28 notice procedures and the steps taken by the Receiver to provide notice to all interested parties of Spirit.

1 Spirit's operations and policies. TRISTAR staff and receivership staff have been trained to use this
2 system in order to research and review Spirit policy and claim matters.

3 Actuarial firm Oliver Wyman Actuarial Consulting, Inc. ("Oliver Wyman") has been engaged to
4 prepare actuarial estimates for Spirit's claims and future losses for years 2018 and 2019. Oliver Wyman
5 will provide its findings in a report to the Receiver, documenting the work performed and the conclusions
6 made.

7 Calhoun, Thompson & Matza, L.L.P. is a CPA firm that has been hired by the Receiver to file
8 and bring all Spirit tax returns current, as Spirit had not filed federal and state tax returns for 2017 or
9 2018 prior to being placed into receivership.

10 PALOMAR FINANCIAL, LC ("Palomar") is an affiliated company of the Special Deputy Receiver
11 and performs financial and technical administrative support services for Spirit in receivership—and
12 those services are now being performed by Palomar. Palomar is being used to facilitate the
13 receivership's administration of financial matters. The Receiver, with assistance from Palomar, has
14 completed all outstanding premium tax reporting for the Company, including reporting that was left
15 outstanding and overdue by former Spirit leadership at the outset of the Receivership.

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

22 The Receiver has been required to engage outside counsel Frost Brown Todd in a Kentucky
23 matter where a plaintiff's attorney has refused to dismiss Spirit as a defendant, even after numerous
24 warnings that he is in violation of the Receivership Court's orders. A Motion to Dismiss Spirit from the
25 matter has been filed and will soon be set for oral argument. The Receiver is working with outside
26 counsel to move this matter to a resolution as soon as possible, and to seek attorney fees for the
27 unnecessary expense caused by opposing counsel's ongoing violations of the Court's injunction.
28

C. Records

The Receiver has made efforts to secure Spirit's electronic records from third parties, being that Spirit had no office space or employees of its own and very few physical files. The Receiver will continue with the evaluation of the Company and will continue gathering the Company's records and data. The Receiver has obtained back-up copies of all data identified as belonging to Spirit held by third parties. Where necessary, the Receiver has also issued litigation hold notices to such parties to ensure that no Spirit data is destroyed until it is certain the data has either been provided to the Receiver (in usable format) or is not needed by the Receivership. This process remains ongoing as the Receiver continues to identify parties that may have information or records that will assist in carrying out the liquidation of Spirit.

Spirit is part of an Insurance Holding Company System and the Receiver has made document and information requests of the various companies in that system – particularly regarding supporting documentation that is needed to evaluate, reconcile, and validate Spirit's accounting records. At this time, and as previously reported, it appears that Spirit's records pertaining to many of its key business functions are largely incomplete and/or non-existent. The Receiver, to the extent practical, will continue its inquiry and pursuit of records in this regard.

D. Asset Recovery Litigation

On February 6, 2020, the Receiver filed an asset recovery lawsuit against a number of parties, including Thomas Mulligan, CTC, Criterion, Spirit's former directors and officers, various other former vendors of Spirit, and various other related persons and entities ("Asset Recovery Lawsuit"). The Asset Recovery Lawsuit was filed in the Eighth Judicial District Court of Clark County, Nevada and assigned Case No. A-20-809963. An excerpt from the Asset Recovery Lawsuit is included below to illustrate the nature of the Receiver's complaint:

1. This complaint arises out of a vast fraudulent enterprise orchestrated by Defendant Thomas Mulligan and others, by which the Defendants operated a multitude of interrelated companies in the insurance service industry for their own benefit and to the detriment of their customers and insureds, including Spirit.

2. Through a web of interrelated companies that wrote insurance policies, provided so-called financing for insureds wishing to purchase insurance, processed insurance premiums, and/or adjusted and paid insurance claims, and collected Spirit's assets (the "Mulligan Enterprise"), Mulligan and his confederates siphoned millions of dollars from Spirit.
3. While Mulligan was the primary architect of his Enterprise, Defendant Pavel Kapelnikov participated heavily in the design and implementation of the scheme and assisted with perpetuating the fraud through his ownership and control of Mulligan Enterprise entities, including a key Spirit services provider, which breached its obligations to Spirit. Mulligan and Pavel Kapelnikov used the many moving pieces of the Mulligan Enterprise to ensure that the entities they owned and controlled enjoyed preferential treatment as creditors by hiding the true and dismal financial condition of Spirit to prolong its operations while they continued to arrogate funds to themselves with a corresponding detriment to Spirit, its policy holders, and its other non-insider creditors.
4. As a result of this scheme, Spirit – an insurance company that insured trucking companies – became financially insolvent and was placed into permanent receivership and subsequently into liquidation, leaving hundreds of unpaid claims and a host of creditors. This complaint seeks to recover, on behalf of Spirit and those affected, the tens of millions of dollars that are owed to Spirit from its principal Mulligan and his cohorts and/or the companies over which he exercised interest and/or control, including companies that were contracted to provide services to Spirit that absconded with virtually all of Spirit's assets and third-party companies to which Spirit's funds were siphoned.

1 On March 27, 2020, an answer was filed on behalf of certain Defendants, along with a demand
2 for jury trial: Pavel Kapelnikov, Chelsea Financial Group, Inc.,³ Global Forwarding Enterprises, LLC,
3 Kapa Management Consulting, Inc., and Kapa Ventures, Inc. The following Defendants have also filed
4 answers to the suit: Brenda Guffey, ICAP Management Solutions, LLC, Daniel George, Lexicon
5 Insurance Management, LLC, James Marx, Igor and Yanina Kapelnikov (along with a demand for jury
6 trial), and Carlos and Virginia Torres. A default judgment was entered on April 24, 2020, against Global
7 Capital Group, LLC, after no answer or other appearance was filed. A three-day Notice of Intent to Take
8 Default Upon Defendant John S. Maloney was filed on May 1, 2020. The majority of other defendants
9 are represented by counsel and have been provided extensions of time to respond to the allegations in
10 the complaint, and responses are anticipated to be filed in the near term.

11 On April 28, 2020, a Stipulation and Order Regarding New Tech Capital, LLC's Investment in
12 Iterative Capital Management, L.P. (the "Stipulation") was entered by the Court. On January 8, 2018,
13 Spirit transferred \$500,000 to New Tech Capital, LLC ("New Tech"). On January 9, 2018, New Tech
14 transferred \$500,000 to Iterative Capital, L.P. (the "Iterative Capital"). Upon information and belief, the
15 original \$500,000 investment has a current net asset liquidation value of \$113,758.73. The Receiver
16 requested for New Tech to elect to liquidate its investment in Iterative and tender the cash distribution
17 to Spirit. The stipulation calls for New Tech to request the return of the remaining value of the
18 investment from Iterative Capital, and to return the amount received from Iterative Capital to Spirit
19 within fifteen (15) days of receipt from Iterative Capital. New Tech is one of the above-mentioned
20 related entities of Mulligan, and it remains a named defendant in the Asset Recovery Lawsuit.⁴ The
21 Stipulation preserves the Receiver's rights to seek further recoveries from New Tech

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23
24 ³ Both the California and New Jersey corporations.

25 ⁴ The Receiver has determined and alleged in the Asset Recovery Lawsuit that \$500,000 of Spirit's money was
26 siphoned from the insurance company and paid to New Tech for the sole benefit of Mulligan and Pavel Kapelnikov, and not
27 Spirit. As noted above, a substantial portion of this \$500,000 amount was lost by Mulligan and Kapelnikov through a high-
28 risk crypto currency investment that was made for their sole benefit, leading to ravage losses and a paltry remaining balance
of \$113,758.73.

The timeline of the asset recovery action has been impacted by the ongoing public health crisis caused by the COVID-19 coronavirus. On March 31, 2020, a Minute Order was entered whereby the Court ordered, pursuant to Administrative Order 20-01,⁵ that the time requirements of NRCP 16(b)(2) were suspended, and the requirement of filing a Joint Case Conference Report was suspended. It is uncertain at this time whether or to what degree COVID-19 will continue to impact the litigation. The Receiver will keep the Court apprised of developments in the proceeding.

E. Receivership Assets and Liabilities

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

1. CTC owes a large balance to Spirit that is at least more than \$40 million and may be much greater after further discovery.⁶ The Receiver filed the Asset Recovery Lawsuit seeking the return of this money *inter alia* as detailed above.
2. The cash assets of the Company were approximately as follows as of April 30, 2020:
 - a. Cash Accounts: \$ \$445,716.86.
 - b. Investments, held at Fidelity, fair market value of \$ \$40,884,944.81.
3. Gross Loss and Loss Adjustment Expense and General Liability Losses: The gross loss and loss adjustment amounts will be further evaluated and projected by outside actuaries for Spirit.

⁵ The Chief Judge of the Eighth Judicial District Court issued Administrative Order 20-01 to outline alterations to court procedures that were necessary for the protection of the community in light of the outbreak of the COVID-19 coronavirus and the declaration of a state of emergency in Nevada by Governor Steve Sisolak.

⁶ On December 20, 2019, forensic accounting firm FTI Consulting, Inc. provided a report to the Receiver regarding its work and provided a Supplemental Consulting Report on February 5, 2020. A copy of both reports without exhibits were included as exhibits to the Receiver's Fourth Status Report to the Court. As of April 30, 2020, the Receiver has paid FTI \$499,939.60 for the forensic accounting work that it has performed to uncover the balance owed by CTC to Spirit. This work began under a co-engagement agreement with Spirit and CTC, whereby the cost of FTI's forensic accounting work would be split between CTC and the Spirit estate. Eventually, Spirit had to take over full responsibility for the cost when CTC stopped paying its share.

1 4. Other Assets: There is no known tangible personal property or real property
2 owned by the Company.

3 We are enclosing the consultants and Special Deputy Receiver bill payments since the last status
4 report filed with the Court. Detailed billings are submitted *in camera*, and summaries of such bills are
5 submitted as Exhibit 1 to this report.⁷ The Receiver is including, as Exhibit 2 attached hereto, a report
6 for April 2020 reflecting the account balances and the cash receipts and disbursements for Spirit.

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⁷ The *in-camera* materials are being submitted in a separate envelope that reflect paid invoices. Certain billings submitted to the Court are appropriate for *in camera* review (as opposed to being made part of a public filing). More 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.

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19 In this regard, courts have held that the bills of legal counsel and experts may be withheld from legal discovery and 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 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).

20 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)).

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 Fifth Status Report and the actions taken by the Receiver.

DATED this 5th day of May 2020.

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

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as the Permanent Receiver for Spirit
Commercial Auto Risk Retention Group, Inc.*

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 5th day of May 2020, I caused a true and correct copy of the forgoing ***Fifth 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