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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendant.

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

NINTH STATUS REPORT

COMES NOW, Commissioner of Insurance and Receiver, Barbara D. Richardson, and CANTILO & BENNETT, L.L.P., Special Deputy Receiver ("SDR"), and files this Ninth Status 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 entities is or was Thomas Mulligan.[1] All of these companies were taking a portion of the premium dollars from Spirit-issued policies.

[1] *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).

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

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

1) that the Company's in-force insurance policies are to be canceled effective on the earlier of April 15, 2019, or the date when the insured ceased making premium payments to Spirit;

2) that the Receiver may impose a full suspension on all disbursements owed by Spirit, including insurance policy disbursements, and costs related to the defense or adjudication of insurance policy claims;

3) that the receivership court has exclusive jurisdiction over all matters pertaining to Spirit and all persons are enjoined from commencing, bringing, maintaining, or further prosecuting any action at law, suit in equity, arbitration, or special or other proceeding against the Company, Receiver, or Special Deputy Receiver;

4) that the Receiver is vested with exclusive title both legal and equitable to all of Spirit's property wherever located, to administer under the general supervisions of the Court;

5) that the Receiver may change to her own name the name of any of Spirit's accounts, funds or other property or assets, held with any bank, savings and loan association, other financial institution, or any other person, wherever located, and may withdraw such funds, accounts and other assets from such institutions or take any lesser action necessary for the proper conduct of the receivership; and

6) that the Receiver is authorized to establish a receivership claims and appeal procedure, for all receivership claims. The receivership claims and appeals procedures shall be used

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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. The Liquidation Order also granted the Receiver's request to formally place Spirit into liquidation effective on November 6, 2019. On September 30, 2020, the Court entered an *Order Extending the Claims Filing Deadline for Spirit Commercial Auto Risk Retention Group, Inc.* The Claims Filing Deadline is now **May 31, 2021**.

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] More recently, the Receiver has provided notice of the new extended Claims Filing Deadline. Future notices about Spirit's receivership will be provided to interested parties in accordance with the Court's Notice Order.

[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.

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B. Claims Administration and Third-Party Support Services

TRISTAR Risk Management ("TRISTAR") is assisting the Receiver in evaluating the incoming Proofs of Claim ("POC").[3] There have been 1,232 POC submissions received to date. The Receiver continues to send notice letters to parties to be sure that they are aware of the claim procedures, particularly when the Receiver is able to locate contact information for new claimants not previously recorded in the file (*i.e.*, because complete records were not established or kept by Criterion).

As previously reported, the Receiver must review each POC form to be sure it is complete and that it complies with the requirements of NRS 696B.330 and the procedures established by the Receivership Court. In many other instances the POC form is complete, but the claim is lacking in some key document and/or information that is needed to fully evaluate and determine the claim(s). The claimant is then provided a written notice, and the opportunity to submit additional materials to cure the defect. This is a key part of the work that is ongoing at this time in claims administration, in addition to reviewing and evaluating the POCs that are complete. After the May 31, 2021, Claims Filing Deadline, the Receiver will prepare to send Notices of Claim Determination to those who submitted timely POCs.

The United States has filed a POC in the receivership, asserting the priority of its claims—if any (they are unknown at this time according to the POC)—over and above any other claims against the estate pursuant to 31 U.S. Code § 3713, also known as the government "superpriority" statute. The Receiver recently sent a letter to the United States to provide a reminder that its claim must be complete, non-contingent, and liquidated in amount on or before the May 31, 2021, deadline – and that if no amendment or supplement to the POC is received by that date, the claim will be denied and barred from sharing in the assets of the Spirit estate. The Receiver will report further on this matter in subsequent status reports. This matter remains pending as of this Ninth Status Report.

The policy data of Spirit is held in the Aspire Information System ("Aspire"), which was created by Maple Technologies. The Receiver believes that this system is still of value to the receivership,

[3] As reported in the previous status report, TRISTAR has also conducted a review of Spirit's open claim files, assessed the reasonableness of the claim reserves previously set by the Company and its claims manager, Criterion, and made 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.

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particularly during the pendency of the POC process and certain litigation matters. The Receiver will regularly review the need for this system.

Actuarial firm Oliver Wyman Actuarial Consulting, Inc. ("Oliver Wyman") has been engaged to prepare actuarial estimates for Spirit's claims and future losses. Oliver Wyman is working on draft actuarial estimates for Spirit as of December 31, 2020, which the Receiver expects to finalize before the next status report.

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

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

As the Court is aware, the Receiver has engaged the law firm of Greenberg Traurig LLP ("Greenberg Traurig"), as counsel in this receivership matter. Additionally, Greenberg Traurig is representing the Receiver on Spirit's behalf in an asset recovery case filed in the Eighth Judicial District Court as Case No. A-20-809963. Although Greenberg Traurig will remain as primary counsel on these matters for Spirit, the Receiver has engaged the services of Lewis Roca Rothgerber Christie ("Lewis Roca") to handle certain limited matters and to act as outside conflicts counsel to address other matters that may arise in which Greenberg Traurig is not representing the receivership estate. Pursuant to NRS 696B.290(6)-(7), the Receiver is advising the Court of the same and including as Exhibit A hereto, a copy of the rates for the Lewis Roca firm. The Receiver will continue to update the Court regarding action taken by the Lewis Roca firm in subsequent status reports as set forth in NRS 696B.290(6)-(7).

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

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

Additionally, the Receiver has responded to arbitration notices to advise of Spirit's inability to participate. Recently, an arbitration decision was entered in spite of the Receiver's previous notices to the parties involved (including the arbitration company) – the decision was immediately cancelled after the Receiver sent a reminder of the permanent injunction to the arbitrator.

The Receiver has been required to engage local outside counsel Frost Brown Todd in a Kentucky matter where a plaintiff's attorney refused to dismiss Spirit as a defendant, even after numerous warnings that he is in violation of the Receivership Court's orders. CTC and other entities that had a relationship with Spirit were named as co-defendants in that matter. After extensive briefing by the parties in this matter, the federal proceeding was stayed pending the outcome of Spirit's liquidation.[4] As an added precaution to ensure that the Nevada order is given the full faith and credit it is due,[5] the Permanent Receivership Order was domesticated in Kentucky. The other parties in this Kentucky claims case matter are working to reach a settlement, but Spirit is not a party to the settlement and has advised that it cannot participate in the settlement due to its status in liquidation and the permanent injunctions put in place by the Permanent Receivership Order.

C. Records

The Receiver has made efforts to secure Spirit's electronic records from third parties. The Receiver will continue with the evaluation of the Company and will continue gathering the Company's records and data. This process will remain ongoing as the Receiver continues to identify parties that may have information or records that will assist in carrying out the liquidation of Spirit. The recovery of Spirit's complete records from third parties remains incomplete.

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[4] The federal court exercised the discretion afforded to it by *Burford v. Sun Oil Co.*, 319 U. S. 315 (1943), to stay the plaintiff's claim against Spirit pending resolution of this liquidation proceeding.

[5] The majority of states give effect to the insurance receivership orders and stays of "reciprocal states" (*i.e.*, states that have enacted a comprehensive legislative framework, typically based on model laws, for insurance company receiverships). Kentucky and Nevada are reciprocal states.

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D. Asset Recovery Litigation

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

1. This complaint arises out of a vast fraudulent enterprise orchestrated by Defendant Thomas Mulligan and others, by which the Defendants operated a multitude of interrelated companies in the insurance service industry for their own benefit and to the detriment of their customers and insureds, including Spirit.
2. Through a web of interrelated companies that wrote insurance policies, provided so-called financing for insureds wishing to purchase insurance, processed insurance premiums, and/or adjusted and paid insurance claims, and collected Spirit's assets (the "Mulligan Enterprise"), Mulligan and his confederates siphoned millions of dollars from Spirit.
3. While Mulligan was the primary architect of his Enterprise, Defendant Pavel Kapelnikov participated heavily in the design and implementation of the scheme and assisted with perpetuating the fraud through his ownership and control of Mulligan Enterprise entities, including a key Spirit services provider, which breached its obligations to Spirit. Mulligan and Pavel Kapelnikov used the many moving pieces of the Mulligan Enterprise to ensure that the entities they owned and controlled enjoyed preferential treatment as creditors by hiding the true and dismal financial condition of Spirit to prolong its operations while they continued to arrogate funds to themselves with a corresponding detriment to Spirit, its policy holders, and its other non-insider creditors.
4. As a result of this scheme, Spirit – an insurance company that insured trucking companies – became financially insolvent and was placed into permanent

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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.,[6] 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, Defendant John Maloney filed an Answer. 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[7] 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 August 24, 2020, Matthew Simon filed an Answer. On August 26, 2020, Scott McCrae filed an Answer.

[6] Both the California and New Jersey corporations.

[7] Thomas Mulligan has attested that he is a member of defendant Chelsea Holdings Company, LLC, but is not affiliated or associated in any way with Chelsea Holdings, LLC. Counsel located the real member of Chelsea Holdings, LLC, and the Secretary of State filings have been corrected. Chelsea Holdings, LLC, was voluntarily dismissed without prejudice from this matter on December 21, 2020.

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

On May 14, 2020, Defendants Scott McCrae and Matthew Simon filed a Motion to Dismiss the Complaint. On June 4, 2020, the Receiver filed her Opposition to Defendants Scott McCrae and Matthew Simon, Jr.'s Motion to Dismiss. On June 11, 2020, Defendants Scott McCrae and Matthew Simon filed a Reply in Support of their Motion to Dismiss Plaintiff's Complaint. On June 15, 2020, a Minute Order was issued by Judge Mark R. Denton ruling that due to the ongoing Coronavirus situation, the matter was deemed submitted on the briefs and under advisement (*i.e.*, to be decided without a hearing).

On July 6, 2020, Judge Denton granted Criterion's Motion to Compel Arbitration, and ruled that it would dismiss the action without prejudice. However, the Court was not persuaded by Criterion's contention that the Receiver's positions are frivolous, and it thus denied Defendant's request for attorneys' fees. The Order was entered on July 22, 2020. On August 5, 2020, the Receiver filed her Motion for Reconsideration of the Court's July 22, 2020, Order Regarding Criterion Claim Solutions of Omaha Inc.'s Motion to Compel Arbitration; Criterion filed its Opposition to the Receiver's Motion on August 19, 2020. A hearing was set for September 8, 2020. On September 29, 2020, the Court denied the Receiver's Motion for Reconsideration of the Court's July 22, 2020, Order Regarding Criterion Claim Solutions of Omaha Inc.'s Motion to Compel Arbitration. On April 1, 2021, the Receiver filed a Petition for Writ of Mandamus in the Nevada Supreme Court regarding, *inter alia*, the Court's July 22, 2020, Order Granting Criterion Claim Solution's Motion to Compel Arbitration.

On July 6, 2020, Judge Denton also granted the CTC Defendants' Motion to Compel Arbitration – the Order was entered July 17, 2020. Finally, on July 6, 2020, the Court granted in part and denied in part Defendants Scott McCrae and Matthew Simon, Jr.'s Motion to Dismiss. The order was entered on

[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.

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August 10, 2020. 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. On August 13, 2020, the CTC Defendants filed their Opposition to the Receiver's Motion for Reconsideration. On August 24, 2020, the Receiver filed her Reply in Support of the Motion for Reconsideration and/or Clarification of the Court's July 17, 2020, Order. A hearing of the Receiver's Motion for Reconsideration was set for August 31, 2020, but was vacated and deemed submitted on the briefs and under advisement. On September 16, 2020, the Court denied the Receiver's Motion for Reconsideration and/or Clarification of the Court's July 17, 2020, Order Regarding CTC Defendants' Motion to Compel Arbitration. On April 1, 2021, the Receiver filed a Petition for Writ of Mandamus in the Nevada Supreme Court regarding, *inter alia*, the Court's July 17, 2020, Order Granting CTC Defendants' Motion to Compel Arbitration.

On August 24, 2020, nine of the defendants[9] filed a Motion to Stay Pending Arbitration. Nineteen additional defendants then filed joinders to the Motion to Stay.[10] 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." The formal Notice of Entry of Order was entered on November 17, 2020. On April 1, 2021, the Receiver

[9] 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").

[10] 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.

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filed a Petition for Writ of Mandamus in the Nevada Supreme Court regarding, *inter alia*, the Court's November 17, 2020, Order Granting the Motion to Stay Pending Arbitration and all Joinders Thereto.

On December 31, 2020, QBE Insurance Corporation ("QBE") submitted its Application for Relief from the Permanent Injunction (the "QBE Application") so as to permit QBE to advance defense costs to the individual defendants (*i.e.*, Spirit's former directors and officers) named in Case No: A-20-809963-C. QBE issued a professional liability policy to Spirit for the June 1, 2018 to June 1, 2019 Policy Period. According to the QBE Application, Spirit's former directors and officers have sought coverage for defense and indemnity from QBE in the Asset Recovery lawsuit. Per the QBE Application, "QBE has determined that it is contractually obligated under the Policy to advance certain Defense Costs (as defined) and that these costs will likely exceed the Policy's $1,500,000 Limit of Liability." QBE is seeking relief from the injunctions within the Permanent Receivership Order, so that it may advance defense costs to the individual defendants. The Receiver previously sent a notice of claim and demand for policy limits to QBE on May 29, 2019. On January 13, 2021, the Receiver filed a Limited Response to Application for Relief from Permanent Injunction, stating *inter alia* that it is the Receiver's belief that the Court is best suited to approve and/or deny QBE's request to proceed as outlined in the QBE Application. A hearing was scheduled for this matter on February 3, 2021. On February 12, 2021, the Court entered its Order Granting Application for Relief from Permanent Injunction.

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 and invested assets of the Company were approximately $42,280,567.41 as of February 28, 2021.

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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 cash flow report for February 2021 reflecting recoveries, disbursements, and cash flow since the receivership began.

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[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)).

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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 Ninth Status Report and the actions taken by the Receiver.

DATED this 14th day of April 2021.

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.

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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 14th day of April 2021, I caused a true and correct copy of the foregoing ***Ninth 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.

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

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