

1 **SR**

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14  
15 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
16  
17 **CLARK COUNTY, NEVADA**

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

23 Plaintiff,

24 vs.

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

Defendant.

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

**SEVENTH STATUS REPORT**

23 COMES NOW, Commissioner of Insurance and Receiver, Barbara D. Richardson, and CANTILLO  
24 & BENNETT, L.L.P., Special Deputy Receiver ("SDR"), and files this Seventh Status Report in the above-  
25 captioned receivership. In accordance with the orders of this Court and the Nevada Revised Statutes  
26 ("NRS") Chapter 696B, the Receiver makes this "true report[s] in summary form of the insurer's affairs  
27 under the receivership and of progress being made in accomplishing the objectives of the receivership."  
28 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 entities is or was Thomas Mulligan.<sup>1</sup> All of these companies were taking a portion of the premium dollars from Spirit-issued policies.

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

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

8 In brief, the Permanent Receivership Order established the following key points for the Spirit  
9 receivership:

- 10 1) that the Company’s in-force insurance policies are to be canceled effective on the earlier  
11 of April 15, 2019, or the date when the insured ceased making premium payments to  
12 Spirit;
- 13 2) that the Receiver may impose a full suspension on all disbursements owed by Spirit,  
14 including insurance policy disbursements, and costs related to the defense or adjudication  
15 of insurance policy claims;
- 16 3) that the receivership court has exclusive jurisdiction over all matters pertaining to Spirit  
17 and all persons are enjoined from commencing, bringing, maintaining, or further  
18 prosecuting any action at law, suit in equity, arbitration, or special or other proceeding  
19 against the Company, Receiver, or Special Deputy Receiver;
- 20 4) that the Receiver is vested with exclusive title both legal and equitable to all of Spirit’s  
21 property wherever located, to administer under the general supervisions of the Court;
- 22 5) that the Receiver may change to her own name the name of any of Spirit’s accounts, funds  
23 or other property or assets, held with any bank, savings and loan association, other  
24 financial institution, or any other person, wherever located, and may withdraw such  
25 funds, accounts and other assets from such institutions or take any lesser action necessary  
26 for the proper conduct of the receivership; and
- 27 6) that the Receiver is authorized to establish a receivership claims and appeal procedure,  
28 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, and procedures for filing claims against Spirit. Subsequently, the Claims Filing Deadline was extended to May 31, 2021, pursuant to an order entered on September 30, 2020 (“Order Extending the Claims Filing Deadline”). This 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.<sup>2</sup>

The Receiver filed a motion to extend the Claims Filing Deadline in the interest of fairness to all the creditors of the estate and taking into account the serious concerns identified herein which were detailed in the Motion to Extend Claims Filing Deadline.<sup>3</sup> As noted above, the Court granted the motion and the new Claims Filing Deadline is May 31, 2021. Thereafter, the Receiver has provided notice of

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<sup>2</sup> The Receiver’s Fourth Status Report (available at [www.spiritinsure.com](http://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.

<sup>3</sup> Filed on August 27, 2020, available for review at [www.SpiritInsure.com](http://www.SpiritInsure.com), on the “Receivership Documents” page.

1 the new extended Claims Filing Deadline. In keeping with the Notice Order, the Receiver updated all  
2 materials on the Spirit website ([www.SpiritInsure.com](http://www.SpiritInsure.com)) and prominently posted a notice about the new  
3 deadline on the home page of the site. Further, in line with the Court's Order Extending Claims Filing  
4 Deadline, the Receiver mailed a postcard notice of the extended deadline to all interested parties who  
5 have not already submitted a Proof of Claim form with the estate. A sample proof of the postcard that  
6 was mailed, along with the affidavit of mailing, is attached as Exhibit 1. The Receiver will continue to  
7 provide the updated claims filing deadline within any new notices or claims correspondence sent by the  
8 receivership. Future notices about Spirit's receivership will be provided to interested parties in  
9 accordance with the Court's Notice Order.

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

11 TRISTAR Risk Management ("TRISTAR") is assisting the Receiver in evaluating the incoming  
12 Proofs of Claim ("POC").<sup>4</sup> There have been 1,039 POC submissions received to date. The Receiver  
13 believes this number should be higher still, and it appears that there are some large open claims on the  
14 Company's pre-receivership loss run report for which no POC has yet been filed. The Receiver  
15 continues to send additional targeted notice letters to parties to be sure that they are aware of the claim  
16 procedures, particularly when the Receiver is able to locate contact information for new claimants not  
17 previously recorded in the file (*i.e.*, because complete records were not established or kept by Criterion).

18 As previously reported, the Receiver must review each POC form to be sure it is complete and  
19 that it complies with the requirements of NRS 696B.330 and the procedures established by the  
20 Receivership Court. The Receiver provides written notice to claimants when their POC form cannot be  
21 further processed due to failing initial review—if it is *inter alia* a duplicate submission, unsworn,  
22 unsigned, substantially incomplete, and/or lacking sufficient documentation or explanation to allow the  
23 claim to be determined. In many other instances the POC form is complete, but the claim may be lacking  
24 key documentation and/or information that is needed to fully evaluate and determine the claim(s). The  
25 claimant is then provided a written notice, and the opportunity to submit additional materials to cure the

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26 <sup>4</sup> As reported in the previous status report, TRISTAR has also conducted a review of Spirit's open claim files,  
27 assessed the reasonableness of the claim reserves previously set by the Company and its claims manager, Criterion, and made  
28 recommendations as to any reserve adjustments needed. In short, and among other findings, TRISTAR found that the  
Company was grossly under-reserved. The report is attached as an exhibit to the Receiver's Sixth Status Report, available at  
[www.SpiritInsure.com](http://www.SpiritInsure.com).

1 defect. This is a key part of the work that is ongoing at this time in claims administration, in addition to  
2 reviewing and evaluating the POCs that are complete.

3 The United States has filed a POC in the receivership, asserting the priority of its claims—if any  
4 (they are unknown at this time according to the POC)—over and above any other claims against the  
5 estate pursuant to 31 U.S. Code § 3713, also known as the government’s “superpriority” statute. The  
6 Receiver will report further on this matter in subsequent status reports. This matter remains pending as  
7 of this Seventh Status Report.

8 The policy data of Spirit is held in the Aspire Information System (“Aspire”), which was created  
9 by Maple Technologies. The Receiver has an agreement with Maple Technologies whereby the Receiver  
10 will continue to have access to this system for a time, for the purposes of conducting an evaluation of  
11 Spirit’s operations and policies. TRISTAR staff and receivership staff have been trained to use this  
12 system in order to research and review Spirit policy and claim matters. The Receiver believes that this  
13 system is still of value to the receivership, particularly during the pendency of the POC process and  
14 certain litigation matters. The Receiver will regularly review the need for this system.

15 Actuarial firm Oliver Wyman Actuarial Consulting, Inc. (“Oliver Wyman”) has been engaged to  
16 prepare actuarial estimates for Spirit’s claims and future losses.

17 Calhoun, Thompson & Matza, L.L.P. is a CPA firm that has been hired by the Receiver to prepare  
18 Spirit’s federal and state tax returns.

19 Palomar Financial, LC (“Palomar”) is an affiliated company of the Special Deputy Receiver and  
20 performs financial and technical administrative support services for Spirit in receivership—and those  
21 services are now being performed by Palomar. Palomar is being used to facilitate the receivership’s  
22 administration of financial matters. The Receiver, with assistance from Palomar, has finalized all  
23 outstanding premium tax matters for the Company, including tax matters that were left outstanding and  
24 overdue by former Spirit leadership at the outset of the Receivership.

25 The Receiver has continued to receive notice from time to time of lawsuits filed against Spirit in  
26 violation of the Court’s Permanent Receivership Order. The Receiver will continue its established  
27 procedure of writing to the parties involved to inform them of the injunctions of the Permanent  
28 Receivership Order, and to request a voluntary dismissal of Spirit from the matter. Thus far, the majority

1 of counsel have been amenable to such requests. In limited cases and only when absolutely necessary,  
2 the Receiver will engage outside counsel to address ongoing or repeated violations of this Court's orders.

3 The Receiver has been required to engage outside counsel Frost Brown Todd in a Kentucky  
4 matter where a plaintiff's attorney has refused to dismiss Spirit as a defendant, even after numerous  
5 warnings that he is in violation of the Receivership Court's orders. The Receiver is working with outside  
6 counsel to move this matter to a resolution as soon as possible, and to seek attorneys' fees for the  
7 unnecessary expense caused by opposing counsel's ongoing violations of the Court's injunction. This  
8 matter is ongoing as of this Seventh Status Report.

9 **C. Records**

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

16 The receivership has received a number of records requests for documents and information since  
17 the outset of the receivership. Responding to such requests can be very costly for the estate as  
18 considerable time and resources must be dedicated to providing a proper response—including a full  
19 search of the Spirit records, and an analysis of privacy and privilege matters (the Receiver will not  
20 disclose any records that are deemed confidential to the receivership). It was necessary to establish a  
21 streamlined procedure to conserve costs and estate resources for the benefit of all creditors of the estate.  
22 The Receiver therefore requires that all requests for Spirit documents and/or information must be made  
23 by serving a subpoena upon Spirit via its commercial registered agent, CSC. The Receiver has provided  
24 the contact information for CSC to inquiring parties. The Receiver will evaluate subpoenas received  
25 from CSC and will send a response in writing to the inquiring party regarding the receivership's ability  
26 to provide the requested information, the anticipated timeframe for response, and the associated fee. The  
27 Receiver has determined that a non-refundable \$200 fee is appropriate for responding to basic policy  
28 document requests, and that a non-refundable \$1,000 fee should be assessed for any request for claim



1 records or any other request that may take substantial time and resources to fulfill. These fees were  
2 established based on conservative and fair estimates of the time needed to prepare such responses and  
3 based on the hourly rates of receivership staff. The Receiver reserves the right to increase these fees for  
4 any request that is overly broad or that necessitates a review of voluminous document(s). Once the fee  
5 is received from the inquiring party, and not before, the receivership staff will begin working to prepare  
6 the responsive material.

7 **D. Asset Recovery Litigation**

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

- 14 1. This complaint arises out of a vast fraudulent enterprise orchestrated by Defendant  
15 Thomas Mulligan and others, by which the Defendants operated a multitude of  
16 interrelated companies in the insurance service industry for their own benefit and to  
17 the detriment of their customers and insureds, including Spirit.
- 18 2. Through a web of interrelated companies that wrote insurance policies, provided so-  
19 called financing for insureds wishing to purchase insurance, processed insurance  
20 premiums, and/or adjusted and paid insurance claims, and collected Spirit's assets  
21 (the "Mulligan Enterprise"), Mulligan and his confederates siphoned millions of  
22 dollars from Spirit.
- 23 3. While Mulligan was the primary architect of his Enterprise, Defendant Pavel  
24 Kapelnikov participated heavily in the design and implementation of the scheme and  
25 assisted with perpetuating the fraud through his ownership and control of Mulligan  
26 Enterprise entities, including a key Spirit services provider, which breached its  
27 obligations to Spirit. Mulligan and Pavel Kapelnikov used the many moving pieces  
28 of the Mulligan Enterprise to ensure that the entities they owned and controlled



1           enjoyed preferential treatment as creditors by hiding the true and dismal financial  
2           condition of Spirit to prolong its operations while they continued to arrogate funds  
3           to themselves with a corresponding detriment to Spirit, its policy holders, and its  
4           other non-insider creditors.

- 5           4.     As a result of this scheme, Spirit – an insurance company that insured trucking  
6           companies – became financially insolvent and was placed into permanent  
7           receivership and subsequently into liquidation, leaving hundreds of unpaid claims  
8           and a host of creditors. This complaint seeks to recover, on behalf of Spirit and those  
9           affected, the tens of millions of dollars that are owed to Spirit from its principal  
10          Mulligan and his cohorts and/or the companies over which he exercised interest  
11          and/or control, including companies that were contracted to provide services to Spirit  
12          that absconded with virtually all of Spirit’s assets and third-party companies to which  
13          Spirit’s funds were siphoned.

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

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28           <sup>5</sup> Both the California and New Jersey corporations.

1 Stipulation and Order was entered to set aside the default judgment against Chelsea Financial Group,  
2 Inc. On June 10, 2020, Chelsea Financial Group, Inc. filed its answer to the Complaint. On August 24,  
3 2020, Matthew Simon filed an Answer. On August 26, 2020, Scott McCrae filed an Answer.

4 On April 28, 2020, a Stipulation and Order Regarding New Tech Capital, LLC's Investment in  
5 Iterative Capital Management, L.P. (the "Stipulation") was entered by the Court. On January 8, 2018,  
6 Spirit transferred \$500,000 to New Tech Capital, LLC ("New Tech"). On January 9, 2018, New Tech  
7 transferred \$500,000 to Iterative Capital, L.P. (the "Iterative Capital"). Upon information and belief, as  
8 of the Receiver's Fifth Status Report, the original \$500,000 investment had a net asset liquidation value  
9 of \$113,758.73. Pursuant to the stipulation, Iterative Capital liquidated the investment and wired the  
10 funds to New Tech, and the net amount finally returned to Spirit by New Tech was \$110,378.68.<sup>6</sup> New  
11 Tech is one of the above-mentioned related entities of Mulligan, and it remains a named defendant in  
12 the asset recovery lawsuit.<sup>7</sup> The Stipulation preserves the Receiver's rights to seek further recoveries  
13 from New Tech.

14 On May 14, 2020, CTC<sup>8</sup> and Criterion Claim Solutions of Omaha, Inc. each filed Motions to  
15 Compel Arbitration of the claims asserted by the Receiver in her asset recovery lawsuit. On June 4,  
16 2020, the Receiver filed her Oppositions to Criterion's and to the CTC Defendants' Motions to Compel  
17 Arbitration. On June 11, 2020, CTC and Criterion Claim Solutions of Omaha, Inc. each filed a Reply in  
18 Support of their Motion to Compel Arbitration.

19 On May 14, 2020, Defendants Scott McCrae and Matthew Simon filed a Motion to Dismiss the  
20 Complaint. On June 4, 2020, the Receiver filed her Opposition to Defendants Scott McCrae and  
21 Matthew Simon, Jr.'s Motion to Dismiss. On June 11, 2020, Defendants Scott McCrae and Matthew  
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23 <sup>6</sup> Upon information and belief, additional funds were held back for taxes and expenses and if not used, New Tech's  
24 pro rata share will be returned. The Receiver has not agreed to this approach for the return of funds. The Receiver has  
25 requested written confirmation from Iterative Capital explaining this as well as confirmation that any additional funds  
returned to New Tech will be sent to the Receiver for Spirit. Litigation continues by the Receiver against New Tech.

26 <sup>7</sup> The Receiver has determined and alleged in the Asset Recovery Action that \$500,000 of Spirit's money was  
27 siphoned from the insurance company and paid to New Tech for the sole benefit of Mulligan and Pavel Kapelnikov, and not  
Spirit. As noted above, a substantial portion of this \$500,000 amount was lost by Mulligan and Kapelnikov through a high-  
risk crypto currency investment that was made for their sole benefit, leading to ravage losses and a paltry remaining balance.

28 <sup>8</sup> 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.

1 Simon filed a Reply in Support of their Motion to Dismiss Plaintiff's Complaint. A hearing of the above  
2 matters (*i.e.*, the motions to compel arbitration and to dismiss) was initially set for June 18, 2020.

3 On June 15, 2020, a Minute Order was issued by Judge Mark R. Denton ruling that due to the  
4 ongoing Coronavirus situation, the June 18, 2020, hearing was deemed submitted on the briefs and under  
5 advisement, and the hearing was vacated from the calendar. On July 6, 2020, Judge Denton granted  
6 Criterion's Motion to Compel Arbitration, and ruled that it would dismiss the action without prejudice.  
7 However, the Court was not persuaded by Criterion's contention that the Receiver's positions are  
8 frivolous, and it thus denied Defendant's request for attorneys' fees. The Order was entered on July 22,  
9 2020. On August 5, 2020, the Receiver filed her Motion for Reconsideration of the Court's July 22,  
10 2020, Order Regarding Criterion Claim Solutions of Omaha Inc.'s Motion to Compel Arbitration;  
11 Criterion filed its Opposition to the Receiver's Motion on August 19, 2020. A hearing was set for  
12 September 8, 2020. On September 29, 2020, the Court denied the Receiver's Motion for  
13 Reconsideration of the Court's July 22, 2020, Order Regarding Criterion Claim Solutions of Omaha  
14 Inc.'s Motion to Compel Arbitration. The Receiver plans on filing a writ petition in the Nevada Supreme  
15 Court.

16 On July 6, 2020, Judge Denton also granted the CTC Defendants' Motion to Compel Arbitration  
17 – the Order was entered July 17, 2020. Finally, on July 6, 2020, the Court granted in part and denied in  
18 part Defendants Scott McCrae and Matthew Simon, Jr.'s Motion to Dismiss. The order was entered on  
19 August 10, 2020. On July 30, 2020, the Receiver filed a Motion for Reconsideration and/or Clarification  
20 of the Court's July 17, 2020, Order Regarding CTC Defendants' Motion to Compel Arbitration. On  
21 August 13, 2020, the CTC Defendants filed their Opposition to the Receiver's Motion for  
22 Reconsideration. On August 24, 2020, the Receiver filed her Reply in Support of the Motion for  
23 Reconsideration and/or Clarification of the Court's July 17, 2020, Order. A hearing of the Receiver's  
24 Motion for Reconsideration was set for August 31, 2020, but was vacated and deemed submitted on the  
25 briefs and under advisement. On September 16, 2020, the Court denied the Receiver's Motion for  
26 Reconsideration and/or Clarification of the Court's July 17, 2020, Order Regarding CTC Defendants'  
27 Motion to Compel Arbitration. The Receiver plans on filing a writ petition in the Nevada Supreme  
28 Court.

On August 24, 2020, nine of the defendants<sup>9</sup> filed a Motion to Stay Pending Arbitration. Thereafter, nineteen additional defendants filed joinders to the Motion to Stay.<sup>10</sup> On September 11, 2020, the Receiver filed an opposition to the Motion to Stay and joinders thereto. A hearing was held on the Motion to Stay & Opposition thereto via videoconference on September 28, 2020. On October 2, 2020, the Court granted the Motion to Stay Pending Arbitration and the Joinders thereto, “being persuaded by the Motion/Joinders that Plaintiff’s claims against the Defendants are so intertwined with those against the parties subject to arbitration that a stay is warranted for the reasons advanced by Defendants.” It is expected that a written order regarding the same will be filed shortly and the Receiver is evaluating options on how best to proceed.

The Receiver will keep the Court apprised of developments in this 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 September 30, 2020:
  - a. Cash Accounts: \$147,375.05

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<sup>9</sup> Six Eleven LLC, Quote My Rig, LLC, New Tech Capital, LLC, 195 Gluten Free LLC, 10-4 Preferred Risk Managers, Inc., Ironjab LLC, Fourgorean Capital LLC, Chelsea Holdings Company, LLC (“Chelsea Holdings”), and Chelsea Financial Group, Inc. (MO) (“Chelsea Financial MO”) (collectively, “Six Eleven Defendants”).

<sup>10</sup> Brenda Guffey filed a joinder on September 2, 2020. James Marx, John Maloney, Virginia Torres, and Carlos Torres (Marx, Maloney, V. Torres, and C. Torres will be referred to collectively herein as the “Spirit Director Defendants”) also filed a joinder on September 2, 2020. On September 3, 2020, Defendants Pavel Kapelnikov, Chelsea Financial Group, Inc. (New Jersey) (“Chelsea Financial New Jersey”), Chelsea Financial Group, Inc. (California) (“Chelsea Financial California”), Global Forwarding Group, Inc. (“Global Forwarding”), Kapa Management Consulting, Inc. (“Kapa Management”), Kapa Ventures Inc. (“Kapa Ventures”), Igor Kapelnikov, and Yanina Kapelnikov (collectively “Kapelnikov Group”) filed a joinder. Thomas Mulligan also filed a joinder on September 3, 2020. Additionally, on September 3, 2020, Defendants Lexicon Insurance Management LLC (“Lexicon”), ICAP Management Solutions, LLC (“ICAP”) and Daniel George (“George”) collectively (“Lexicon/George Group”) filed a joinder. Matthew Simon Jr. and Scott McCrae also filed a joinder on September 4, 2020.

b. Investments, held at Fidelity, fair market value of \$43,188,200.43.

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 2 to this report.<sup>11</sup> The Receiver is including, as Exhibit 3 attached hereto, a report for September 2020 reflecting the account balances and the cash receipts and disbursements for Spirit.

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<sup>11</sup> 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 Seventh Status Report and the actions taken by the Receiver.

DATED this 28<sup>th</sup> day of October 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

MARK E. FERRARIO, ESQ. (SB# 1625)  
KARA HENDRICKS, ESQ. (SB# 7743)  
TAMI D. COWDEN, ESQ. (SB# 8994)  
GREENBERG TRAURIG, LLP  
10845 Griffith Peak Drive, Suite 600  
Las Vegas, Nevada 89135

*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 28<sup>th</sup> day of October 2020, I caused a true and correct copy of the foregoing ***Seventh 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



EXHIBIT “1”

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**Spirit Commercial Auto Risk Retention Group, in Receivership for Liquidation (“Spirit”)**

**IMPORTANT NOTICE:**

**THE SPIRIT CLAIMS FILING DEADLINE HAS BEEN EXTENDED TO MAY 31, 2021**

Spirit is in receivership for liquidation by order of the Eighth Judicial District Court of the State of Nevada. Barbara D. Richardson, the Nevada Commissioner of Insurance, is the Receiver of Spirit and Cantilo & Bennett, L.L.P., is the appointed Special Deputy Receiver (“SDR”) of Spirit.

All claims against Spirit will be handled as claims against the Spirit receivership estate, and all proceedings are governed by applicable Nevada law. All claims must be submitted to the SDR on the approved Proof of Claim (“POC”) Form. Late-filed POCs will be barred from sharing in any distribution of Spirit’s assets. In order for a POC to be considered timely filed, it must be postmarked or delivered to the SDR on or before **May 31, 2021**. In addition to being timely filed, claims must also be non-contingent and liquidated in amount by the Claims Filing Deadline (*i.e.*, May 31, 2021) to share in any distribution of Spirit’s assets. Claims that remain contingent and/or unliquidated after May 31, 2021, will also be barred (subject to any exceptions found in NRS 696B.450, which will be in the Receiver’s sole discretion to determine).

If you have not already done so, please read, and follow the instructions within, the Receivership Claims and Appeals Procedure to submit your POC form to the SDR. These materials, along with FAQs and other important receivership documents, are available for download at [www.spiritinsure.com](http://www.spiritinsure.com). You may wish to check the site on an ongoing basis to stay informed. You may request print copies of the POC Form and the Receivership Claims and Appeals Procedure by calling (512) 478-6000, or by writing to Cantilo and Bennett, L.L.P., Attention: Spirit SDR, P.O. Box 184, Austin, Texas 78767. You are responsible for keeping the SDR apprised of any change in your address, to assure your receipt of any mailed notices or correspondence. **If you have already filed a POC, please disregard this notice.**

**[www.SpiritInsure.com](http://www.SpiritInsure.com)**

**(833) 242-6823**



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**(833) 242-6823**



CERTIFICATE OF MAILING

STATE OF MINNESOTA

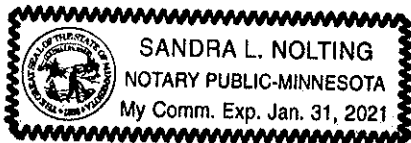
COUNTY OF BENTON

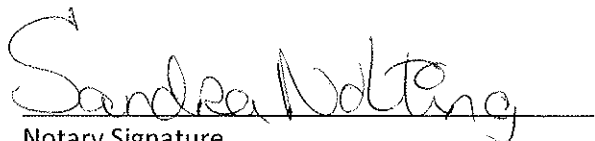
This Affidavit of Mailing certifies that the Job Log ID number described below was presented to Bradley Kremer & Toppan Merrill and were accepted as being in good order.

Company Name: Spirit Commercial  
Job Log ID #: 0338687  
Description: Spirit Commercial Auto Mailing  
Mailing Date: 10/14/2020  
Class of Mail: First Class Comingle  
Pieces Total: 12,841

  
\_\_\_\_\_  
Bradley Kremer  
Print Production Service

Subscribed and sworn before in Sartell, MN on the 20<sup>th</sup> day of October, 2020.



  
\_\_\_\_\_  
Notary Signature

My commission expires Jan 31 2021.

Exhibits 2-3 are available upon request  
by calling Cantilo & Bennett, L.L.P.  
at (512) 478-6000.