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14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

20 Plaintiff,

21 vs.

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

25 Defendant.

Case No. A-19-787325-B

Dept. No. 27

[HEARING REQUESTED]

**MOTION TO EXTEND CLAIMS FILING
DEADLINE**

26 COMES NOW, Barbara D. Richardson, Commissioner of Insurance (“Commissioner”) and
27 Receiver (“Receiver”), and CANTILO & BENNETT, L.L.P., Special Deputy Receiver (“SDR”), by and
28 through their counsel of record, Greenberg Traurig, LLP and hereby file this Motion to Extend Claims
Filing Deadline (“Motion”).

1 This Motion is made and based upon the pleadings and papers on file herein, the following
2 Memorandum of Points & Authorities, and any and all oral arguments allowed by this Court at the time
3 of hearing.

4 DATED this 27th day of August, 2020.

5 **GREENBERG TRAURIG, LLP**

6
7 */s/ Kara Hendricks*

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13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. Introduction & Background Information**

15 Due to new information regarding potential claimants and the continuing COVID-19
16 situation, good cause exists to extend the claims filing deadline in this matter to ensure that all potential
17 claimants are able to complete and submit the required forms by the court ordered Claim Filing Deadline.
18 The current deadline for claims to be filed is October 31, 2020 and Plaintiff is requesting the deadline be
19 extended to May 31, 2021.

20 As the Court may recall, Spirit Commercial Auto Risk Retention Group (“Spirit” or the
21 “Company”) is an association captive insurance company organized under the insurance laws of Nevada
22 and the Liability Risk Retention Act of 1986. Spirit received its Certificate of Authority on February 24,
23 2012, and operates under the authority of NRS Chapter 694C. Spirit transacted commercial auto liability
24 insurance business. Within that line, Spirit specialized in serving commercial truck owners. Pursuant to
25 NRS 679A.160, Spirit was subject to Nevada laws in Chapters 694C and 695E that pertain to captive
26 insurers (as “captive insurer” is defined in NRS 694C.060) and risk retention groups (as “risk retention
27 group” is defined in NRS 695E.110) that have a Certificate of Authority from the Nevada Division of
28 Insurance (“Division”). Spirit is considered an association captive insurer (as “association captive

1 insurer” is defined in NRS 694C.050). As a risk retention group (“RRG”), Spirit is subject to the federal
2 Liability Risk Retention Act of 1986. RRGs domiciled in Nevada do not participate in the Nevada
3 Guaranty Association.

4 The Commissioner initially filed her first petition to put the Company into receivership on January
5 11, 2019. On February 27, 2019, this Court issued its Permanent Injunction and Order Appointing
6 Commissioner as Permanent Receiver of Spirit Commercial Auto Risk Retention Group, Inc. (the
7 “Permanent Receivership Order”). The Commissioner, in her capacity as Receiver for Spirit, appointed
8 the firm of CANTILO & BENNETT, L.L.P. as the Special Deputy Receiver (“SDR”) of Spirit effective
9 February 27, 2019, in accordance with Chapter 696B of the NRS. The term “Receiver” herein refers
10 collectively to the Receiver and the SDR.

11 On November 6, 2019, the Court entered a Final Order Liquidating Spirit and a Final Order
12 Setting Claims Filing Deadline for Spirit and related relief which approved a Proof of Claim (“POC”)
13 procedure and appeal procedure (“Claims Order”). *See* Claims Order on file herein. The Claims Order
14 established October 31, 2020 as the deadline for filing and rendering absolute, non-contingent, and
15 liquidated in amount, claims against Spirit (“Claims Deadline”). *Id.* Additionally, the Claims Order
16 specified that all claims against Spirit not postmarked on or before October 31, 2020 and received by the
17 Receiver would be deemed not timely filed and be barred, not subject to process by the Receiver and not
18 eligible for any distributions. *Id.*

19 Subsequent to the entry of the Claims Order and consistent with the prior direction provided by
20 the Court, potential claimants were provided notice of the Claims Order and provided the approved claims
21 form and related information as further detailed in the quarterly status reports filed in this matter.

22 **II. Grounds for Motion**

23 Grounds exist to extend the Claims Deadline because 1) additional interested parties have recently
24 been identified by the Receiver; 2) it appears that there are some large open claims on the Company’s
25 pre-receivership loss run report for which no POC has yet been filed and the Receiver is taking additional
26 measures to ensure proper notice is provided to such claimants; and 3) COVID-19 has caused unexpected
27 delays and concerns relating to notarization of POC forms and timely submittal of the same. Each basis
28 for extending the claims deadline is further detailed below.

1 First, the Receiver initially distributed notices regarding the Permanent Receivership Order to all
2 interested parties of Spirit, as detailed in the Receiver’s quarterly status reports. The Receiver has
3 subsequently identified additional interested parties of Spirit while further reviewing archived documents
4 obtained from Spirit’s prior third party administrator Criterion Claims Solutions of Omaha, Inc.
5 (“Criterion”),¹ and is sending targeted letters to these parties (*i.e.*, with the POC notice packet enclosed)
6 to be sure that they are on notice of the liquidation, the estate’s claim procedures, and of the Claims
7 Deadline. An extension of the Claims Deadline will ensure that such parties have ample time to submit
8 a claim.

9 Second, TRISTAR Risk Management (“TRISTAR”) is assisting the Receiver in evaluating the
10 incoming Proofs of Claim (“POC”). Eight hundred thirty-nine (839) POC submissions have been
11 received to date. The Receiver believes this number should be higher, and it appears that there are some
12 large open claims on the Company’s pre-receivership loss run report for which no POC has yet been filed.
13 As mentioned above, the Receiver is sending out additional targeted notice letters to parties to be sure
14 that they are aware of the claim procedures. In some cases, it is difficult to obtain contact information
15 for the interested parties associated with a particular claim (*i.e.*, because complete records were not
16 established or kept by Criterion). An extension of the Claims Deadline will provide the Receiver and
17 TRISTAR additional time to try and research and contact interested parties.

18 Third, as the Court is aware, on March 12, 2020, Nevada Governor Steve Sisolak issued an
19 emergency declaration in response to the COVID-19 pandemic to mitigate the spread of the deadly virus
20 and on March 13, 2020, the President of the United States declared a nationwide emergency. Since that
21 time the Center for Disease control has recommended social distancing and governors across the United
22 States have implemented a variety of measures to slow the spread of the virus. Spirit insureds are not
23 isolated in one location and reside in numerous states and have been subject to different directives over
24 the last five months. The Receiver has been contacted by some potential claimants expressing concerns
25 about their ability to complete and return the requisite claims forms in a timely manner due to the ongoing
26 pandemic.

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¹ Such parties were not found in the address lists received from the Company or its TPA, and were not set up with a separate
claim line in the Company’s loss run reports – so are only discovered upon a more detailed review of the open claim files of
the Company.

1 To address concerns, the Receiver has made available on its website a POC form with an alternate
2 signature block that alleviates the need for a notary pursuant to NRS 53.045, thereby alleviating the need
3 for claimants to travel and to have a face-to-face encounter with a notary in order to complete their POC
4 form. The Receiver will also accept POC forms that are electronically notarized, so long as the
5 submission meets the requirements of the Electronic Notary Public Authorization Act. NRS 240.181 -
6 240.206. Additionally, to ensure that all claimants have ample time to complete and return the claims
7 forms, good cause exists to extend the Claims Deadline.

8 Given the concerns identified above, good cause exists to extend the claims deadline of October
9 31, 2020 to May 31, 2021.

10 **III. Legal Argument**

11 NRS 696B.460 provides that the claims filing deadline shall be not less than six (6) months after
12 the entry of an order of liquidation is entered, but does not mandate a specific date for completion of the
13 claims process. At the time of the November 6, 2019 Order, the Receiver had no reason to believe that the
14 October 31, 2020 deadline would not be sufficient to meet the needs of claimants. However, given that
15 new information has been uncovered regarding potential claimants, as well as the COVID-19 pandemic,
16 additional time is justified.

17 Much like the accommodations recognized by this Court for court appearances and discovery
18 deadlines, accommodations are needed here to ensure that Spirit claimants have ample time to submit their
19 claims for consideration. Subsequent to the declaration of emergency issued by Nevada's Governor, the
20 Eighth Judicial District Court has taken precautions to protect the public and reduce the potential for spread
21 of the virus. Such measures include implementing appearance by alternate means at hearings, closing the
22 clerk's office and prohibiting in-person filings, accepting electronic signatures on documents filed with the
23 court, prohibiting in-person deposition prior to July 1, 2020, tolling discovery deadlines through July 1,
24 2020 and continuing service deadlines. *See*, Administrative Order 20-17. Moreover, this Court's
25 Administrative Order 20-17 specified that the Court would recognize the COVID-19 emergency as
26 constituting "good cause" and "excusable neglect" warranting the extension of time in non-essential civil
27 cases. *Id.* at 18. Due to the unique issues COVID-19 has presented as it relates to submitting claims to the
28 Receiver, good cause exists to extend the existing claims deadline of October 31, 2020 to May 31, 2021.

1 An extended deadline of May 31, 2021 will allow all parties in interest sufficient time and opportunity to
2 identify and file claims. If a person fails to file a claim with the Receiver by the Claims Deadline, and in
3 the method provided by this Court’s Order, NRS 696B.460(2) provides that the claim “shall be forever
4 barred.” In keeping with NRS 696B.460(2), the Receiver requests this Court to order that all claims against
5 Spirit not postmarked on or before May 31, 2021, and sent to the address specified by the Receiver, be
6 deemed not to have been timely and be barred, not subject to processing by the Receiver, ineligible to share
7 in any distribution of the assets of the estate, and not liabilities of Spirit. Finally, the Receiver requests this
8 Court to order that the claim procedures and forms previously approved by this Court shall remain in effect
9 and undisturbed, except that the Receiver will make minimal amendments to such materials and website
10 text to reflect the extension of the Claim Filing Deadline to May 31, 2021.

11 The Receiver proposes providing notice of the extended claims deadline by posting a copy of any
12 ensuing order on its website and updating its website to include bold language that indicates the claims
13 filing deadline has been extended to May 31, 2021. Additionally, any new notices or claim
14 correspondence sent out will include the new claims deadline and anyone contacting the Receiver or
15 TRISTAR by telephone will be provided the updated information. In the event that this motion is granted,
16 the Receiver will immediately take steps to send a postcard notice of the extended deadline to all
17 interested parties who do not already have a POC form on file with the estate.

18 The proposed extension will not unnecessarily delay the claims process and will instead ensure
19 that all claimants have sufficient time to submit claims.

20 **IV. Conclusion**

21 Based on the newly identified potential claimants and the unexpected circumstances surrounding
22 the COVID-19 pandemic, an extension of time for claimants to complete and submit their claims in the
23 Spirit receivership is necessary and appropriate.

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1 WHEREFORE, the Receiver respectfully requests that the claims deadline in this matter be
2 extended from October 31, 2020 to May 31, 2021.

3 DATED this 27th day of August, 2020.

4 **GREENBERG TRAURIG, LLP**

5 /s/ Kara Hendricks

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this 27th day of August,
3 2020, I caused a true and correct copy of the foregoing *Motion to Extend Claims Filing Deadline* to be
4 filed with the Clerk of Court using the Odyssey e-FileNV Electronic Service system and served on all
5 parties with an email address on record, pursuant to Administrative Order 14-2 and Rule 9 of the
6 N.E.F.C.R.

7 The date and time of the electronic proof of service is in place of the date and place of deposit in
8 the mail.

9 /s/ Andrea Lee Rosehill
10 Employee of Greenberg Traurig, LLP