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2 MARK E. FERRARIO, Bar No. 1625
3 KARA B. HENDRICKS, Bar No. 7743
4 TAMI D. COWDEN, Bar No. 8994
5 GREENBERG TRAURIG, LLP
6 10845 Griffith Peak Drive, Suite 600
7 Las Vegas, NV 89135
8 Telephone: (702) 792-3773
9 Facsimile: (702) 792-9002
10 Email: ferrariom@gtlaw.com
11 hendricksk@gtlaw.com
12 cowdent@gtlaw.com

13 *Attorneys for the Plaintiff*

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

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

20 Plaintiff,

21 vs.

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

25 Defendant.

Case No. A-19-787325-B

Dept. No. 27

TWELFTH STATUS REPORT

26 COMES NOW, Commissioner of Insurance and Receiver, Barbara D. Richardson, and CANTILO
27 & BENNETT, L.L.P., Special Deputy Receiver ("SDR"), and files this Twelfth Status Report in the above-
28 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).

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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 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).

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

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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, 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 was extended to **May 31, 2021**, and has now expired.

II.

RECEIVERSHIP ADMINISTRATION

A. Notice of Developments in Receivership

On August 19, 2019, the Court entered its Order Regarding Motion for Instructions Including Notice Requirements (the “Notice Order”). Future notices about Spirit’s receivership will be provided to interested parties in accordance with the Court’s Notice Order. Interested parties may also monitor the Spirit receivership web site (www.spiritinsure.com) to keep up to date about developments in the receivership.

B. Claims Administration and Third-Party Support Services

TRISTAR Risk Management (“TRISTAR”) is assisting the Receiver in evaluating the incoming Proofs of Claim (“POC”).

The Claims Filing Deadline expired on May 31, 2021. There were 1,405 timely POC submissions received.

1 The Receiver is evaluating the claims against the estate and has begun mailing written Notices
2 of Claim Determination to claimants – and these notices advise claimants of whether their claims are
3 approved (in full or in part) or denied. Approximately four hundred three (403) claims have been
4 adjudicated, and Notices of Claim Determination completed and mailed to the claimants to date. The
5 Receiver has posted a status update (*i.e.*, advising that POCs are in the process of being evaluated) to the
6 home page of the Spirit receivership web site.

7 The United States has filed a POC in the receivership, asserting the priority of its claims—if any
8 (they are unknown at this time according to the POC)—over and above any other claims against the
9 estate pursuant to 31 U.S. Code § 3713, also known as the government “superpriority” statute. The
10 Receiver sent letters to the United States to provide a reminder that its claim must be complete, non-
11 contingent, and liquidated in amount on or before the May 31, 2021, deadline – and that if no amendment
12 or supplement to the POC was received by that date, the claim would be denied and barred from sharing
13 in the assets of the Spirit estate. No amendment or supplement from the United States has been received
14 as of the date of this report.

15 TRISTAR also assists the Receiver by responding to loss run requests submitted by former
16 policyholders of Spirit which are frequently necessary for the policyholders to obtain new policies of
17 insurance. Responding to the loss run requests, which are submitted in substantial volume on a regular
18 basis, requires considerable expenditure of estate resources. At this time, so as to minimize harm to
19 policyholders, the Receiver continues to provide loss run reports. It may be necessary at some point in
20 the future to conserve the assets of the estate further by ceasing this practice. The Receiver will continue
21 to evaluate the reasonableness of this expense.

22 The policy data of Spirit is held in the Aspire Information System (“Aspire”), which was created
23 by Maple Technologies. The Receiver believes that this system is still of value to the receivership,
24 particularly during the pendency of the POC process and certain litigation matters. The Receiver will
25 regularly review the need for this system.

26 Actuarial firm Oliver Wyman Actuarial Consulting, Inc. (“Oliver Wyman”) has been engaged to
27 prepare actuarial estimates for Spirit’s claims and future losses. Oliver Wyman has completed actuarial
28 estimates for Spirit as of December 31, 2020, as reported in the Receiver’s previous Tenth Status Report.

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

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

9 As the Court is aware, the Receiver has engaged the law firm of Greenberg Traurig LLP
10 ("Greenberg Traurig"), as counsel in this receivership matter. Additionally, as reported in the previous
11 status reports, the Receiver has engaged the services of Lewis Roca Rothgerber Christie ("Lewis Roca")
12 to handle certain limited matters and to act as outside conflicts counsel to address other matters that may
13 arise in which Greenberg Traurig is not representing the receivership estate.

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

21 **C. Records**

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

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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.

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.,² 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, LLC³ 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.

In addition to the filing of the answers referenced above, CTC⁴ and Criterion Claim Solutions of Omaha, Inc. each filed Motions to Compel Arbitration of the claims asserted by the Receiver in her asset

² Both the California and New Jersey corporations.

³ 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.

⁴ 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.

1 recovery lawsuit. The Motions to Compel Arbitration were granted by Judge Denton and thereafter nine
2 of the defendants⁵ filed a Motion to Stay Pending Arbitration and joinders were filed by nineteen
3 additional defendants. The Court granted the Motion to Stay Pending Arbitration and the Joinders
4 thereto and the formal Notice of Entry of Order was entered on November 17, 2020.

5 On December 31, 2020, QBE Insurance Corporation (“QBE”) submitted its Application for
6 Relief from the Permanent Injunction (the “QBE Application”) so as to permit QBE to advance defense
7 costs to the individual defendants (*i.e.*, Spirit’s former directors and officers) named in Case No: A-20-
8 809963-C. On February 12, 2021, the Court entered its Order Granting Application for Relief from
9 Permanent Injunction. The Receiver’s previous Tenth Status Report provides additional detail regarding
10 QBE’s application.

11 On April 1, 2021, the Receiver filed a Petition for Writ of Mandamus in the Nevada Supreme
12 Court regarding, *inter alia*, (1) the Court’s July 17, 2020, Order Granting CTC Defendants’ Motion to
13 Compel Arbitration, (2) the Court’s July 22, 2020, Order Granting Criterion Claim Solution’s Motion to
14 Compel Arbitration, and (3) the Court’s November 17, 2020, Order Granting the Motion to Stay Pending
15 Arbitration and all Joinders Thereto. The Nevada Supreme Court has not yet ruled on the Petition.
16 However, on July 14, 2021, the Nevada Supreme Court entered an order directing the respondents to file
17 an answer, including authorities, against issuance of the Receiver’s requested writ. As of September 15,
18 2021, answers have been filed by all respondents. On October 13, 2021, the Receiver filed a Reply to
19 the opposition briefs of the respondents.

20 **E. Actuarial Reports**

21 Oliver Wyman is an actuarial firm that was selected to prepare actuarial estimates for Spirit’s
22 claims and future losses. Oliver Wyman has completed its actuarial report for Spirit as of December 31,
23 2020. The Receiver wrote about the report in the previous Tenth Status Report.

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27 ⁵ Six Eleven LLC, Quote My Rig, LLC, New Tech Capital, LLC, 195 Gluten Free LLC, 10-4 Preferred
28 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”).

F. Receivership Assets and Liabilities

The Receiver has been gathering information and evaluating the assets and liabilities of Spirit. The Receiver's liability analysis will continue to evolve as the claims of the estate are determined, asset recoveries are made, and actuary estimates of Spirit's liabilities are updated. 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 \$41,507,983.00 as of November 30, 2021.
3. Gross Loss and Loss Adjustment Expense ("LAE") and General Liability Losses: The gross unpaid loss & allocated LAE as of December 31, 2020, are estimated by Oliver Wyman at \$198,663,000.
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 bills paid or approved for payment 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.⁶ The Receiver is including, as Exhibit 2 attached

⁶ 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*,

hereto, a cash flow report for November 30, 2021, reflecting recoveries, disbursements, and cash flow since the receivership began.

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 Twelfth Status Report and the actions taken by the Receiver.

DATED this 27th day of December 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/ CANTILLO & 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.*

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)).

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 27th day of December 2021, I caused a true and correct copy of the foregoing ***Twelfth 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 Flintz

An employee of Greenberg Traurig, LLP