



1 **SUPPL**
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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

**SUPPLEMENT IN SUPPORT OF
RECEIVER’S MOTION TO ESTABLISH
CLAIMS APPEAL PROCESS AND
PROCEDURE AND FOR THE
APPOINTMENT OF A SPECIAL
MASTER TO ASSIST WITH THE SAME**

Hearing Date: March 2, 2023
Hearing Time: 10:00 a.m.

24 COMES NOW, the Commissioner of Insurance and Receiver (“Receiver”) of Spirit
25 Commercial Auto Risk Retention Group, Inc. (“Spirit”), and CANTILO & BENNETT, L.L.P., Special
26 Deputy Receiver (“SDR”), and files this Supplement (“Supplement”) in Support of Receiver’s Motion
27 to Establish a Claims Appeal Process and Procedure and for the Appointment of a Special Master to
28 Assist with the Same filed on December 2, 2022 (“Motion”).

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

3 Dated this 1st day of March, 2023.

4 /s/ Kara B. Hendricks

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11 **MEMORANDUM OF POINTS OF AUTHORITIES**

12 The Receiver seeks to supplement its request to appoint special masters to evaluate Class B claim
13 appeals involving factual issues (“Factual Appeals”). In its Motion, the Receiver sought to establish a
14 procedure for evaluating claim appeals. Because there were fourteen-hundred and five (1,405) timely
15 Proof of Claims (“POC”) submitted to the SDR, forty-three (43) of which have been appealed, the
16 Receiver suggested that the Court appoint a special master or special masters to oversee the Factual
17 Appeals. Out of the forty-three (43) currently filed appeals, twenty-three (23) of them involve factual
18 disputes that could be resolved by the proposed special masters and through the procedure proposed in
19 the Motion.

20 **1. Proposed Appointment of Two Special Masters.**

21 As noted in at the hearing held on January 9, 2023, due to the number of appeals needing review
22 and to ensure sufficient time for the consideration of the same, the Receiver believes it prudent to appoint
23 two special masters who can divide the appealed claims. Through this Supplement, the Receiver
24 proposes the Court to appoint the Hon. Jennifer Togliatti (Ret.) and David Lee, who have agreed to serve
25 as special masters for this matter at reduced rates. Judge Togliatti and Mr. Lee are highly experienced,
26 skilled, and reputable members of the legal community who have collectively presided over Nevada
27 disputes for decades.

28 Judge Togliatti is a former Eighth Judicial District Court judge who has experience presiding
over disputes in judicial roles for over two decades. *See* Biography of the Hon. Jennifer Togliatti,

1 attached as **Exhibit 1**. During her tenure, Judge Togliatti facilitated the settlement of several of Nevada’s
2 largest and most complex commercial disputes. *Id.* Following decades of judicial experience, Judge
3 Togliatti now focuses on ADR with a focus on complex matters, including serving as a mediator, special
4 master, and private judge. *Id.* She also serves as a chair of the Nevada Gaming Commission—a panel
5 that makes final determinations over gaming license applications, regulation changes, and disciplinary
6 issues. *Id.* Judge Togliatti’s normal rate is ranges between \$720 - \$1200 an hour. However, Judge
7 Togliatti has agreed to serve as a special master for this matter at the rate of \$550.00/hour. Additionally,
8 although Judge Togliatti will hear numerous appeals, there will be a one-time administrative fee of
9 \$250.00 that is to be paid to Advanced Resolution Management and will cover the duration of her
10 involvement. Judge Togliatti’s reputable track-record and breadth of expertise makes her an excellent
11 candidate to serve as a court-appointed special master.

12 Mr. Lee boasts over 25 years of mediating and arbitrating complex commercial disputes. *See*
13 Biography of David S. Lee, Esq., attached as **Exhibit 2**. Mr. Lee not only has decades of complex
14 commercial litigation experience, but he has mediated more than 500 disputes across a spectrum of
15 industries. Mr. Lee’s normal rate generally ranges from \$600-650 an hour, but he has agreed to serve as
16 a special master in this matter at the reduced rate of \$550.00/hour. Mr. Lee will not require the payment
17 of an administrative fee.

18 Because both of these individuals are highly qualified, skilled, and reputable members who have
19 agreed to accept a special master appointment at a reduced rate, the Receiver respectfully requests that
20 the Court grant the Motion and appoint Judge Togliatti and Mr. Lee. Due to the amount of work that is
21 anticipated, the proposed special masters have each requested a \$7,500 retainer that they will bill against
22 for work completed in this matter. The Special Deputy Receiver (“SDR”) believes this request to be fair
23 and reasonable given the number of appeals and scope of the issues to be determined.

24 **2. Proposed Review Process and Findings.**

25 Based on further discussions with Judge Togliatti and Mr. Lee regarding the appeals process, the
26 Receiver believes it is also prudent to seek clarity from the Court regarding the standard for review and
27 the proposed form that will be utilized for the findings of fact.

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 1st day of March 2023, I caused a true and correct copy of the foregoing ***Supplement in Support of Receiver’s Motion to Establish Claims Appeal Process and Procedure and for the Appointment of a Special Master to Assist With the Same*** 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

EXHIBIT 1

Please contact the SDR at 512-478-6000 to request a copy of Exhibit 1.

EXHIBIT 2

Please contact the SDR at [512-478-6000](tel:512-478-6000) to request a copy of Exhibit 2.

EXHIBIT 3

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**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
REGARDING APPEAL OF SPIRIT
POC _____**

24 The undersigned Special Master having considered the Appeal submitted relating to Proof
25 of Claim No. _____, including but not limited to Receiver's Open Brief, the
26 Response/Opposition submitted by Claimant, the Reply submitted by the Receiver and a hearing
27 being held on _____, and for good cause shown, finds as follows:

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Findings of Fact & Conclusions of Law

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2 1. Spirit Commercial Auto Risk Retention Group, Inc. (“Spirit” or the “Company”) is
3 an insolvent Risk Retention Group that was put in Permanent Receivership by an order entered by
4 the Court in this matter on February 27, 2019 (“Receivership Order”).

5 2. Thereafter, on November 6, 2019, the Court entered its Final Order Placing Spirit into
6 Liquidation (the “Liquidation Order”) and its Final Order Setting Claims Filing Deadline for Spirit
7 and Related Relief (“the Claims Order”).

8 3. The Claims Order established a Claims Filing Deadline and procedures for filing
9 claims against Spirit. On September 30, 2020, the Court entered an order extending the claims filing
10 deadline to May 31, 2021.

11 4. Claimant _____, submitted a timely claim which was reviewed and
12 evaluated by the Special Deputy Receiver (“SDR”) of Spirit, who sent a Notice of Claims
13 Determination (“NCD”) to claimant.

14 5. Under the Receivership Appeal Procedure, each Claimant had 60 days to object in
15 writing to the SDR’s determination(s). The Claimant who filed POC No. _____ (“Appealed
16 Claim”) objected to the SDR’s determination regarding the claim.

17 6. The Appealed Claim relates to a claim for _____ based on an
18 incident occurring _____.

19 7. Pursuant to the Receivership Appeal Procedure, the appeal was assigned to the
20 undersigned Special Master for review and consideration and the SDR and Claimant provided written
21 briefs for consideration. A hearing was also held on _____.

22 8. Based on my review of the record and after hearing argument regarding the same, the
23 SDR’s Notice of Claims Determination is hereby _____ [affirmed, modified, or
24 denied – select one], as to the allowed amount for the claim; and (2) is hereby _____

1 [affirmed, modified, or denied – select one], as to the priority classification assigned to the claim
2 pursuant to NRS 696B.420.

3 **[if affirmed]**

4 9. The SDR's finding that the claim was _____ is supported by evidence
5 submitted including _____.

6 **[if modified or reversed]**

7 9. Based on my review, I am [modifying/reversing] the SDR's determination of the
8 Appealed Claim as follows: _____.

9 10. This [modification/reversal] is warranted because
10 _____.

11 11. Accordingly, the Appealed Claim should be approved in the amount of _____,
12 and assigned Class ____ priority pursuant to NRS 696B.420.

13 Based on the findings and for good cause appearing therefore,

14 **IT IS HEREBY ORDERED** that the Receiver's determination regarding Claim No.
15 _____ is [Affirmed, Modified or Reversed] in accordance with the above.

16
17 Respectfully submitted by:

18
19 _____
Special Master

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