Electronically Filed
6/28/2022 6:15 PM
Steven D. Grierson
CLERK OF THE COURT

SR
MARK E. FERRARIO, Bar No. 1625
KARA B. HENDRICKS, Bar No. 7743
TAMI D. COWDEN, Bar No. 8994
GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, NV 89135
Telephone: (702) 792-3773
Facsimile: (702) 792-9002
Email: ferrariom@gtlaw.com
hendricksk@gtlaw.com
cowdent@gtlaw.com

Attorneys for the Plaintiff

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

FOURTEENTH 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 Fourteenth 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 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).

Greenberg Traurig, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135

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

Greenberg Traurig, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135

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 Proofs of Claim ("POCs") that have been received. TRISTAR's initial work for the estate included an evaluation of the outstanding policy claims liabilities of the estate. TRISTAR's work in this regard is detailed in the Sixth Status Report and exhibits thereto. TRISTAR has since assisted the Receiver in evaluating and determining the POCs filed in the Spirit estate. Among other things, TRISTAR also continues to maintain a customer service telephone line for Spirit, handle inquiries regarding policy claims and other general inquiries about the receivership, and host certain paper and electronic claim records for the Spirit

Greenberg Traurig, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135

estate. Through the appeals phase of the claims process for the estate (*i.e.*, as claimants submit appeals of the Receiver's claim determinations), TRISTAR will evaluate the appeal submissions from claimants and make recommendations to the Receiver regarding proposed resolutions of such appeals. The Receiver anticipates that it will continue to utilize TRISTAR's assistance for claims matters, until all claims and appeals of the estate are resolved. The Receiver will continue to evaluate the need for TRISTAR's assistance and will continue to report about TRISTAR's ongoing work for the estate.

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

The Receiver is evaluating the claims against the estate and has begun mailing written Notices of Claim Determination to claimants – and these notices advise claimants of whether their claims are approved (in full or in part) or denied. Approximately seven hundred sixty-two (762) Notices of Claim Determination have been completed and mailed to the claimants to date. The Receiver has posted a status update (*i.e.*, advising that POCs are in the process of being evaluated) to the home page of the Spirit receivership web site.

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 sent letters 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. No amendment or supplement from the United States has been received as of the date of this report. The Receiver has also written to the Centers for Medicare and Medicaid Services ("CMS"), seeking policy guidance regarding the applicability of certain claim reporting requirements to the Spirit receivership. CMS has yet to respond, but the Receiver will continue to seek direct input from the agency to clarify the regulatory requirements for the Spirit estate.

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, particularly during the pendency of the POC process and certain litigation matters. At the outset of the receivership, the Receiver worked with Maple Technologies to continue Spirit's pre-receivership

Greenberg Traurig, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135

arrangement. The Receiver was then able to negotiate a lower monthly cost to maintain the Receiver's access to the Aspire system in receivership.[2] 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 previously completed actuarial estimates for Spirit as of December 31, 2020, and is currently working on the estimates for Spirit as of December 31, 2021.

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 remained outstanding and overdue by former Spirit leadership at the outset of the Receivership, and routine reporting continues as required for certain state jurisdictions.

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, as reported in the previous status reports, 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.

The Receiver has received 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 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.

---

[2] The Aspire rate information is included within Exhibit 1 to this report.

Greenberg Traurig, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135

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.

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").[3] The Asset Recovery Lawsuit was filed in the Eighth Judicial District Court of Clark County, Nevada, and assigned Case No. A-20-809963-B. Although the majority of Defendants filed answers to the Asset Recovery Lawsuit, CTC[4] 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. The Motions to Compel Arbitration were granted by Judge Denton and thereafter nine of the defendants[5] filed a Motion to Stay Pending Arbitration, and joinders were filed by nineteen additional defendants. The court granted the Motion to

---

[3] The Defendants in the Asset Recovery Lawsuit are: Thomas Mulligan, an Individual; CTC Transportation Insurance Services of Missouri, LLC, a Missouri Limited Liability Company; CTC Transportation Insurance Services LLC, a California Limited Liability Company; CTC Transportation Insurance Services of Hawaii LLC, a Hawaii Limited Liability Company; Criterion Claims Solutions of Omaha, Inc., a Nebraska Corporation; Pavel Kapelnikov, an Individual; Chelsea Financial Group, Inc., a California Corporation; Chelsea Financial Group, Inc., a Missouri Corporation; Chelsea Financial Group, Inc., a New Jersey Corporation D/B/A Chelsea Premium Finance Corporation; Chelsea Financial Group, Inc., a Delaware Corporation; Chelsea Holding Company, LLC, a Nevada Limited Liability Company; Chelsea Holdings, LLC, a Nevada Limited Liability Company; Fourgorean Capital, LLC, a New Jersey Limited Liability Company; Kapa Management Consulting, Inc. a New Jersey Corporation; Kapa Ventures, Inc., a New Jersey Corporation; Global Forwarding Enterprises Limited Liability Company, a New Jersey Limited Liability Company; Global Capital Group, LLC, a New Jersey Limited Liability Company; Global Consulting; New Tech Capital, LLC, a Delaware Limited Liability Company; Lexicon Insurance Management LLC, A North Carolina Limited Liability Company; Icap Management Solutions, LLC, a Vermont Limited Liability Company; Six Eleven LLC, a Missouri Limited Liability Company; 10-4 Preferred Risk Managers Inc., a Missouri Corporation; Ironjab LLC, a New Jersey Limited Liability Company; Yanina G. Kapelnikov, an Individual; Igor Kapelnikov, an Individual; Quote My Rig LLC, a New Jersey Limited Liability Company; Matthew Simon, an Individual; Daniel George, an Individual; John Maloney, an Individual; James Marx, an Individual; Carlos Torres, an Individual; Virginia Torres, an Individual; Scott McCrae, an Individual; Brenda Guffey, an Individual; 195 Gluten Free LLC, a New Jersey Limited Liability Company, Doe Individuals I-X; and Roe Corporate Entities I-X. The Receiver's previous Twelfth Status Report provides the dates that answers to the suit were filed by the defendants.

[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.

[5] 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").

Greenberg Traurig, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135

Stay Pending Arbitration and the Joinders thereto and the formal Notice of Entry of Order was entered on November 17, 2020.

On April 1, 2021, the Receiver filed a Petition for Writ of Mandamus in the Nevada Supreme Court regarding, *inter alia* (1) the court's July 17, 2020, Order Granting CTC Defendants' Motion to Compel Arbitration, (2) the court's July 22, 2020, Order Granting Criterion Claim Solution's Motion to Compel Arbitration, and (3) the court's November 17, 2020, Order Granting the Motion to Stay Pending Arbitration and all Joinders Thereto. On July 14, 2021, the Nevada Supreme Court entered an order directing the respondents to file an answer, including authorities, against issuance of the Receiver's requested writ. Answers were filed by all respondents. On October 13, 2021, the Receiver filed a Reply to the opposition briefs of the respondents. On February 18, 2022, the Nevada Supreme Court denied the Receiver's petition for writ of mandamus – thereby requiring the Receiver to pursue two separate arbitration proceedings to recover Spirit's assets (*i.e.*, while litigation against the remaining defendants is stayed pending the outcome of the separate arbitration proceedings).

Accordingly, on February 25, 2022, the Receiver filed a Motion for Leave to Initiate Arbitration Proceedings on Order Shortening Time. On March 14, 2022, this court granted the Receiver Leave to Initiate Arbitration Proceedings against the CTC Defendants and Criterion Claims Solutions of Omaha, Inc. There are different arbitration procedures called for by Spirit's respective pre-receivership contractual agreements with CTC and Criterion. Counsel for the Receiver is working with CTC and Criterion, respectively, to develop plans to proceed in the two separate arbitration proceedings.

E. Actuarial Reports

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

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.

Greenberg Traurig, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135

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, and is also pursuing claims in arbitration as also detailed above.

2. The cash and invested assets of the Company were approximately $36,598,475.57 as of May 31, 2022.

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 at $198,663,000 by Oliver Wyman.

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, and the detailed billings are submitted *in camera*, with summaries of such bills being submitted as Exhibit 1 to this report.[6] The Receiver is including, as Exhibit

---

[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. As detailed above, claims administration is a significant part of the work remaining to be completed prior to winding down the Spirit liquidation and is a significant expense for the estate. TRISTAR's detailed invoices have been included with the *in camera* submission for the Court's information. The Receiver has approved billing rates for Cantilo & Bennett, L.L.P. as of January 1, 2022, which are included in the billings for that month, and which updates earlier billing rates approved by the Receiver.

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)).

Greenberg Traurig, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135

2 attached hereto, a cash flow report for May 31, 2022, 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 Fourteenth Status Report and the actions taken by the Receiver.

DATED this 28th day of June 2022.

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: *<u>/s/ CANTILO & BENNETT, L.L.P.</u>*
Special Deputy Receiver
By Its Authorized Representative
Mark F. Bennett

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

Counsel for Barbara D. Richardson,
Commissioner of Insurance,
as the Permanent Receiver for Spirit
Commercial Auto Risk Retention Group, Inc.

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this 28th day of June 2022, I caused a true and correct copy of the foregoing ***Fourteenth Status Report*** to be e-filed and e-served on the upon the parties all parties registered for e-service. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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

Greenberg Traurig, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135