MOT

MARK E. FERRARIO, Bar No. 1625
KARA B. HENDRICKS, Bar No. 7743
GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135
Telephone: (702) 792-3773
Facsimile: (702) 792-9002
Email: ferrariom@gtlaw.com
hendricksk@gtlaw.com

Attorneys for the Plaintiff

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
CLARK COUNTY, NEVADA

STATE OF NEVADA, EX REL. COMMISSIONER OF INSURANCE, IN HIS OFFICIAL CAPACITY AS STATUTORY RECEIVER FOR DELINQUENT DOMESTIC INSURER, Plaintiff(s), vs. SPIRIT COMMERCIAL AUTO RISK RETENTION GROUP, INC., a Nevada Domiciled Association Captive Insurance Company, Defendant.	Case No. A-19-787325-B Department 15 [HEARING REQUESTED] **MOTION FOR ORDER APPROVING PLAN OF DISTRIBUTION**

COMES NOW, Commissioner of Insurance[1] as Receiver ("Receiver") of Spirit Indemnity Risk Retention Group, Inc. ("Spirit" or the "Company") and CANTILO & BENNETT, L.L.P., Special Deputy Receiver ("SDR"), by and through the undersigned counsel of record, and respectfully requests that this Court enter an Order that:

1. Approves, authorizes, and permits the distribution of payments on a *pro rata* percentage basis from Spirit to those claimants whose claims have been allowed in full or in part, and assigned the statutory distribution priority class specified in NRS 696B.420(1)(b) (*i.e.*, "Class B"

[1] Ned Gaines assumed the role of Nevada Insurance Commissioner effective October 6, 2025. Pursuant to NRCP 25(d), when a public officer ceases to hold office while an action is pending, "[t]he officer's successor is automatically substituted as a party."

policy claims);

2. Sets and approves the total amount of Spirit's assets available for distribution to the Class B claimants at $15,066,210.34, and approves 20% as the *pro rata* percentage that may be paid to each Class B Claimant based on the total Class B liabilities as compared to the estate assets available for distribution;

3. Directs that if any claimant fails or refuses to cooperate with the Receivers' request for data needed to meet Centers for Medicare and Medicaid Services ("CMS") or other legal reporting requirements, the Receiver has grounds to withhold distribution of payment for that claim;

4. Directs that, pursuant to NRS 696B.420(1) and due to the insufficient assets available in the Spirit estate, no distribution can be made for late-filed claims or for claimants assigned to priority classes lower than Class B (*i.e.*, NRS 696B.420(1)(c)-(l));

5. Directs that service of this Motion constitutes final notice to the United States, and all federal agencies and subdivisions thereof, of the Spirit receivership claims and appeal procedures, and of the requirement for claims against the Spirit estate to be rendered absolute (*i.e.*, both liquidated in amount and non-contingent) on or before the Claims Filing Deadline of May 31, 2021;

6. Directs that, if within thirty (30) days of the entry of any final order on this Motion the United States does not file any opposition or bring forward any legal arguments pertaining to the matters referenced within this Motion, the Receiver may proceed with the claim distributions authorized by this Court;

7. Orders that, absent the filing of any opposition by the United States within thirty (30) days of the entry of any final order on this Motion, the SDR's interpretation of 42 U.S.C. § 1395y(b) (the "Medicare Secondary Payor Act") as applied to Class B policyholder claims for reimbursement is affirmed and the SDR may proceed with its distributions to policyholders for approved Class B policy claims irrespective of the Medicare Secondary Payor Act.

/ / /

/ / /

/ / /

This Motion is made and based on the memorandum of points of authorities filed herewith and any oral argument at a hearing on this matter.

Dated this 7th day of November 2025.

GREENBERG TRAURIG, LLP

/s/ Kara B. Hendricks

MARK E. FERRARIO
Nevada Bar No. 1625
KARA B. HENDRICKS
Nevada Bar No. 7743
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135
Attorneys for Plaintiff

MEMORANDUM OF POINTS OF AUTHORITIES

A. INTRODUCTION

As the Court is aware, Spirit is an insolvent risk retention group that previously provided commercial auto liability insurance to commercial truck owners. After appointing the Commissioner as permanent Receiver of Spirit, this Court approved a claims and appeals process and procedure by which creditors and claimants of Spirit could submit claims to the Receiver by and through the SDR. The SDR has processed all but one of the Proofs of Claim ("POCs") received and sent out Notices of Claim Determination ("NCDs").[2] At this time, there are only sufficient assets in the estate to make a partial distribution for those claims assigned a Class B priority pursuant to NRS 696B.420(1)(b). As detailed further below, the total allowed amount for most Class B claims is now final, and reserves have been made for the outstanding Class B claim appeals, and therefore the Receiver proposes this plan for *pro rata* distribution to the approved Class B claimants for which no appeal is pending. The Receiver anticipates a further distribution of assets to Class B claimants after the disbursement of assets under this Plan of Distribution. The *pro rata* percentage of the claims that may be paid in such future distribution is dependent upon the outcome of ongoing asset recovery litigation by the estate.

B. BACKGROUND

Spirit was an association captive insurance company organized under the insurance laws of

[2] The remaining POC relates to the claim of the United States. The Receiver will resolve the government's POC after the resolution of all other claims and appeals of the estate, either through the issuance of an NCD or as part of the government's informal waiver procedure described herein.

Nevada and the Liability Risk Retention Act of 1986. Spirit received its Certificate of Authority on February 24, 2012, and operated 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 of Insurance. 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).

The Commissioner initially filed a petition to put the Company into receivership on January 11, 2019, and 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. The Nevada Commissioner of Insurance, in her capacity as Receiver for Spirit, appointed the firm of CANTILO & BENNETT, L.L.P. as the SDR of the Companies. The "Receiver" and "SDR" are referred to collectively herein as the "Receiver."

This Court also approved a claims process and procedure by which creditors and claimants of Spirit could submit claims to the Receiver for review and evaluation. In total, one thousand three hundred ninety-six (1,396) timely POC submissions were received by the May 31, 2021, Claims Filing Deadline and required an NCD to be sent by the Receiver.[3] After processing the same, one

[3] Seventy-Six (76) POC forms received by the SDR are not included in this total, for the following reasons: eleven POCs (11) were withdrawn by the claimants, three (3) were rejected in writing by the SDR (*i.e.*, due to being related to a different insurance company), thirteen (13) could not be processed due to the POC form being almost entirely incomplete, seven (7) were closed by the SDR due to the file being opened in error (*i.e.*, a different POC number had already been opened for the claim), and thirteen (13) were duplicate submissions by the claimant, and have been consolidated under the POC number assigned to the claimant's original submission. An additional twenty-nine (29) POCs have been filed late, after the bar date that was set by this Court – these claimants have or will receive notices that their claim is barred and cannot be processed by the Receiver.

thousand three hundred ninety-five (1,395) NCDs were sent to claimants.[4] A matrix showing the claim determinations made to date is attached as **Exhibit A** to this Motion.[5] Pursuant to the Receivership Appeal Procedure, each NCD recipient had sixty (60) days to object in writing to the SDR's determination(s).

Eighty-eight (88) claimants filed objections to the SDR's determinations. Seventy-four (74) of the appeals have been resolved, in keeping with the receivership appeal procedure and NRS 696B.330. This Court entered an order for each of the resolved appeals heard by the Court or a special master, which were appealable orders pursuant to NRS 696B.330(9). Three of the Court's orders have been appealed to the Nevada Supreme Court. The Nevada Supreme Court affirmed the Court's order in one case, and the other two remain pending before the Nevada Supreme Court.

Ten (10) of the objections have not yet been heard and, pursuant to this Court's orders, will be heard by a Special Master or the Court in the near future. Four (4) of the objections have been heard and are pending recommendations by the Special Master, a final order from this Court, or final resolution by the Nevada Supreme Court. All of these pending objections pertain to Class B claims (*i.e.*, claims that would be assigned to Class B if any amount were to be allowed for the claim). The SDR has reserved for these outstanding Class B objections in its proposed initial plan of distribution for Spirit claimants. A matrix showing the objections received to date, and the resolution status of each, is attached as **Exhibit B** to this Motion.

A proposed initial plan of distribution for Spirit claimants, for which Court approval is sought, is attached hereto as **Exhibit C**. The plan summarizes the proposed initial distribution to each claimant in accordance with NRS 696B.330(7).

Notice of this Motion, and notice of any related hearings or final orders, will be made by the Receiver in accordance with this Court's prior instructions on notice requirements.[6] Additionally, all

---

[4] As explained further herein, one (1) of the 1,396 POCs was filed by the United States and has yet to be processed. Claims of the federal government are typically classified as Class D claims, pursuant to NRS 696B.420(1)(d).

[5] Due to privacy concerns, claimant names are redacted from the public Exhibit, and an unredacted copy is submitted to this Court *in camera*.

[6] See *Order Regarding Motion for Instructions Including Notice Requirements* (August 19, 2019).

claimants listed on **Exhibit A** will receive notice of this Motion, any hearings set thereon, and any final orders entered on this Motion.[7] The United States will also receive notice of this Final Plan of Distribution should the government have any claims that it wishes to assert or to render absolute (*i.e.*, non-contingent and liquidated in amount) against Spirit before this plan is approved and receivership assets are distributed.

C. MOTION FOR APPROVAL OF PLAN OF DISTRIBUTION

The SDR seeks Court approval to pay a *pro rata* distribution to those Class B Spirit claimants as specified in **Exhibit C**. The total amount of these approved claims is approximately $75M. However, the allowed amount for approved Class B claims exceeds Spirit's total assets and therefore a *pro rata* percentage distribution is necessary. As there is no possibility at this time of paying the Class B claims in full (or of reserving an adequate amount therefore), no amount whatsoever can be paid for inferior classes of claims (claims classified as Class C-L), pursuant to NRS 696B.420(1). **Exhibit C** is a spreadsheet which summarizes the proposed final plan of distribution and the *pro rata* amount to be paid to each Class B claimant, and confirms that no funds are available for late-filed claims or for classes of claims inferior to Class B.[8]

Per the most recent cash flow report, which is **Exhibit D** to this Motion, Spirit had available net liquid assets of approximately $33,891,210 as of September 30, 2025. The Receiver is recommending a distribution of $15,061,878.12 to Class B claimants, which is a 20% *pro rata* distribution for approved policy claims. The remaining Spirit asset amount would be held back to cover expected administrative expenses, claim appeal reserves, litigation, and potential wind-down contingencies.

NRS 696B.420(1)(A) requires that:

> [D]istribution of claims from the estate of the insurer on liquidation of the insurer must be as set forth in this section. Each claim in each class must be

---

[7] To conserve costs for the estate, notice will be in the form of a one page letter advising Claimants of the filing of the Motion and hearing date and directing claimants to the Spirit receivership web site for downloadable copies of this Motion, and any hearing notices or final orders entered on this Motion. The notice will also advise that the SDR will mail hard copies of these documents to claimants upon request.

[8] Claimants assigned to priority Classes C-L were previously notified by the SDR, by written NCDs, that the SDR did not anticipate assets being available to distribute for their claims.

> paid in full or adequate money retained for the payment before the members of the next class receive any payment[…] the order of distribution and of priority must be as follows: (a) Administration costs and expenses, including, but not limited to, the following: (1) The actual and necessary costs of preserving or recovering the assets of the insurer; (2) Compensation for any services rendered in the liquidation; (3) Any necessary filing fees; (4) The fees and mileage payable to witnesses; and (5) Reasonable attorney's fees.

The SDR estimates that the remaining assets of Spirit will be necessary to keep in reserve for now to pay any remaining Class A administrative claims, either incurred but not yet paid or later arising, from work done to address those remaining matters at issue in the Spirit estate.

Tasks and potential contingencies for the receivership (*i.e.*, items 8-12 below) for further wind down resolution are as follows:

(1) Preparation of materials necessary to complete the above-requested estate distributions.

(2) Preparation of financial statements and records for Spirit, including balance sheets, income statements, cash flow summaries, and statutory or court-ordered reports concerning the same.

(3) Development of tax and regulatory informational filings for Spirit, and coordination with consultants or other appropriate professionals.

(4) Further custodianship and, when no longer necessary and as authorized by the Court, eventual transfer or destruction of those Spirit records held by the SDR.

(5) Production of records archives or summary materials for Spirit which may be required to be produced or recorded by state or federal law or regulation.

(6) Drafting and mailing of materials necessary to effect escheatments under law.

(7) Closure of any remaining accounts, financial or otherwise, held for or on behalf of Spirit, with private entities or public agencies, as appropriate.

(8) Resolution of claim matters.

(9) Resolution of litigation matters.

(10) Resolution with the CMS of any Medicare Secondary Payor regulatory matters.

(11) Resolution of any outstanding federal claims or tax matters, payment of potential tax liability (if any), and the completion of any necessary tax filings for the estate (including but not limited to a final return filing with the U.S. Internal Revenue Service ("IRS")).

(12) Other necessary expenses or matters attendant to a final wind down of Spirit.

The Receiver also faces potential individual liability from the United States government under 31 U.S.C. § 3713 (the "federal priority statute") to the extent of any federal claims, as explained further below.

D. FEDERAL CLAIMS

The Receiver is requesting that service of this Motion on the United States, any federal agency and/or the Department of Justice, be deemed a final notice to the same of the Spirit receivership claims and appeals procedures, and of the need to liquidate and make non-contingent its claim against the Spirit estate. The Receiver requests the Court's approval to move forward with Spirit distributions if no late liquidated claim or other response is received from the United States and/or any federal agency within thirty (30) days of the entry of any Final Order on this Motion.[9]

The United States filed a POC with the receivership on January 21, 2020, but both the "Total Amount of Claim" and the "Explanation of Claim" were stated on the POC form to be "Unknown." The SDR wrote to the United States twice to warn that the POC was incomplete and could be denied as contingent and/or unliquidated if it was not amended before the claims filing deadline. No response was received, and the POC could be denied on that basis.

Further instruction is requested from this Court to resolve potential issues relating to federal claims, and to allow distributions to Spirit claim holders to now proceed. Notably, the Federal

[9] The Receiver requests this authority but is not seeking a formal extension of the claims filing deadline for the U.S. government or any other claimant. The Receiver is without knowledge of U.S. government claims against Spirit. In addition, the Receiver does not waive any assertion or relinquish any right that the U.S. government is subject to Nevada state insurance receivership laws, the Nevada insurance law claims priority statute for receivership claims, and the requirement that claims be submitted to the Receiver before any distribution from receivership assets may be made on any proper U.S. government claims.

Notwithstanding the foregoing, if receivership assets are distributed to Spirit's claimants and the U.S. government thereafter submits claims to the Receiver, then the Receiver should be legally justified in having made Spirit claim distributions in the absence of beforehand knowledge of such U.S. government claims.

Priority Act, 31 U.S.C. § 3713, gives first priority ("shall be paid first") to the United States for its claims against, *inter alia*, an insolvent entity's estate. Courts across the country have continued to debate the applicability of this provision under the McCarran-Ferguson Act, as state laws enacted "for the purpose of regulating the business of insurance" do not yield to conflicting federal statutes unless federal statute specifically requires otherwise. McCarran–Ferguson Act, § 2(b), 15 U.S.C.A. § 1012(b). The primary case addressing the issue is *U.S. Dep't of Treasury v. Fabe,* wherein the court held that a state statute governing the priority of claims against an insolvent insurer was a "law enacted . . . for the purpose of regulating the business of insurance," within the meaning of Section 2(b) of the McCarran-Ferguson Act, 15 U.S.C. § 1012(b), so that the state statute, rather than the Federal Insolvency Act, would govern priority of claims–but only to the extent that it benefited policyholders. *U.S. Dep't of Treasury v. Fabe,* 113 S. Ct. 2202, 124 L. Ed. 2d 449 (1993).

Here, NRS 696B.420 specifies the order in which distributions of claims must be made and was clearly enacted for the purpose of regulating insurance and specifying the order in which claims can be paid for the benefit of policyholders. *See* NRS 696B.420(1)(b) prioritizing claims against the insured for liability for injury above all other claims, other than the estate administration costs and expenses. Spirit does not have sufficient assets to pay any portion of claims prioritized below Class B. If the United States had filed a complete, non-contingent, and liquidated POC, any amount allowed for the claim would have been assigned priority as a Class D claim of the federal government pursuant to NRS 696B.420(1)(d).

Because courts have interpreted what "the business of insurance" means differently (*i.e.*, in reference to state laws concerning claim filing deadlines, bar dates, and priority in state insolvency proceedings), receivers for insolvent insurance companies will sometimes seek a waiver of federal priority claims from the United States to ensure that the receiver would not be exposed to potential personal liability for claims distributions that did not include the government entity. Indeed, the Department of Justice has established an informal[10] procedure for seeking such a waiver. However, as it is an informal procedure, there is no deadline by which the United States is required to respond

[10] The Department of Justice provides, on request, a list of items that should be provided with a request for a federal waiver of priority—but states that the list is provided as guidance only and does not have any force or effect of law.

to a waiver request. The process can take multiple months and sometimes in excess of a year before a waiver can be obtained and would delay distributions to Spirit claimants.

In this case, not only has the United States not filed a complete proof of claim,[11] but the only potential federal claims the Receiver is aware may potentially arise are IRS claims or CMS claims, and these are generally carved-out of any federal waiver that would be provided by utilizing the Department of Justice Procedure referenced above. The Receiver intends to seek a federal waiver once all underlying Spirit claims are resolved, but as mentioned, the issuance of a federal waiver will only provide a partial release of federal claims.

Because any federal waiver will only provide a partial waiver of claims, delaying claim distributions until after such waiver is granted by the United States (*i.e.*, *if* the United States grants such waiver) will have minimal value for this estate because of the carve-outs referenced above, and it will only delay the distribution process. Any partial waiver could also later be disputed by the federal government if the dispute is based on alleged inaccurate representations from the original waiver request.

Based on the forgoing, the Receiver is seeking to provide a final notice to federal entities *via* an order that provides thirty days for the United States, any federal agency and/or the Department of Justice to file a complete, non-contingent, liquidated claim in the Spirit estate and/or bring forward any legal arguments pertaining to the above-referenced matters and allows the Receiver to move forward with a distribution plan if a claim or response is not received. To ensure full disclosure and an opportunity to respond to this request, a copy of this Motion and any related hearing notice will be provided to the Department of Justice, the IRS, and CMS. This will allow such entities the opportunity to bring forward a claim, and/or challenge the Receiver's position(s) in regard to the applicability of the receivership claim and appeal procedures to the United States.

CMS Concerns Related to Policy Claims of Injured Third-Party Claimants

There are approximately five hundred eighty (580) Class B policy claims that have been

[11] Often, the United States will file a "protective" POC that notifies the Receiver that the federal government may have claims against the insurer that are "not currently known" but nonetheless must be paid prior to any other distributions from the estate. The United States has done so here, by filing what is essentially a "placeholder" POC.

approved, or approved in part, by the Receiver. Many or most of these claims were submitted by third-party claimants for their injury claims against an individual or entity insured or covered by Spirit. To the extent that the Receiver makes a payment to or on behalf of an injured party, the Medicare Secondary Payor Act and/or the available CMS guidance require the liquidator to act as the Responsible Reporting Entity ("RRE") and to complete the necessary claims reporting that Spirit would have been required to do under the Medicare Secondary Payor Act, if not for its receivership and liquidation.

For this purpose, the SDR will utilize the data provided by these claimants to query the CMS database (*i.e.*, to determine whether or not the claimant is eligible for Medicare or Medicaid) and to then determine, for any eligible claimants, whether a Medicare lien may apply to the claim payment (and if so, how best to resolve such lien prior to releasing the distribution payment).

The Receiver has notified claimants that policy claim determinations (*i.e.*, allowed amounts for "Class B" claims pursuant to NRS 696B.420(1)(b)) are contingent on the claimant's further cooperation with the Receiver's efforts to comply with federal Medicare reporting requirements pertaining to 42 U.S.C. § 1395y(b)(7) and (8). The Receiver will need to coordinate with Medicare and meet Medicare Secondary Payor regulations by and through the CMS. The failure to meet these requirements could lead to additional liability for the estate. Claimants have been requested to provide certain data that is needed to meet the CMS reporting requirements and have been warned that the failure to provide the requested data could prevent them from receiving any distribution for their claim from the estate. Most claimants have complied and sent the requested information, but some have either refused or sent incomplete information.

In addition to the above-referenced data, the SDR will also require claimants to provide a completed IRS W-9 form and a signed release that, inter alia: (1) waives any claim against the Spirit policyholder, and/or credits the Spirit Policyholder, up to the amount that is distributed by the receivership for the claim; (2) attests to the veracity of the data provided to the SDR and acknowledges that such information will be used by the SDR to complete all necessary regulatory reporting (including CMS and IRS); (3) expressly assumes responsibility for satisfying any and all notification, reimbursement, and recovery obligations owed to CMS for the claim payment; and

(4) assigns to the Receiver any and all rights or claims (known or unknown), as to all approved Spirit policy claims against any of Spirit's affiliate entities and/or any persons or entities named in the Receiver's asset recovery litigation (*i.e.*, whether in state, federal, or bankruptcy court). The claimants will retain a right to receive further payments from the Spirit receivership estate for any further *pro rata* claim distributions to the extent that receivership assets (*i.e.*, now available or as recovered in the future) permit further distributions. An example template release is attached as **Exhibit E**. The template release is subject to further revision and may be modified as needed for different types of claimants.

The Receiver requests that the Court confirm that failure to cooperate with the Receiver's efforts in regard to providing requested data, and/or failure to execute the above-referenced release, is a reasonable basis for withholding the distribution payment for the claim.

CMS Concerns Related to Policy Claims of Spirit Policyholders

Forty (40) or less[12] of the approved Class B policy claims were presented by Spirit policyholders who are seeking *reimbursement* of amounts that they have paid to resolve a commercial auto claim brought against them by an injured third party (*i.e.*, when such claims would ordinarily have been insured and paid for by Spirit). At the outset of the receivership, due to Spirit's hazardous financial position, a moratorium was imposed upon any and all policy disbursements owed by Spirit, to include defense costs and any other costs related to the adjudication of insurance policy claims. Instead, policyholders were required to arrange on their own, to the best of their ability, for the continued defense of any claims brought against them. Insureds that paid their own defense costs for claims covered by Spirit and/or paid money to settle claims covered by Spirit, were entitled to submit claims for reimbursement of those paid defense costs or claim settlements (*i.e.*, as covered by the Company's insurance policy) to the Receiver.

These insureds, who made the above-mentioned direct claim payments, filed POCs seeking a reimbursement from the estate. These insureds that handled claims against them to the best of their ability under very difficult circumstances were not especially well-positioned to resolve CMS

[12] There are forty (40) approved Class B claims that were presented by Spirit policyholders. Some of these claims pertain only to property damage, or pertain only to reimbursement for attorney fees, and do not involve reimbursement for the payment of bodily injury claims.

Medicare Secondary Payor issues and may not have obtained the needed data from the claimants which the Receiver would need to run the above-referenced data queries. It can be extremely difficult to obtain such data from a claimant after the fact of a settlement payment and after the passage of time.

The SDR has sought CMS guidance as to what Medicare Secondary Payor Act reporting obligations will be required of Spirit (if any) where the policyholder has paid the injured party to settle the claim and is now seeking reimbursement from the Spirit estate. The CMS position on claim payments made by liquidators is as follows:

> To the extent that settlement, judgment, award, or other payment to or on behalf of the injured party is funded from the assets of the entity in liquidation, the entity in liquidation is the RRE. To the extent that a portion of a settlement, judgment, award, or other payment obligation to or on behalf of the injured party is funded by another entity from that other entity's assets (for example, payment by a state guarantee fund), *the entity that makes payment is the RRE.*
>
> *MMSEA Section 111 Medicare Secondary Payer Mandatory Reporting Liability Insurance (Including Self-Insurance), No-Fault Insurance, and Workers' Compensation User Guide,* Section *6.1.6 Liquidation (settlement, judgment, award, or other payment obligation against the entity in liquidation)* ("NGHP User Guide") (emphasis added).[13]

In the above CMS example, a state guaranty fund[14] may (and typically does) file a POC with the insolvent insurer's estate seeking reimbursement for the policy claim payments that it has made in the insurer's stead, and CMS seems to say that such payments are reportable by the guaranty fund and not the Liquidator.

The SDR could not locate any legal authority or CMS guidance *directly* on point for the circumstances at hand. However, it is the SDR's position that, at least under the circumstances here, the distribution payments to policyholders described above do not subject the Receiver to Medicare Secondary Payor reporting obligations – and that such approved *pro rata* distribution payments

---

[13] Available online at: https://www.cms.gov/files/document/mmsea-111-may-5-2025-nghp-user-guide-version-81-chapter-iii-policy-guidance.pdf.

[14] There are no state guaranty funds involved in the Spirit receivership because, as a risk retention group, Spirit was excluded from state guaranty fund coverage by law. Nev. Rev. Stat. 695E.200(5).

should be made to Spirit's insureds without further delay and irrespective of any Medicare Secondary Payor claims of CMS.

Reimbursement payments made by the Receiver to Spirit's insureds are akin to a liquidator's payments to state guaranty funds, as described above. *Id*. Such payments to insureds are also analogous to the non-reportable indemnity payments described in Chapter III, Section 6.1.11 of the NGHP User Guide (*i.e*., subrogation indemnity payments that reimburse another insurer for its payment to the injured claimant are "not reportable"). The SDR finds further support in Section 6.1.5 ("Fronting Policies"), which states: "Where the insured pays the claim, the insured is the RRE. Where the insurer pays the claim, the insurer is the RRE," and in Section 6.1.3 ("Deductible Issues versus. Re-insurance, Stop-Loss Insurance, Excess Insurance, Umbrella Insurance, etc.") where CMS states: "the key in determining whether or not reporting for 42 U.S.C. § 1395y(b)(8) is required for these situations is whether or not the payment is to the injured claimant/representative of the injured claimant vs. payment to the self-insured entity to reimburse the self-insured entity. Where payment is being made to reimburse the self-insured entity, the self-insured entity is the RRE for purposes of a settlement, judgment, award, or other payment to or on behalf of the injured party and no reporting is required by the insurer reimbursing the self-insured entity."

The SDR wrote to CMS to seek express guidance on this point, and to inquire whether CMS takes a contrary position to the SDR's position on this matter. The CMS response did not address the SDR's inquiry but only provided citations to the same legal authority and CMS guidance that the SDR had already cited in its original correspondence to CMS. The SDR's letter, and the CMS response referenced above, are provided herein as **Exhibit F**.

The SDR proposes that CMS be served with this Motion and notice of any hearing thereon. If no opposition is made by CMS, then the SDR requests that the Court enter an order affirming the SDR's position on the Medicare Secondary Payor Act reporting of indemnity/reimbursement payments made to Spirit policyholders. After such order is entered by the Court, and provided that no Notice of Appeal is timely filed pursuant to NRAP 4(a)(1), the SDR would then proceed with distributions to Class B policyholder claimants, as authorized by the Court, without further delay.

/ / /

E. CONCLUSION

Based on the foregoing, the SDR respectfully requests that this Court, after notice and hearing, grant the SDR's motion for approval of proposed final plan of distribution to Class B estate claimants of Spirit, for issuance of an order approving of same and authorizing the SDR to begin to make the requested distributions, and providing any other such relief as the Court deems necessary.

Dated this 7th day of November, 2025.

GREENBERG TRAURIG, LLP

/s/ Kara B. Hendricks

MARK E. FERRARIO
Nevada Bar No. 1625
KARA B. HENDRICKS
Nevada Bar No. 7743
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135
Attorneys for Plaintiff

Exhibits may be requested by contacting the Special Deputy Receiver at 512-478-6000