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11 *Attorneys for the Plaintiff*

12 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
13 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 vs.

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

23 Defendant.

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

**(Hearing Requested)**

**MOTION TO ESTABLISH CLAIMS  
APPEAL PROCESS AND PROCEDURE  
AND FOR THE APPOINTMENT OF A  
SPECIAL MASTER TO ASSIST WITH  
THE SAME**

24 COMES NOW, Commissioner of Insurance and Receiver, Barbara D. Richardson, and CANTILO  
25 & BENNETT, L.L.P., Special Deputy Receiver, and files this Motion to Establish a Claims Appeal  
26 Process and Procedure and for the Appointment of a Special Master to Assist with the Same (“Motion”).

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

3 Dated this 2nd day of December , 2022.

4 /s/ Kara B. Hendricks

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10 *Attorneys for Plaintiff*

## 11 **MEMORANDUM OF POINTS OF AUTHORITIES**

### 12 **I.**

#### 13 **INTRODUCTION & FACTUAL BACKGROUND**

14 By and through the subject Motion, the Receiver is seeking to further establish and define a  
15 procedure for the evaluation of claim appeals which the Receiver proposes occur on an ongoing basis  
16 given the ongoing review and evaluation of claims by the Special Deputy Receiver (“SDR”).

17 As this Court is aware, Spirit Commercial Auto Risk Retention Group, Inc. (“Spirit” or the  
18 “Company”) is an insolvent Risk Retention Group that was put in Permanent Receivership by an  
19 order entered by this Court on February 27, 2019 (“Receivership Order”). Thereafter, on November 6,  
20 2019, the Court entered its Final Order Placing Spirit into Liquidation (the “Liquidation Order”) and its  
21 Final Order Setting Claims Filing Deadline for Spirit and Related Relief (“the Claims Order”). The  
22 Claims Order established a Claims Filing Deadline, and procedures for filing claims against Spirit. On  
23 September 30, 2020, the Court entered an order extending the claims filing deadline to May 31, 2021.

24 There were 1,405 timely Proof of Claims (“POC”) submissions received by the SDR. As set  
25 forth in recent status reports, the SDR has utilized TRISTAR Risk Management (“TRISTAR”) to assist  
26 the Receiver in evaluating the POCs that were received. As of the last status report filed herein,  
27 approximately eight hundred thirty-one (831) Notices of Claim Determination (“NCD”) have been  
28 completed and mailed to the claimants.

1 Pursuant to the procedure approved in the Claims Order, when an NCD is sent to a claimant, the  
2 claimant is also advised they have a right to appeal the claims determination. As of October 31, 2022,  
3 approximately forty-three (43) appeals of the Receiver’s claim determinations have been received. Not  
4 included in that total are the four (4) appeals which the Receiver has resolved through further  
5 communication with the claimants (e.g., claimant was able to provide proof of timely submission of  
6 missing claim documentation, SDR was then able to issue a revised Notice of Claim Determination  
7 which satisfied the claimant). Where circumstances merit it, the SDR will continue to resolve such  
8 matters without the need for an appeal hearing, if possible. Although the review and evaluation of claims  
9 and appeals is ongoing, at this juncture the Receiver believes it is appropriate to initiate a formal process  
10 for review and determination of the timely appeals that have been received.<sup>1</sup>

11 **II.**

12 **LEGAL ARGUMENT & APPEAL PROPOSAL**

13 This Court has original jurisdiction of the subject matter of this action pursuant to NRS 696B  
14 which governs delinquent insurers, conservation, rehabilitation, and liquidation. At this time, it is  
15 necessary to further define the appeals process and procedure. The Receiver requests that a process be  
16 established that divides Class B appeals<sup>2</sup> into two categories: 1) legal issues that can be resolved by the  
17 Court; and 2) factual issues that will first be heard by a Special Master appointed by this Court for the  
18 purpose of hearing such matters.

19 Pursuant to NRS 696B.330(8), if an objection is filed to a claims determination, “the receiver  
20 shall submit to the court a report on the determination of the receiver on each claim to which an objection

21 \_\_\_\_\_  
22 <sup>1</sup> A status check hearing was held on September 7, 2022, during which counsel for the Receiver provided  
23 a status update to the receivership court regarding the processing of receivership claims and appeals.  
The Court set a follow-up status check hearing for December 7, 2022, at 10:30 a.m., and requested that  
a proposed procedure for appeal hearings be submitted before the same.

24 <sup>2</sup> NRS 696B.420 sets forth the order for distribution of claims from the receivership estate. After the  
25 payment of administrative expenses, Class B claims have priority and include “all claims under policies,  
26 any claims against an insured for liability for bodily injury or for injury to or destruction of tangible  
property which are covered claims under policies, including any such claims of the Federal Government  
27 or any state or local government”. NRS 696B.420(1)(b). Because such claims are prioritized by statute,  
the Receiver proposes appeals for such claims occur prior to any other class of claims. This will allow  
28 the Receiver to complete the processing of the Class B claims and determine the total liability for these  
claims and thus the pro rata percentage which can be paid to claimants based on the available assets in  
the estate.

1 has been filed,” and “the court shall fix a time for a hearing on such claims and shall direct the receiver  
2 to give notice of the hearing.” NRS 696B.330 (9) further provides that:

3 A hearing may be conducted by the court or by a master or referee appointed by the court.  
4 If a hearing is conducted by a master or referee, the master or referee shall submit findings  
5 of fact and recommendations to the court. The court shall enter an order approving or  
6 denying, in whole or in part, a claim filed against an insurer. Any such order is an  
7 appealable order.

8 As stated above, there are a total of forty-three (43) appeals of the Receiver’s claim  
9 determinations have been received.<sup>3</sup> Of these 43, thirteen (13) present legal issues and twenty-three (23)  
10 present primarily factual issues relating to the amount the Receiver approved for the claim.<sup>4</sup> A schedule  
11 of the appeals filed, including a brief description of the issue or issues on appeal for each claim is attached  
12 hereto as **Exhibit A**.

13 **A. Procedure for Review of Appeals Presenting Legal Issues.**

14 For the 13 appeals filed to date that present legal issues, the Receiver believes they can generally  
15 be grouped into four broad categories: (1) objections to the application of a statute of limitations to the  
16 claim; (2) objections to the priority class assigned by the SDR pursuant to NRS 696B.420; (3) coverage  
17 disputes (i.e., disputes about policy interpretation); and (4) issues pertaining to the Federal Motor Carrier  
18 Safety Administration Form MCS-90. For all such claims the Receiver requests that the Court fix a time,  
19 place, and date for a hearing on the referenced claims and direct the Receiver to give notice of such  
20 hearing pursuant to NRS 696B.330(8)(a-b). Additionally, it is requested that claimants and/or their  
21 counsel be allowed to participate in the appeal process *via* electronic means such as Bluejeans or Zoom  
22 as a number do not reside in the state of Nevada.

23 The Receiver further proposes that the Receiver submit an Opening Brief/Motion to the Court  
24 and identified claimants that summarizes the issues on appeal and submits relevant documents; that  
25 claimants be provided thirty (30) days to file an Opposition/Response Brief with the Court and counsel  
26 for the Receiver; and that thereafter the Receiver may have fourteen days (14) to submit any Reply Brief.

27 \_\_\_\_\_  
28 <sup>3</sup> These include appeal received on or before November 31, 2022.

<sup>4</sup> Seven (7) of the filed appeal forms do not state the issue being appealed, and appear to have been filed  
in error or based on a misunderstanding of the appeal process. The SDR will communicate with the  
claimants to resolve these appeals, and will advise whether any additional hearings are needed for this  
group of claims.

1 With the service of the Opening Brief, the Receiver will also provide the claimants notice of the briefing  
2 schedule and hearing date.

3 Because there are only 13 such claims that can be grouped in four categories, and because they  
4 address primarily legal issues for which there is a dispute, the Receiver believes it is appropriate for the  
5 Court to hear the appeals directly. This will be more efficient and will speed up the process and  
6 adjudication of the same, avoid the costs and fees related to the retention of a special master, and avoid  
7 delay associated with the review process. A brief summary of such claims and the appealed issues is set  
8 forth in **Exhibit A**. However, should the Court desire to appoint a Special Master, a procedure can be  
9 established to facilitate the same.<sup>5</sup> Regardless of the person that hears the appeal, ultimately the Court  
10 shall enter an order approving or denying, in whole or in part, a claim filed against an insurer. Any such  
11 order is an appealable order.” NRS 696B.330(9).

12 **B. Procedure for Review of Appeals Presenting Factual Issues.**

13 For the 23 appeals that present factual issues, the Receiver believes it is appropriate for a Special  
14 Master to hear the same and hear additional factual appeals as they are further identified by the Receiver.<sup>6</sup>  
15 It is anticipated that the issue presented in most of these appeals will relate to the proposed dollar amount  
16 of the approved/denied claim (i.e., objections to the SDR’s determination of damages and/or liability for  
17 the claim based on the specific facts and circumstances of the claim).

18 Because NRS 696B.330 (9) contemplates a hearing for such appeals, the Receiver proposes the  
19 same be held *via* electronic means such as Bluejeans or Zoom as a number of Claimants do not reside in  
20 the state of Nevada. Additionally, the Receiver proposes the following process/procedure after a Special  
21 Master is appointed.

- 22 1. Receiver is to provide Special Master with a List of appeals in which there are factual issues;  
23

24 \_\_\_\_\_  
25 <sup>5</sup> As detailed below, the Receiver is proposing that a Special Master be appointed to hear claim appeals  
26 of a factual nature. If this Court would prefer that a Special Master also hear claims with primarily legal  
27 issues, the Receiver proposes that the same Special Master be designated for both purposes.

28 <sup>6</sup> The Receiver proposes that on a quarterly basis, the Special Master be provided a list of newly  
submitted appeals to allow hearings to be set for the same on an ongoing basis. The Receiver will update  
the Court on this process and the number of appeals submitted to the Special Master in status reports  
going forward.

- 1           2. Special Master identifies hearing dates for appeals, setting aside up to one hour for each
- 2           claimants' hearing<sup>7</sup>;
- 3           3. Receiver provides each claimant with notice of the hearing date and appeal process after the
- 4           Special Master identifies same;
- 5           4. Receiver submits Opening Brief to Special Master and claimant by date specified which
- 6           includes:
- 7           a. Proof of Claim filed by claimant (and any supporting documents),
- 8           b. The Notice of Claim Determination sent by the SDR,
- 9           c. Appeal filed by claimant (and any new supporting documents),
- 10          d. Any additional materials considered by the SDR which, in the SDR's discretion, may
- 11          aid the Special Master (*e.g.* claim summary reports ).
- 12          5. Claimant submits Opposition/Response to Special Master and counsel for the Receiver within
- 13          30 days of Opening Brief submittal or on date specified by Special Master;
- 14          6. Receiver submits Reply Brief to Special Master and Claimant at least ten (10) days prior to
- 15          scheduled hearing;
- 16          7. Hearing held by Special Master;
- 17          8. Written findings of fact and conclusions of law submitted to this Court by Special Master and
- 18          Relevant Parties 60 days after date of hearing;<sup>8</sup>
- 19          9. The Special Master is vested with the ability to reasonably alter and/or modify the procedure
- 20          approved by the Court based on his/her judgment and discretion;
- 21          10. The Court shall enter an order approving or denying, in whole or in part the findings of the
- 22          Special Master, which order by the Court shall be an appeal order as contemplated by NRS
- 23          696B.330(9).
- 24
- 25

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26 <sup>7</sup> For cause, the Receiver or a claimant can request the Special Master schedule additional time for a  
27 hearing on an appeal and the decision to provide additional time will be at the discretion of the Special  
28 Master.

<sup>8</sup> The Receiver's counsel will submit proposed findings of fact and conclusions of law as directed by  
the Court and/or the Special Master.

1                   **C. Appointment of Special Master.**

2                   Due to the number of timely claims filed in this matter (1,405 timely), the appointment of a  
3                   Special Master is warranted to ease the burden on the Court and to facilitate a process by which each  
4                   claimant who has appealed the SDR’s claim determination may be heard. As referenced above, as of  
5                   October 31, 2022, claims determination letters were sent to 831 claimants and 43 appeals have been  
6                   filed. The Receiver believes it is appropriate that a Special Master hear the 23 appeals that have been  
7                   designated to primarily involve factual matters and proposes that the Court appoint a retired judge to act  
8                   in this capacity and subject to the procedure set forth above. Additionally, after the appointment of a  
9                   Special Master, the SDR requests the ability to submit additional appeals received from Claimants in  
10                  which the dispute is factual in nature to the Special Master on a quarterly basis, and that the same appeal  
11                  process outlined herein be followed to resolve the same.

12                  The Receiver intends to propose the names of at least two individuals that would be willing serve  
13                  as a Special Master in this matter and will submit the names and proposed rates to the Court at least ten  
14                  days prior to the requested hearing in this matter.<sup>9</sup>

15   **III.**  
16   **CONCLUSION**

17                  Based on the foregoing, the Receiver respectfully requests this Motion be granted and a further  
18                  procedure established for the handling of appeals and hearings relating to the same established  
19                  forthwith.

20                  Dated this 2nd day of December , 2022.

21   /s/ Kara B. Hendricks  
22   MARK E. FERRARIO, Bar No. 1625  
23   KARA B. HENDRICKS, Bar No. 7743  
24   GREENBERG TRAUIG, LLP  
25   10845 Griffith Peak Drive, Suite 600  
26   Las Vegas, NV 89135

27   *Attorneys for Plaintiff*

28                  <sup>9</sup> Subsequent to the filing of this Motion, counsel for the Receiver intends to provide a copy of the same  
to potential Special Master candidates and will attempt to negotiate rates for the handling for the appeal  
process and will provide the Court with proposed candidates and proposed rates prior to the anticipated  
hearing on this matter.

**CERTIFICATE OF SERVICE**

1  
2 Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this 2nd day of  
3 December 2022, I caused a true and correct copy of the foregoing *Motion to Establish Claims Appeal*  
4 *Process and Procedure and for the Appointment of a Special Master to Assist With the Same* to be e-  
5 filed and e-served on the upon the parties all parties registered for e-service. The date and time of the  
6 electronic proof of service is in place of the date and place of deposit in the mail.

7  
8 /s/ Andrea Lee Rosehill  
An employee of Greenberg Traurig, LLP



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# EXHIBIT A

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POC NUMBER	SUBMITTER TYPE	CLAIMANT NAME	SPIRIT CLAIM NO.	TOTAL CLAIMED	TOTAL APPROVED	NRS 696B.420 CLASS	NCD MAIL DATE	APPEAL DUE DATE	APPEAL RECEIVED	ISSUE TYPE	APPEAL ISSUE(S) DESC.
POC SP-000008	Claimant	[redacted]	SA17006781	\$ 1,000,000.00	\$ -	Class B	12/13/2021	2/14/2022	2/15/2022	Fact	Objects to apportionment of liability
POC SP-000026	Claimant	[redacted]	SA18011487	\$ 225,000.00	\$ -	Class B	8/24/2021	10/25/2021	9/21/2021	Fact	Objects to apportionment of liability (assumed); Insufficient documentation
POC SP-000052	Claimant	[redacted]	SA19011891	\$ 3,012.52	\$ -	Class B	8/31/2021	11/1/2021	9/30/2021	Fact	Contingent claim, stat. exc. not met
POC SP-000078	Claimant	[redacted]	SA19011894	\$ 3,687.00	\$ -	Class B	9/16/2021	11/15/2021	10/5/2021	Fact	Contingent claim, stat. exc. not met; No response to SDR request for additional info
POC SP-000277	Claimant	[redacted]	SA17009183	\$ 460,106.79	\$ 149,788.55	Class B	10/26/2021	12/27/2021	11/9/2021	Fact	Objects to amount allowed
POC SP-000308	Claimant	[redacted]	SA17007917	\$ 25,000.00	\$ 2,500.00	Class B	11/2/2021	1/3/2022	1/4/2022	Fact	Causation/liability
POC SP-000309	Claimant	[redacted]	SA17007917	\$ 100,000.00	\$ -	Class B	11/30/2021	1/31/2022	2/15/2022	Fact	Causation/liability
POC SP-000330	Claimant	[redacted]	SA18010677	\$ 80,000.00	\$ 14,250.00	Class B	12/2/2021	1/31/2021	2/15/2021	Fact	Objects to amount allowed
POC SP-000334	Claimant	[redacted]	SA18009848	\$ 130,000.00	\$ 80,000.00	Class B	12/16/2021	2/14/2022	2/15/2022	Fact	Objects to amount allowed
POC SP-000466	Claimant	[redacted]	SA18009914	\$ 750,000.00	\$ 22,233.45	Class B	1/11/2022	3/14/2022	3/15/2022	Fact	Objects to amount allowed
POC SP-000501	Claimant	[redacted]	SA17007178	\$ 1,000,000.00	\$ 38,610.00	Class B	1/20/2022	3/21/2022	3/17/2022	Fact	Objects to amount allowed
POC SP-000749	Claimant	[redacted]	SA18011315	\$ 210,000.00	\$ 75,000.00	Class B	3/8/2022	5/9/2022	5/3/2022	Fact	Objects to priority class
POC SP-000808	Claimant	[redacted]	SA18011191	\$ 500.00	\$ -	N/A	4/12/2022	6/13/2022	6/30/2022	Fact	Objects to denial
POC SP-000810	Claimant	[redacted]	SA17009564	\$ 750,000.00	\$ 9,555.00	Class B	4/12/2022	6/13/2022	6/30/2022	Fact	Objects to amount allowed
POC SP-000819	Claimant	[redacted]	SA18010265	\$ 5,000,000.00	\$ 100,000.00	Class B	4/12/2022	6/13/2022	6/9/2022	Fact	Objects to apportionment of liability (assumed)
POC SP-000845	Claimant	[redacted]	SA15003143	\$ 175,000.00	\$ 38,100.00	Class B	4/19/2022	6/20/2022	6/30/2022	Fact	Objects to amount allowed
POC SP-000847	Claimant	[redacted]	SA15003413	\$ 750,000.00	\$ 87,131.00	Class B	6/1/2022	8/1/2022	6/30/2022	Fact	Objects to amount allowed
POC SP-000871	Claimant	[redacted]	SA18011398	\$ 45,000.00	\$ 15,000.00	Class B	7/19/2022	9/19/2022	9/6/2022	Fact	Objects to amount allowed
POC SP-000908	Claimant	[redacted]	SA18009495	\$ 150,000.00	\$ 22,000.00	Class B	6/20/2022	8/19/2022	8/15/2022	Fact	Objects to amount allowed
POC SP-000910	Claimant	[redacted]	SA18009495	\$ 20,000.00	\$ 5,100.00	Class B	6/20/2022	8/19/2022	8/15/2022	Fact	Objects to amount allowed
POC SP-001000	Claimant	[redacted]	SA17009121	\$ 10,000,000.00	\$ -	N/A	2/8/2022	4/11/2022	4/5/2022	Fact	Causation/liability
POC SP-001225	Claimant	[redacted]	SA17007953	\$ 112,395.11	\$ -	N/A	7/21/2022	9/19/2022	9/8/2022	Fact	Objects to denial; Causation/liability
POC SP-001331		[redacted]	SA17008054	\$ 4,020,766.88		Class B	6/28/2022	8/29/2022	8/29/2022	Fact	Objects to amount allowed; Objection to CMS reporting requirements
POC SP-000305	Claimant	[redacted]	SA15004127	\$ 2,660,880.00	\$ -	N/A	11/2/2021	1/3/2022	12/7/2021	Legal	Statute of Limitations
POC SP-000448	Claimant	[redacted]	SA17008445	\$ 250,000.00	\$ -	N/A	1/11/2021	3/14/2022	2/15/2022	Legal	Statute of Limitations
POC SP-000524	carrier	[redacted]	SA16005460	\$ 20,000.00	\$ 20,000.00	Class G	3/16/2022	5/16/2022	5/16/2022	Legal	Objects to priority class
POC SP-000565	Vendor	[redacted]	SA19011874	\$ 90,646.51	\$ 90,646.51	Class G	3/16/2022	5/16/2022	5/12/2022	Legal	Objects to priority class
POC SP-000636	Policyholder	[redacted]	SA16005378	\$ 101,913.91	\$ -	n/a	2/15/2022	4/18/2022	4/21/2022	Legal	Objects to denial
POC SP-000673	Claimant	[redacted]	SA18010008	\$ 1,154,511.13	\$ 750,000.00	Class B; Class H	2/10/2022	4/11/2022	4/7/2022	Legal	Objects to priority class; MCS-90 Issues
POC SP-000764	Claimant	[redacted]	SA18009673	\$ 1,000,000.00	\$ -	n/a	3/24/2022	5/23/2022	5/17/2022	Legal	Coverage Dispute; MCS-90 issues
POC SP-000929	Policyholder	[redacted]	SA18011233	\$ 14,000.00	\$ 14,000.00	Class B	3/8/2022	5/9/2022	5/12/2022	Legal	Objection to CMS reporting requirement

POC NUMBER	SUBMITTER TYPE	CLAIMANT NAME	SPIRIT CLAIM NO.	TOTAL CLAIMED	TOTAL APPROVED	NRS 696B.420 CLASS	NCD MAIL DATE	APPEAL DUE DATE	APPEAL RECEIVED	ISSUE TYPE	APPEAL ISSUE(S) DESC.
POC SP-000996	Policyholder	[redacted]	SA17007504	\$ 24,829.19	\$ 24,829.19	Class B	6/2/2022	8/1/2022	7/14/2022	Legal	Objects to amount allowed; Insured submitted record of additional defense fees incurred since last POC supplement (determine whether claimant may submit additional fees after claim bar date and NCD sent out)
POC SP-001019	Carrier	[redacted]	SA16005525	\$ 770,000.00	TBD	Class G	7/14/2022	9/12/2022	8/29/2022	Legal	Objects to priority class
POC SP-001064	Vendor	[redacted]	SA16005086	\$ 115,665.67	TBD	Class G	2/22/2022	4/25/2022	4/21/2022	Legal	Objects to priority class
POC SP-001087	Vendor	[redacted]	SA17009025; SA16007048	\$ 66,096.13	TBD	Class G	2/22/2022	4/25/2022	4/25/2022	Legal	Objects to priority class
POC SP-001280	Claimant	[redacted]	SA18009588	\$ 750,000.00	\$ -	N/A	5/10/2022	7/11/2022	7/14/2022	Legal	Coverage Dispute
POC SP-000136	Claimant	[redacted]	SA16005698	Not Provided	\$ 1,872.48	Class B	9/29/2021	11/29/2021	11/9/2021	Not Stated	Appeal form states amount that was already approved for the claim
POC SP-000187	Claimant	[redacted]	SA19011736	\$ 60,000.00	\$ -	N/A	10/26/2021	12/27/2021	12/7/2021	Not Stated	Objects to apportionment of liability (assumed); Attorney re-submitted POC materials, without further explanation
POC SP-000235	Claimant	[redacted]	SA19011736	\$ 80,000.00	\$ -	N/A	10/26/2021	12/27/2021	12/7/2021	Not Stated	
POC SP-000236	Claimant	[redacted]	SA19011736	\$ 30,000.00	\$ -	N/A	10/26/2021	12/27/2021	12/7/2021	Not Stated	
POC SP-000367	Carrier	[redacted]	SA16012049	\$ 51,233.00	TBD	Class G	2/22/2022	4/25/2022	3/15/2022	Not Stated	
POC SP-000418	Carrier	[redacted]	20816356	\$ 3,119.10	TBD	Class G	2/22/2022	4/25/2022	3/8/2022	Not Stated	re-submission of POC, appeal issue not stated
POC SP-000812	State/Local Gov	[redacted]		\$ 296.33	N/A	Class E	5/19/2022	7/18/2022	7/14/2022	Not Stated	Appeal form states amount that was already approved for the claim