

1 **SR**

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

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

22 Plaintiff,

23 vs.

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

27 Defendant.

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

SIXTH STATUS REPORT

28 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 initially served in that role through circa July 2018). Chelsea Financial Group, Inc. provided premium financing services for the majority of Spirit’s policies. The company 10-4 Risk Management provided risk management and loss run services. The owner or ultimate controlling person for each of these

1 entities is or was Thomas Mulligan.¹ All of these companies were taking a portion of the premium
2 dollars from Spirit-issued policies.

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

10 In brief, the Permanent Receivership Order established the following key points for the Spirit
11 receivership:

- 12 1) that the Company’s in-force insurance policies are to be canceled effective on the earlier
13 of April 15, 2019, or the date when the insured ceased making premium payments to
14 Spirit;
- 15 2) that the Receiver may impose a full suspension on all disbursements owed by Spirit,
16 including insurance policy disbursements, and costs related to the defense or adjudication
17 of insurance policy claims;
- 18 3) that the receivership court has exclusive jurisdiction over all matters pertaining to Spirit
19 and all persons are enjoined from commencing, bringing, maintaining, or further
20 prosecuting any action at law, suit in equity, arbitration, or special or other proceeding
21 against the Company, Receiver, or Special Deputy Receiver;
- 22 4) that the Receiver is vested with exclusive title both legal and equitable to all of Spirit’s
23 property wherever located, to administer under the general supervisions of the Court;
- 24 5) that the Receiver may change to her own name the name of any of Spirit’s accounts, funds
25 or other property or assets, held with any bank, savings and loan association, other
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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).

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

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

1 interested parties in accordance with the Court’s Notice Order. The Receiver has identified additional
2 interested parties of Spirit while further reviewing Criterion’s pre-receivership claim archives,³ and is
3 sending targeted letters to these parties (*i.e.*, with the Proof of Claim notice packet enclosed) to be sure
4 that they are on notice of the liquidation, the estate’s claim procedures, and of the Claims Filing Deadline.

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

6 TRISTAR Risk Management (“TRISTAR”) is assisting the Receiver in evaluating the incoming
7 Proofs of Claim (“POC”). Seven hundred ninety-eight (798) POC submissions have been received to
8 date. The Receiver believes this number should be higher, and it appears that there are some large open
9 claims on the Company’s pre-receivership loss run report for which no POC has yet been filed. As
10 mentioned above, the Receiver is sending out additional targeted notice letters to parties to be sure that
11 they are aware of the claim procedures. In some cases, it is difficult to obtain contact information for
12 the interested parties associated with a particular claim (*i.e.*, because complete records were not
13 established or kept by Criterion). POCs must pass a *prima facie* review before being processed further
14 by the Receiver and TRISTAR. For instance, a POC may be rejected if it is: a duplicate submission,
15 unsigned, substantially incomplete, and/or lacking sufficient documentation or explanation to allow the
16 claim to be determined. When a POC must be rejected, the Receiver will send a written notice to the
17 submitting party explaining the reasons why the POC cannot be processed. The claimant will then have
18 a chance to correct and re-submit the POC in advance of the **October 31, 2020**, Claims Filing Deadline.

19 The Receiver has been contacted by several interested parties regarding concerns relating to
20 obtaining the requisite notarization on the POC form due to COVID-19 concerns. In response to the
21 same, an alternate signature block on the approved POC form is being made available to claimants
22 pursuant to NRS 53.045. This will allow claimants to attest to the truthfulness of the information
23 contained therein without the need for a notary to be present. The Receiver continues to assess issues
24 related to COVID-19 and is working to minimize the affect the pandemic has on the claims process. To
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27 ³ Such parties were not found in the address lists received from the Company or its TPA, and were not set up with a
28 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 that end, and also due to the additional concerns cited above regarding the notices and the volume of
2 POCs being filed, the Receiver intends to file a motion to extend the claims filing deadline. **In the**
3 **meantime, and until such time that the Receivership Court actually approves such an extension,**
4 **claimants should assume that they must file their liquidated and non-contingent POCs ahead of**
5 **the current October 31, 2020, claims filing deadline.**

6 In addition to the above-referenced matters, an important part of TRISTAR's initial scope of
7 work for the Receiver was to conduct a review of Spirit's open claim files, assess the reasonableness of
8 the claim reserves previously set by the Company and its claims manager, Criterion, and make
9 recommendations as to any reserve adjustments needed. TRISTAR has completed an assessment of the
10 outstanding policy claims liabilities of the estate (*i.e.*, for the claims found within the Company's open
11 loss run report) and has advised the Receiver on these matters via a written summary report, attached as
12 Exhibit 3 to this Sixth Status Report. The main finding of TRISTAR's report is that Spirit was woefully
13 under-reserved for its claim obligations:

14 We recommend Bodily Injury loss reserve increases of \$35,395,619.12 or 80% over the
15 reserves shown in the data converted from the Spirit RiskMaster claim system produced
16 by the Company's prior TPA. We recommend Property Damage increases of
17 \$6,400,417.82 or an 80% increase over the [Property Damage] reserves in the converted
18 data.

19 Ex. 3 at 1. In addition to finding that the claims were substantially under-reserved, other key findings
20 of the report *inter alia* were that the claim files were not fully investigated or documented, and that
21 Criterion appears to have employed a reserving practice that was "formulaic at best, utilizing relatively
22 low standard rates for reported claims even when substantive investigatory material was available to
23 allow posting of more accurate reserves." Ex. 3 at 8. Tristar also noted the following in its report: "There
24 were numerous instances where known claimants were ignored, documents not acted upon and basic
25 claim practices not followed." Ex. 3 at 7. In addition to the summary report, TRISTAR also provided
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1 the Receiver with a detailed spreadsheet illustrating the reserve change recommendations for every
2 individual outstanding claim.⁴

3 For the majority of the claims, TRISTAR has recommended substantial increases to the loss
4 amount reserved for those claims. The Receiver anticipates that the reserve recommendations will only
5 increase as POCs are received and reviewed by TRISTAR (some of which will provide additional
6 information for the known open claims, and some of which may inform the Receiver for the first time
7 about claims not shown on the pre-receivership loss report).

8 TRISTAR has also set up a customer service telephone line for Spirit and is handling inquiries
9 regarding policy claims, the POC process, and other general inquiries about the receivership. The
10 Receiver is also handling such inquiries, and parties may request to speak with a member of the SDR's
11 staff by calling Cantilo & Bennett, LLP.

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

18 The policy data of Spirit is held in the Aspire Information System (“Aspire”), which was created
19 by Maple Technologies. The Receiver has an agreement with Maple Technologies whereby the Receiver
20 will continue to have access to this system for a time, for the purposes of conducting an evaluation of
21 Spirit's operations and policies. TRISTAR staff and receivership staff have been trained to use this
22 system in order to research and review Spirit policy and claim matters. The Receiver believes that this
23 system is still of value to the receivership, particularly during the pendency of the POC process and
24 certain litigation matters. However, the Receiver requested and received a reduction in the monthly cost
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27 ⁴ This spreadsheet and the exhibits to TRISTAR's summary report have been redacted from Exhibit 3 due to
28 containing confidential and/or private information.

1 for this service in order to reduce the cost to the estate to maintain this system. The new lower rate went
2 into effect on April 1, 2020.

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. The Receiver is working with outside
25 counsel to move this matter to a resolution as soon as possible, and to seek attorney fees for the
26 unnecessary expense caused by opposing counsel’s ongoing violations of the Court’s injunction.
27 Pursuant to NRS 696B.270, the Receivership Court may at any time during the receivership proceeding
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1 “issue such other injunctions or orders as may be deemed necessary to prevent interference with the
2 Commissioner or the proceeding, or waste of the assets of the insurer, or the commencement or
3 prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the
4 making of any levy against the insurer or against its assets or any part thereof.” Should it become
5 necessary, the Receiver may seek the Receivership Court’s intervention to stop any repeated or persistent
6 violations of the Court’s Orders.

7 **C. Records**

8 The Receiver has made efforts to secure Spirit’s electronic records from third parties, being that
9 Spirit had no office space or employees of its own and very few physical files. The Receiver will
10 continue with the evaluation of the Company and will continue gathering the Company’s records and
11 data. This process remains ongoing as the Receiver continues to identify parties that may have
12 information or records that will assist in carrying out the liquidation of Spirit.

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

19 **D. Asset Recovery Litigation**

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

- 26 1. This complaint arises out of a vast fraudulent enterprise orchestrated by Defendant
27 Thomas Mulligan and others, by which the Defendants operated a multitude of
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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.

On March 27, 2020, an answer was filed on behalf of certain Defendants, along with a demand for jury trial: Pavel Kapelnikov, Chelsea Financial Group, Inc.,⁵ Global Forwarding Enterprises, LLC, Kapa Management Consulting, Inc., and Kapa Ventures, Inc. The following Defendants have also filed answers to the suit: Brenda Guffey, ICAP Management Solutions, LLC, Daniel George, Lexicon Insurance Management, LLC, James Marx, Igor and Yanina Kapelnikov (along with a demand for jury trial), and Carlos and Virginia Torres. A default judgment was entered on April 24, 2020, against Global Capital Group, LLC, after no answer or other appearance was filed. A three-day Notice of Intent to Take Default Upon Defendant John S. Maloney was filed on May 1, 2020. On May 13, 2020, an Answer was filed by Defendant John Maloney. On May 14, 2020, an Answer was filed by Defendant Thomas Mulligan. Also, on May 14, 2020, an Answer was filed by Six Eleven, LLC, Quote My Rig, LLC, New Tech Capital, LLC, 195 Gluten Free, LLC, 10-4 Preferred Risk Managers, LLC, Ironjab, LLC, Fourgorean Capital, LLC, and Chelsea Holding Company, LLC. On May 21, 2020, a default judgment was entered against Chelsea Holdings, LLC and Chelsea Financial Group, Inc. However, on June 4, 2020, a Stipulation and Order was entered to set aside the default judgment against Chelsea Financial Group, Inc. On June 10, 2020, Chelsea Financial Group, Inc. filed its answer to the Complaint.

On April 28, 2020, a Stipulation and Order Regarding New Tech Capital, LLC's Investment in Iterative Capital Management, L.P. (the "Stipulation") was entered by the Court. On January 8, 2018, Spirit transferred \$500,000 to New Tech Capital, LLC ("New Tech"). On January 9, 2018, New Tech transferred \$500,000 to Iterative Capital, L.P. (the "Iterative Capital"). Upon information and belief, as of the Receiver's Fifth Status Report, the original \$500,000 investment had a net asset liquidation value of \$113,758.73. The Receiver requested for New Tech to elect to liquidate its investment in Iterative and tender the cash distribution to Spirit. The stipulation called for New Tech to request the return of the remaining value of the investment from Iterative Capital, and to return the amount received from Iterative Capital to Spirit within fifteen (15) days of receipt from Iterative Capital. Iterative Capital liquidated the investment and wired the funds to New Tech, and the net amount finally returned to Spirit

⁵ Both the California and New Jersey corporations.

1 by New Tech was \$110,378.68.⁶ New Tech is one of the above-mentioned related entities of Mulligan,
2 and it remains a named defendant in the asset recovery lawsuit.⁷ The Stipulation preserves the Receiver's
3 rights to seek further recoveries from New Tech.

4 On May 14, 2020, CTC⁸ and Criterion Claim Solutions of Omaha, Inc. each filed Motions to
5 Compel Arbitration of the claims asserted by the Receiver in her asset recovery lawsuit. On June 4,
6 2020, the Receiver filed her Oppositions to Criterion's and to the CTC Defendants' Motions to Compel
7 Arbitration. On June 11, 2020, CTC and Criterion Claim Solutions of Omaha, Inc. each filed a Reply in
8 Support of their Motion to Compel Arbitration. On May 14, 2020, Defendants Scott McCrae and
9 Matthew Simon filed a Motion to Dismiss the Complaint. On June 4, 2020, the Receiver filed her
10 Opposition to Defendants Scott McCrae and Matthew Simon, Jr.'s Motion to Dismiss. On June 11,
11 2020, Defendants Scott McCrae and Matthew Simon filed a Reply in Support of their Motion to Dismiss
12 Plaintiff's Complaint. A hearing of the above matters (*i.e.*, the motions to compel arbitration and to
13 dismiss) was initially set for June 18, 2020.

14 On June 15, 2020, a Minute Order was issued by Judge Mark R. Denton ruling that due to the
15 ongoing Coronavirus situation, the June 18, 2020, hearing was deemed submitted on the briefs and under
16 advisement, and the hearing was vacated from the calendar. On July 6, 2020, Judge Denton granted
17 Criterion's Motion to Compel Arbitration, and ruled that it would dismiss the action without prejudice.
18 However, the Court was not persuaded by Criterion's contention that the Receiver's positions are
19 frivolous, and it thus denied Defendant's request for attorneys' fees. On July 6, 2020, Judge Denton also
20 granted the CTC Defendants' Motion to Compel Arbitration – the Order was entered July 17, 2020.
21 Finally, on July 6, 2020, the Court granted in part and denied in part Defendants Scott McCrae and

22 ⁶ Upon information and belief, additional funds were held back for taxes and expenses and if not used, New Tech's
23 pro rata share will be returned. The Receiver has requested written confirmation from Iterative Capital explaining this as
24 well as confirmation that any additional funds returned to New Tech will be sent to the Receiver for Spirit.

25 ⁷ The Receiver has determined and alleged in the Asset Recovery Action 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.

⁸ Here, "CTC" refers to Defendants CTC Transportation Insurance Services of Missouri, LLC; CTC Transportation
Insurance Services LLC; and CTC Transportation Insurance Services of Hawaii LLC's.

Matthew Simon, Jr.'s Motion to Dismiss.⁹ On July 30, 2020, the Receiver filed a Motion for Reconsideration and/or Clarification of the Court's July 17, 2020, Order Regarding CTC Defendants' Motion to Compel Arbitration. The Receiver will also file a Motion for Reconsideration of the Criterion Order to Compel Arbitration. A hearing of the Receiver's Motion for Reconsideration has been set for August 31, 2020.

The timeline and administration 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 20-01,¹⁰ that the time requirements of NRC 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. 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 June 30, 2020:
 - a. Cash Accounts: \$372,224.19
 - b. Investments, held at Fidelity, fair market value of \$42,438,416.45.

⁹ A formal order has been submitted to the Court regarding the Motion to Dismiss and is pending signature.

¹⁰ 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.

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.

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

We are enclosing the consultants and Special Deputy Receiver bill payments since the last status report filed with the Court. Detailed billings are submitted *in camera*, and summaries of such bills are submitted as Exhibit 1 to this report.¹¹ The Receiver is including, as Exhibit 2 attached hereto, a report for June 2020 reflecting the account balances and the cash receipts and disbursements for Spirit.

¹¹ 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.

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).

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 Sixth Status Report and the actions taken by the Receiver.

DATED this 5th day of August 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/ CANTILO & BENNETT, L.L.P.
Special Deputy Receiver
By Its Authorized Representative
Mark F. Bennett

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*Counsel for Barbara D. Richardson,
Commissioner of Insurance,
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 August 2020, I caused a true and correct copy of the forgoing ***Sixth 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

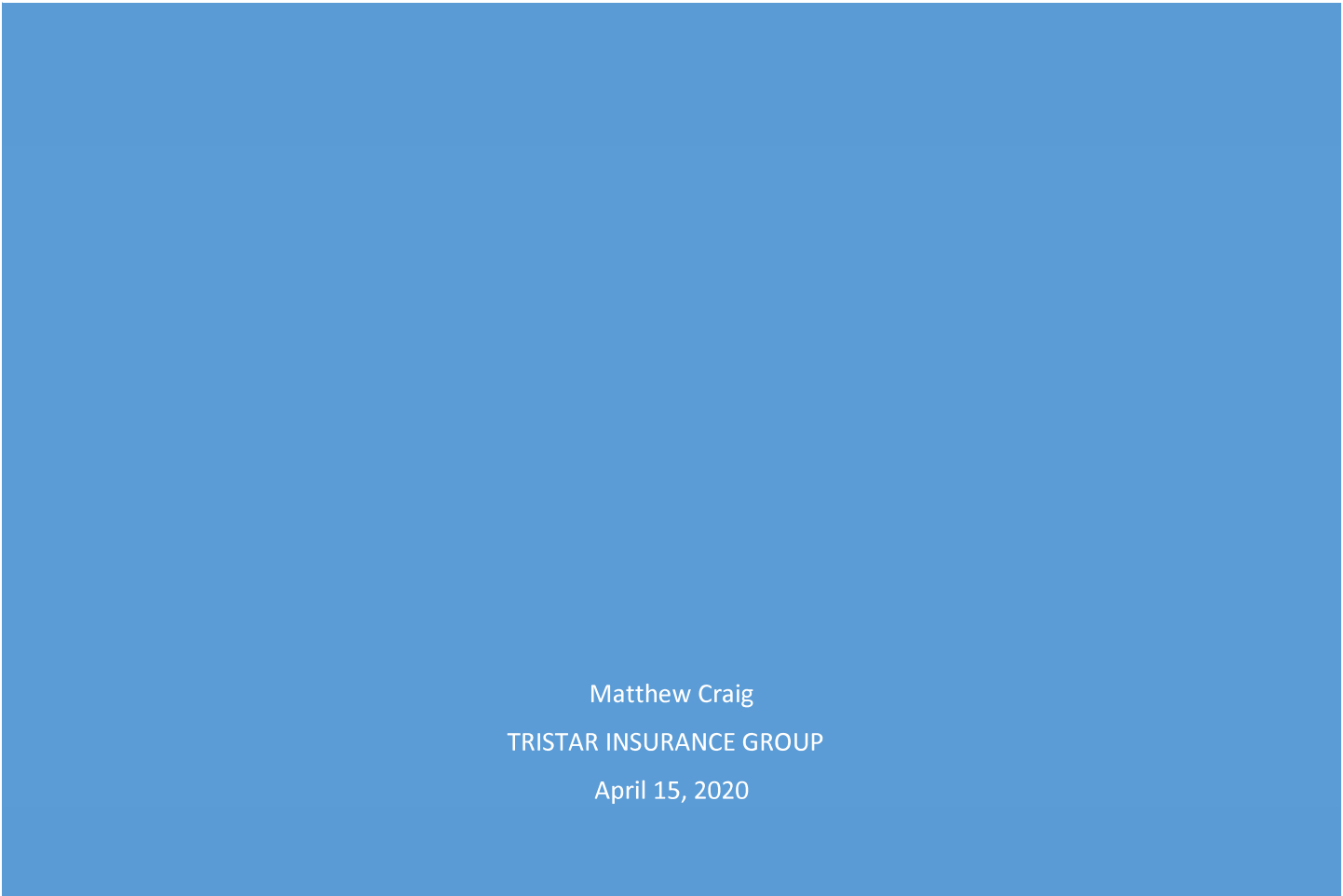
An employee of Greenberg Traurig, LLP

Exhibits 1-2 are available upon request
by calling Cantilo & Bennett, L.L.P.
at (512) 478-6000.

EXHIBIT “3”



CONFIDENTIAL REPORT TO SPECIAL DEPUTY RECEIVER



Matthew Craig
TRISTAR INSURANCE GROUP
April 15, 2020



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Triage Summary Report to Special Deputy Receiver
April 15, 2020

Analysis of Spirit RRG in Receivership

Transportation Claim Liabilities

Executive Summary:

As detailed further below, Tristar Risk Enterprise Management ("TRISTAR") has been engaged by the Receiver for Spirit Commercial Auto Risk Retention Group, Inc. ("Spirit" or the "Company") to assist the Receiver in resolving the policy claims of the Spirit estate. Part of TRISTAR's initial scope of work for the Receiver was to conduct a review of the open claim files, assess the reasonableness of the claim reserves set by the Company and the prior Third-Party Claim Administrator ("TPA"), and finally to make recommendations as to any reserve adjustments needed. This initial phase of work is referred to as the "Claim Triage," and this report is the result of that work.

The main conclusion of this report is that the Company was substantially under-reserved. We recommend Bodily Injury loss reserve increases of \$35,395,619.12 or 80% over the reserves shown in the data converted from the Spirit RiskMaster claim system produced by the Company's prior TPA¹. We recommend Property Damage increases of \$6,400,417.82 or an 80% increase over the PD reserves in the converted data. . Our specific claim reserve recommendations are enclosed (**See Exhibit A Master Triage Spreadsheet**).

Background:

Spirit is subject to the federal Liability Risk Retention Act of 1986. Spirit transacted commercial auto liability insurance business and specialized in serving commercial truck owners. Following examination of its condition by regulators, Spirit was placed into permanent receivership by the Eighth Judicial Court of the State of Nevada (the "Receivership Court") on February 27, 2019. The Company's in-force insurance policies were canceled by order of the Receivership Court, effective on the earlier of April 15, 2019, or the date when the insured ceased making premium payments to Spirit. 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

¹ This report, produced by Criterion as of 9/17/2019, is referred to herein as the "Criterion Claimant Report" and is enclosed as Exhibit B to this report.

Spirit. As provided by the Permanent Order, the Receiver and Special Deputy Receiver are authorized to conduct the business of the Company and to administer its affairs for the protection of all secured creditors, insureds, policyholders, and general creditors. The Receivership 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") on November 6, 2019. As part of the Claims Order, the Court established October 31, 2020 as the Claims Filing Deadline for creditors to submit their claims against the Estate.

Prior to being placed into receivership, the Spirit claims were administered by Criterion Claims Solutions of Omaha, Inc. ("Criterion"), a Nebraska-based TPA company that was affiliated with CTC Transportation Insurance Services of Missouri, LLC ("CTC"). CTC was the program management firm that issued and administered transportation liability, physical damage and cargo policies to Spirit insureds throughout the United States.

Following placement into receivership, all claim and expense payments by Criterion ceased. The Court approved the replacement of Criterion with an independent TPA not affiliated with CTC, Tristar Risk Enterprise Management ("TRISTAR"). TRISTAR is charged with assessing the current condition of the book of claims and administering them on a go forward basis under the direction of the SDR. Criterion was advised by the SDR to cease all activity related to the claims and to forward all claim files, correspondence, inquiries and demands to TRISTAR. In concert with the SDR, TRISTAR began responding to those insureds, third parties, and vendors with an interest in Spirit matters. In its November 6, 2019 Claims Order, the Court approved the SDR's Proof of Claim ("POC") documents and processes.

TRISTAR's review work began in late September 2019 when it received a set of data files from Criterion's claims management system, the DXC Insurance RISKMASTER™ claims management system, a product of Computer Sciences Corporation ("RiskMaster"), and began to reconcile and enter the claims into TRISTAR's own proprietary electronic claim management system. It took some time to receive and validate all of the electronic notes, documents, and paper files necessary to conduct triage and analysis. These were entered into TRISTAR's system following SDR sign-off on November 8, 2019. Due to a lack of support and/or understanding by Criterion's data management firm, the entry required TRISTAR to expend over 300 programming hours to reconcile and finalize the data transfer. Consequently, the full data was not available to the Triage team until November 21, 2019.

Triage Review

Upon receipt of final claim data files, the SDR engaged TRISTAR to review each open electronic claim file to determine the ultimate reserve values based on the available file

documentation. During the course of its review, TRISTAR did not conduct additional investigation nor solicit additional documentation from interested parties unless a valid Proof of Claim had been received.

Each file was assigned to a member of TRISTAR's Triage Team (see below) to conduct the review. File assignments were made based upon an initial management staff review which matched jurisdictional issues and claim complexity with TRISTAR staff expertise.

As the review was conducted, notes were made in the electronic claim files as to sufficiency of current documentation. Recommended reserve adjustment values were documented on the Master Triage Spreadsheet (**See Exhibit A Master Triage Spreadsheet**). These values will be updated in TRISTAR's claim system upon direction of the SDR and/or receipt of POC associated with the claim.

Triage Team

TRISTAR has employed seven (7) licensed professional adjusters to review the individual claim files following receipt and incorporation of the data into the TRISTAR electronic claims system. The adjusting professionals were supervised by two (2) direct supervisors, [REDACTED] and [REDACTED] and supported by two (2) clerical assistants. The entire team was overseen by Branch Claim Manager, Alan Rauch who has over 30 years of experience in managing transportation industry claims. Each of the professionals involved in the review process have extensive experience in managing transportation claims in jurisdictions across the country. (**See Exhibit C Claim Service Team**)

Data Conversion

In order to begin its work, TRISTAR had to convert the Spirit RiskMaster claim data to bring it into TRISTAR's proprietary electronic claim management system. All data, including electronic notes and documents, were reviewed. As part of the data conversion process, TRISTAR's data management department ran various programs with the data files and compared the results against the final claim report from Criterion. Upon receipt of data, we observed that there were a total of 1,668 open claim files having 2,868 features² associated with them, although the Criterion Claimant Report (**See Exhibit B**) only showed 1,614 open claims with 2,705 open features. There were also discrepancies between the standard financial totals in the data and those on the report.

² A "feature" is an industry term. Each claim occurrence can have one or many features associated with it. The features are a way to categorize claims by coverage. To illustrate, in a particular auto-accident there may be five claimants who each have a bodily injury claim (5 features). If one of those claimants was the driver whose vehicle was damaged in the accident, there is an additional property damage feature on the claim and the claim has a total of 6 features.

The Criterion Claimant Report is an excel spreadsheet that is purportedly produced from the RiskMaster claim database. Since the RiskMaster data is the purported source of the Criterion Claimant Report, a substantial discrepancy between the report and the electronic data was not anticipated.

TRISTAR worked with the SDR and with Criterion in an attempt to thoroughly reconcile the final RiskMaster data files prepared by Criterion's data management company with the 9/17/19 Criterion Claimant Report. The data files were valued at September 13, 2019, four days prior to the valuation date of the Criterion Claimant Report. We believe that this led to some of the discrepancies. For example, the data files contained 19 claims that were not included in the 9/17/19 Criterion Claimant Report. Conversely, there were 3 claims in the Criterion Claimant Report that did not have corresponding claimant information in the data files. We also discovered closed claims within the data that had open reserves. The reserves were closed by TRISTAR during the course of the conversion.

Lastly, there were a number of claims noted in the data file that were not correctly associated with the Spirit business per Criterion's own management team (i.e., other companies' claims data and documents were inadvertently included in the Spirit data delivered to TRISTAR). Upon identification of some of these issues during the test period, Criterion instructed RiskMaster to remove certain files and documents from the data that apparently were associated with other clients that Criterion serviced.

The end result is that there were differences in claim counts and various financial buckets (payments, loss reserves, expense reserves) between the data that could be accepted into the TRISTAR system and the Criterion Claimant Report. At the end of the day, although the data contained in the report and the data converted to TRISTAR's system from Riskmaster were relatively close, neither Criterion nor its data management company could fully explain differences in the data files and the final loss run provided.

Following discussions, the SDR agreed that TRISTAR would convert the data with certain known differences. This prudent decision allowed TRISTAR to begin to review the claims. It recognizes the fact that upon completion and acceptance of the Triage review, the SDR would instruct TRISTAR to enter the appropriate reserve changes to reflect what the ultimate value of the claims is based on the documentation in the files. That process will establish the appropriate claim related liabilities for the Estate and provide a basis for asset distribution calculations. TRISTAR will adjust reserves as POCs are presented and additional investigation is conducted.

In summary, there are two sources of information about the reserves set by the Company's pre-receivership TPA: (1) the electronic claims data held in the RiskMaster



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claim system ("RiskMaster Data"), which was converted and uploaded to TRISTAR's proprietary claims software, and (2) the Criterion Claimant Report (i.e., the final month-end loss run report), which was an excel spreadsheet held out by Criterion as a representation of the total losses and loss reserves of the Company. For the purposes of the pre- and post- triage comparisons made this report, TRISTAR is utilizing the data converted to its system as shown on the Master Triage Spreadsheet. We include a copy of the Criterion Claimant Report for illustrative purposes.

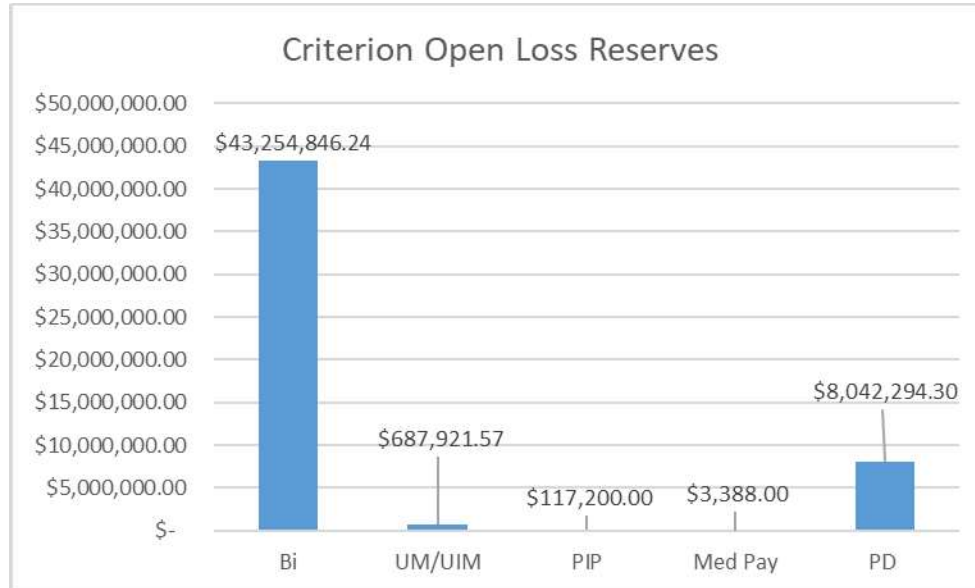
Master Triage Spreadsheet

In order to conduct its Triage work, TRISTAR developed the Master Triage Spreadsheet, utilizing only the RiskMaster data that was accepted into TRISTAR's system where a claim file was in fact open with a correct Spirit file number on it (numbers assigned by Criterion to Spirit claims contained the prefix "SA"). The Master Triage Spreadsheet addresses reserves, identifying initial summary loss and expense reserves converted at the file level to TRISTAR's system; recommended adjustments to those reserves and total expected reserves once recommended changes are made. In addition to basic claim information such as claim number, claimant and insured names, and the like, the Master Triage Spreadsheet contains brief notes and information about jurisdictional issues for most claims.

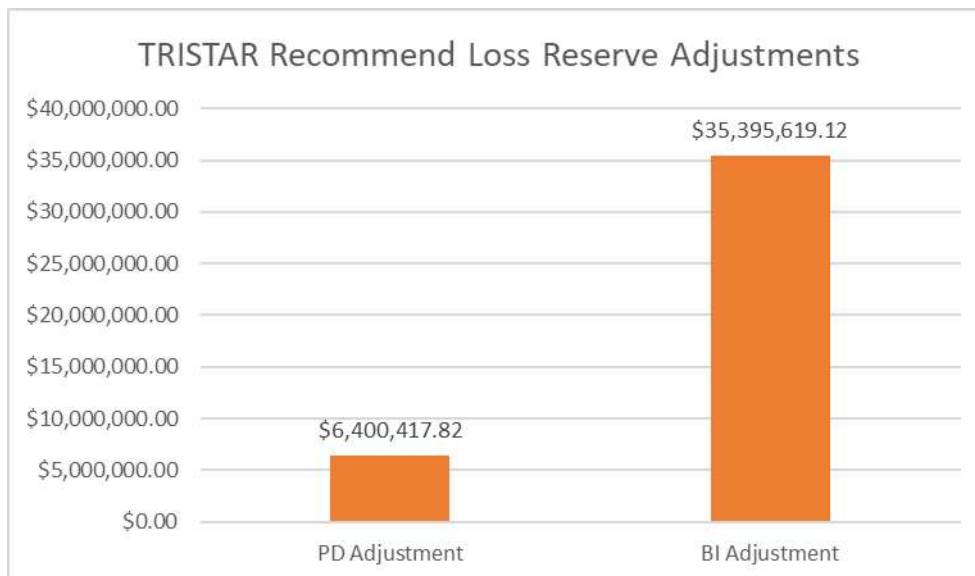
As illustrated by the **Master Triage Spreadsheet (Exhibit A)**, the RiskMaster data shows Criterion's Initial Reserve Total, including Loss and Expense Reserves, at \$53,002,075.58. TRISTAR is recommending the following:

Criterion Initial Reserve Position	\$ 53,002,075.58
Property Damage Adjustment	\$ 6,400,417.82
Bodily Injury Adjustment	\$ 35,395,619.12
Legal Adjustment	\$ 73,248.82
Expense Adjustment	\$ (42,658.34)
Recovery Adjustment	\$ (197,661.00)
TRISTAR Recommended Reserve Position	\$ 94,631,042.00

After the above adjustments, the recommended reserve position is **\$94,631,042.00**. That is an increase of **78.5%** over the Criterion reserve position of \$53,002,075.58.

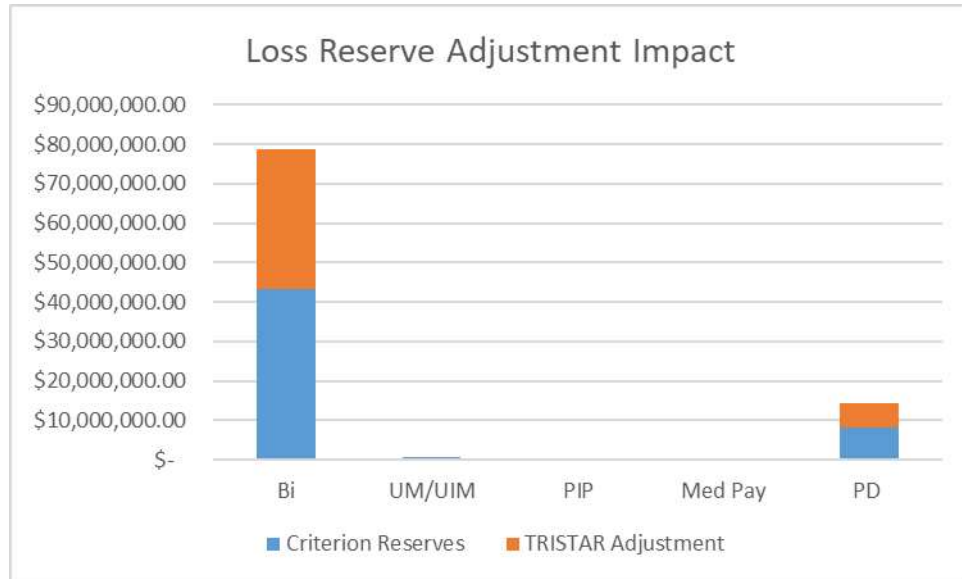


Source: TRISTAR Master Triage Spreadsheet 4/8/2020



Source: TRISTAR Master Triage Spreadsheet 4/8/2020

Note: The adjustments recommended to the loss reserve categories of Personal Injury Protection ("PIP"), Medical Payments to Others ("Med Pay"), Uninsured Motorist ("UM"), and Underinsured Motorist ("UIM") were negligible and were included in the Bodily Injury category.



Source: TRISTAR Master Triage Spreadsheet 48/2020

As TRISTAR conducted its review, we made the following observations:

File Condition

Overall, the claim files were not fully investigated or documented. There were numerous instances where known claimants were ignored, documents not acted upon and basic claim practices not followed. It appears that the Criterion claim team was just processing claims, not managing them. There were no reserve worksheets in the files that would give the reader insight into the adjuster's thinking when reserves were set. TRISTAR's team spent a good deal of time organizing the files and identifying additional investigative needs in order to make its reserve assessments.

Open Loss Reserves

It is clear from our review of the reserving patterns we see in the open claims that Criterion was not applying sufficient reserves to the claims that they received. This results in our recommending a significant increase across the board. Based on the principal of ultimate probable loss, we are recommending a 78.5% increase of the loss reserves (Bodily Injury loss reserve increases of \$35,395,619 and Property Damage increases of \$6,400,418) over the Criterion reserve position of \$53,002,075.58.

This assessment of ultimate probable loss is based exclusively on the open claims data delivered to TRISTAR by Criterion. We expect that with further investigation of these claims, receipt of additional detailed information will likely cause reserves to rise even further.

It appears that Criterion's reserving practice was formulaic at best, utilizing relatively low standard rates for reported claims even when substantive investigatory material was available to allow posting of more accurate reserves. These formulaic reserves were in the amounts of \$500, \$2,500, \$5,000, \$10,000, \$25,000, \$50,000 and \$75,000. There was no discernible pattern of use of the formulaic reserves, although most Property Damage claims were assigned the \$500 and \$2,500 rates and Bodily Injury claims were often reserved at \$5,000 or \$10,000. Only major incidents involving fatalities and other serious injury received the \$25,000, \$50,000 or \$75,000 reserves. There were no reserve worksheets employed to describe the relevant facts, liability, damages or adjuster's thought process used to post the reserves. **Exhibit D (Reserve Change Without Factual Basis)** details a few examples of the significant issues with reserve practice we saw throughout the book. We noted numerous instances where reserves were changed without any support, whatsoever.

Feature Counts:

Criterion created only one feature per claimant, even though there were typically two or more distinct claims noted for each claimant. Most often this involved having both Bodily Injury (BI) and Property Damage (PD) for the owner of an adverse vehicle on a single feature, although we did find instances where PIP and/or Med Pay should have been created in addition to a BI feature. It is our understanding that these features are to be placed into different classes as far as the order that they may be paid by the Spirit estate (i.e., in line with the Nevada statute, NRS 696B.420, that dictates the payment priority to be assigned to each class of claims). For instance, an unpaid vendor claim may potentially be assigned to a different priority status than a claim for liability coverage under the terms of a policy. Criterion's approach may not directly impact future liabilities, and the SDR will be able to assign a priority to each claim that is presented through the Proof of Claim process. However, Criterion's approach of putting all aspects of each claim into one big bucket (feature), makes it impossible – without the expenditure of very significant estate resources — to provide an advanced estimate of the estate's potential liability for each class of claim.

Although we will not change the data in our system now, we have taken steps to account for this on a go forward basis as POC's are presented. Once a POC is received, the claim(s) associated with the POC will be separated into the appropriate features, allowing the SDR to efficiently resolve the claims according to the relevant Nevada law and the Receivership Court's Orders.

More importantly, there were numerous claims created with multiple parties to an accident where claim features for the claimants were not set up at all by Criterion. A few examples of the types of claims that would need additional features are noted below:



[REDACTED]

[REDACTED]

[REDACTED]

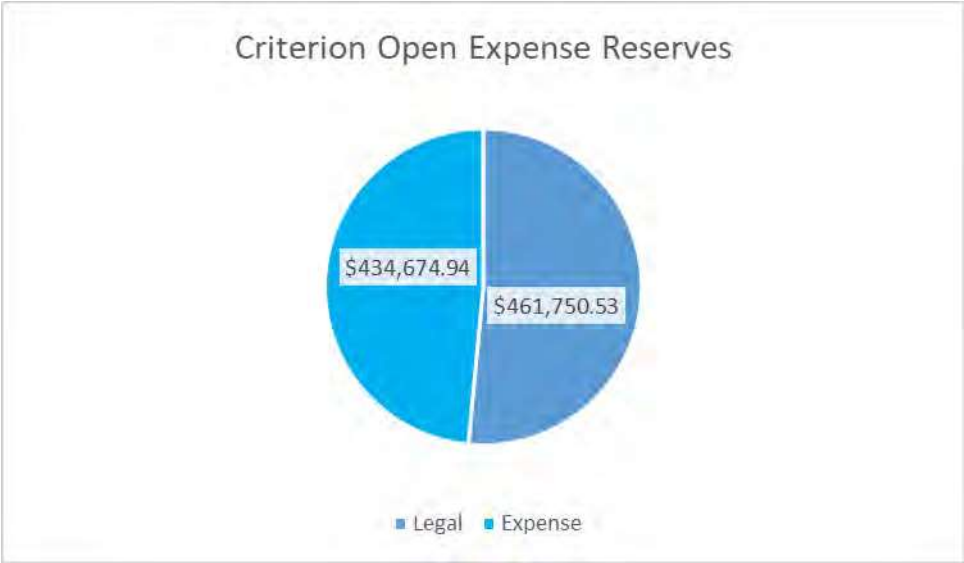
[REDACTED]

These and other claims requiring a new feature have been noted on the Master Triage Spreadsheet and their probable cost added to estimated reserve adjustments, as they do present a potential liability for the Estate. As the TRISTAR engagement requires that we



only actively manage claims where a POC has been presented, we have not created these claimants in the system and will not do so until a valid POC is presented unless the SDR directs otherwise.

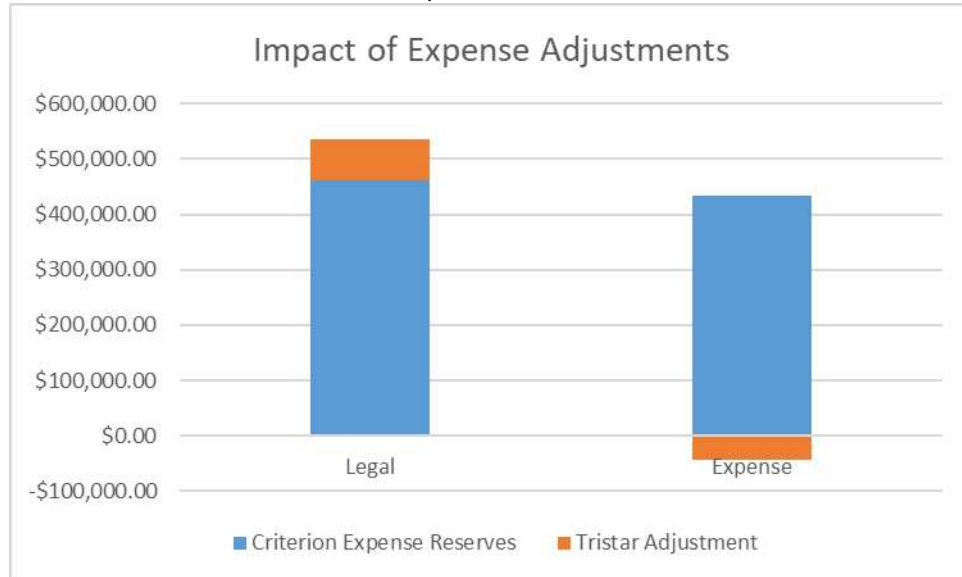
Expense Reserves



Source: TRISTAR Master Triage Spreadsheet 4/8/2020



Source: TRISTAR Master Triage Spreadsheet 4/8/2020



Source: TRISTAR Master Triage Spreadsheet 4/8/2020

Since all of the claims by vendors (including defense counsel, investigators, accident reconstruction specialists and others) are stayed and it is unlikely that TRISTAR will employ such vendors in the future, TRISTAR did not suggest significant increases in the expense reserve categories. Where there was evidence of outstanding bills or work completed we made minor adjustments to accommodate only the known costs. These amount to \$73,248 for Legal and **\$-42,658.34** in Expense or about a 3.3% overall increase in Total Expense reserves. As with all other parties, vendors will need to present their claim to the Estate through the POC process.

Our experience in dealing with estates such as the Spirit Estate leads us to believe that most vendors will choose to write off the expense as a loss rather than go through the process of presenting claims through a POC. A caveat to this observation is those vendors who handled multiple claims for Spirit and may have a significant sum at stake. The data received from Criterion was not configured in such a way to allow us to identify vendors falling into this category. That said, although there could be some vendors with claims in the thousands of dollars, we do not believe that any of the vendor claims will be significant enough to cause a material change to the estimated known liabilities.

As with the claims for loss, we do not know what class the vendors will fall into. So, as with the claims for loss under the policies, we have taken steps to allow us to segregate vendor claims from those of policyholders and third-party claimants. When a POC from a



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vendor is presented, the vendor will be set up as a separate feature on the claim allowing us to quickly identify them and assist the SDR in dealing with their claims.

Recovery

One area of potential asset recovery for the Estate is the recovery from adverse parties at fault of amounts paid by Spirit (*i.e.*, that were the responsibility of third parties to be paid). We reviewed each claim for recovery possibilities and made adjustments as noted in the spreadsheet. Where the file material showed a clear recovery possibility that was not accounted for, we made an adjustment in line with the amounts paid and the likelihood of recovery. However, since most claims are open and will not be paid until the SDR does so, we did not assume any recovery for those claims where payment had not already been made. Our findings under these assumptions indicate additional recoveries available to the Estate in the amount of \$199,428 on the Open Claims.

In addition, we identified 55 open subrogation/recovery claims received in the data that did not appear on the Criterion Claimant Report. These appear to be in the hands of SDR selected attorneys who were engaged to pursue various recovery efforts including MCS 90s and Deductibles on behalf of the Estate. These claims do not have open reserves. However, the potential recovery amount associated with these claims is the total amounts paid of \$995,216.61. As these matters are being pursued by SDR counsel, we did not opine on the likelihood of recovery.

TRISTAR did not perform any asset checks or actions of that nature to assess the collectability of the potential recoveries. We cannot assess the true value of these recovery actions. However, for the purposes of this presentation, we assumed that these were all 100% recoverable when we performed our net reserve increase calculations.

In all likelihood, there are recovery opportunities hidden in the closed claim files. We are uncertain as to the diligence of Criterion in attempting to secure recovery through subrogation action, although it does appear that part of their process was to put adverse parties on notice. In order to assess these, a review of the Closed book of claims is required. This can be accommodated by TRISTAR but was not within the scope of our initial Triage.

Lastly, another asset available to the Estate is Salvage. As noted in the Master Triage Spreadsheet, there were at least 9 claims where the independent salvage company, Copart, was awaiting a title to process a salvage transaction, but it appears good title was not conveyed. Thus, storage charges continued to accrue and the salvage piece could be not disposed of in an auction. Additionally, Copart pre-advanced payment to remove at least one vehicle that we know of and was not paid. In some cases, there was a hold placed on the vehicle due to a fatality or serious event.

TRISTAR only received one "live" title from Criterion. Given the number of total property damage claims involving claimant autos, it would appear that many titles were not properly negotiated and thus potential salvage would be lost.

The Criterion title process is outlined below in an excerpt from a Criterion employee's e-mail:

Our process, when we get an original title, I take it to Douglas County DMV, have it changed to our name, Criterion Claim Solutions of Omaha, Inc. This is signed off and sent to the salvage buyer. I have 1 title for Spirit, which has been put into our name, SA [REDACTED], [REDACTED], I will put this in today's mail sending it to TRISTAR so they can process it.

Diana Konfrst, Corporate Services, Criterion Claim Solutions of Omaha, Inc., e-mail to Kristen Johnson (authorized representative for the SDR)(October 21, 2019).

Incurred But Not Reported (IBNR)

Our estimates do not include any provision for claims that were Incurred But Not Reported ("IBNR"). We expect that with the passage of time, more claims will be reported, further adding to the claim liabilities associated with the policies issued by Spirit. This is an important aspect of the Estate's liabilities that is not addressed by TRISTAR. In order to accurately predict the ultimate liabilities, the SDR Actuary would need to be employed to review all historical claim activity along with our reserve adjustment recommendations to make predictions as to the emergence of future losses associated with the book of business written by Spirit. We expect that the truncated reporting period dictated by the Court will act to reduce the IBNR emerging losses but will not eliminate it. If requested, TRISTAR will meet with the Actuary as necessary to assist in developing an accurate estimate of the Estate's IBNR.

Conclusions

1. TRISTAR is making total loss and expense reserve recommendations that would increase the gross liabilities of the Spirit Estate by \$41,826,627. We find only \$197,661 available in known recoveries to offset this increase resulting in a net recommended increase of **\$41,628,966.42**. The resulting recommended reserve position of \$94,631,042.00 represents a 78.5% increase over the \$53,002,075.58. total Criterion reserve shown in the RiskMaster claims data, and a 76% increase over the \$53,712,453.18 that Criterion reported on its 9/17/2019 Loss Run Report spreadsheet (the Criterion Claimant Report) that was provided to the SDR as a record of the stated reserve liabilities associated with the known, open transportation claims arising from the Spirit RRG policies.



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2. If we give the benefit of the doubt and assume that the total amount of \$995,217 paid on the Counsel Managed Recovery claims is fully recovered through their actions, the net reserve increase would be \$40,631,982 or a 75.6% increase over the outstanding liabilities last reported by Criterion that were presented to the Court.
3. These recommendations were made by claim professionals based exclusively on the data and electronic documents converted from the Criterion data files into TRISTAR's system. They do not take into account any additional investigatory activity that needs to be undertaken.
4. The estimates noted do not include an estimate of IBNR.
5. Upon entry of the recommended reserve changes into the TRISTAR system, a new loss run will be generated from TRISTAR's claim system to provide the SDR with an updated picture of the entire book of Spirit claims.