

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

STATE OF NEVADA, EX REL.  
COMMISSIONER OF INSURANCE,  
BARBARA D. RICHARDSON, IN HER  
OFFICIAL CAPACITY AS RECEIVED  
FOR SPIRIT COMMERCIAL AUTO  
RISK RETENTION GROUP, INC

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA, IN AND FOR THE  
COUNTY OF CLARK, AND THE  
HONORABLE, MARK R. DENTON,  
DISTRICT JUDGE, DEPT. 13

Respondents,

And Concerning,

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,  
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

Electronically Filed  
Apr 01 2021 03:12 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court Case No.:

Dist. Ct. Case No.: **A-20-809963-B**

**PETITIONER'S APPENDIX**

**Volume III (APP0452-669)**

CHELSEA PREMIUM FINANCE CORPORATION; 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; 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; and 195 GLUTEN FREE LLC, a New Jersey Limited Liability Company,

Real Parties in Interest,

Mark E. Ferrario, Esq., NBN 1625  
Kara B. Hendricks, Esq., NBN 7743  
Tami D. Cowden, Esq., NBN 8994  
**GREENBERG TRAURIG, LLP**  
10845 Griffith Peak Drive, Ste. 600  
Las Vegas, Nevada 89135  
Telephone (702) 792-3773  
Facsimile (702) 792-9002  
*Attorneys for Petitioner*

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I	APP0140-206	4/2/20	Defendant Daniel George's Answer to Complaint
II	APP0207-268	4/2/20	Defendant ICAP Management Solutions, LLC's Answer to Complaint
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IV	APP0719-751	6/4/20	Plaintiff's Opposition to CTC Defendants' Motion to Compel Arbitration
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## CERTIFICATE OF SERVICE

Pursuant to NRAP 25,1 certify that I am an employee of GREENBERG TRAURIG, LLP, that in accordance therewith, that on April 1, 2021, I caused a copy of *Petitioner's Appendix* to be served via U.S. Mail, first class postage prepaid, and via the 8th Judicial District Court's e-service system, upon the below identified Real Parties:

<p>William R. Urga, Esq. David J. Malley, Esq. Michael R. Ernst, Esq. <b>Jolley Urga Woodbury &amp; Holthus</b> 330 S. Rampart Blvd., Suite 380 Las Vegas, Nevada 89145 <a href="mailto:wru@juwlaw.com">wru@juwlaw.com</a>; <a href="mailto:djm@juwlaw.com">djm@juwlaw.com</a>; <a href="mailto:mre@juwlaw.com">mre@juwlaw.com</a></p> <p><i>Attorneys for Real Parties in Interest Thomas Mulligan</i></p>	<p>Matthew T. Dushoff, Esq. Jordan D. Wolff, Esq. <b>Satzman Mugan Dushoff</b> 1835 Village Center Circle Las Vegas, Nevada 89134 <a href="mailto:Mdushoff@nvbusinesslaw.com">Mdushoff@nvbusinesslaw.com</a> <a href="mailto:jwolff@nvbusinesslaw.com">jwolff@nvbusinesslaw.com</a></p> <p><i>Attorneys for Real Parties in Interest CTC Transportation Insurance Services of Missouri, LLC, CTC Transportation Insurance Services, LLC and CTC Transportation Services of Hawaii, LLC</i></p>
<p>John R. Bailey, Esq. Joshua M. Dickey, Esq. Rebecca L. Crooker, Esq. <b>Bailey Kennedy</b> 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148 <a href="mailto:JBailey@BaileyKennedy.com">JBailey@BaileyKennedy.com</a> <a href="mailto:JDickey@BaileyKennedy.com">JDickey@BaileyKennedy.com</a> <a href="mailto:RCrooker@BaileyKennedy.com">RCrooker@BaileyKennedy.com</a></p> <p><i>Attorneys for Real Parties in Interest Criterion Claim Solutions of Omaha, Inc.</i></p>	

<p>Thomas E. McGrath, Esq.  Russell D. Christian, Esq.  <b>Tyson &amp; Mendes LLP</b>  3960 Howard Hughes Parkway, #600  Las Vegas, Nevada 89169  <a href="mailto:tmcgrath@tysonmendes.com">tmcgrath@tysonmendes.com</a>  <a href="mailto:rchristian@tysonmendes.com">rchristian@tysonmendes.com</a></p> <p><i>Attorneys for Real Parties in Interest  Attorneys for Defendants Pavel  Kapelnikov; Chelsea Financial Group,  Inc. a California corporation; Chelsea  Financial Group, Inc. a New Jersey  corporation; Global Forwarding  Enterprises, LLC; Kapa Management  Consulting, Inc.; Kapa Ventures, Inc.;  and Igor and Yanina Kapelnikov</i></p>	<p>L. Christopher Rose, Esq.  Kirill V. Mikhaylov, Esq.  William A. Gonzales, Esq.  <b>HOWARD &amp; HOWARD  ATTORNEYS PLLC</b>  3800 Howard Hughes Parkway, #1000  <a href="mailto:lcr@h2law.com">lcr@h2law.com</a>; <a href="mailto:kvm@h2law.com">kvm@h2law.com</a>  <a href="mailto:wag@h2law.com">wag@h2law.com</a></p> <p><i>Attorneys for Defendants 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 Financial Group, Inc. a  Missouri corporation</i></p>
<p>Robert S. Larsen, Esq.  Wing Yan Wong, Esq.  <b>Gordon Rees Scully Mansukhani, LLP</b>  300 South Fourth Street, Suite 1550  Las Vegas, Nevada 89101  <a href="mailto:rlarsen@grsm.com">rlarsen@grsm.com</a>  <a href="mailto:wwong@grsm.com">wwong@grsm.com</a></p> <p><i>Attorneys for Real Parties in Interest  Lexicon Insurance Management LLC,  Daniel George and ICAP Management  Solutions, LLC</i></p>	<p>Tamara Beatty Peterson, Esq.  Nikki L. Baker, Esq.  David E. Astur, Esq.  <b>Peterson Baker, PLLC</b>  701 S. 7th Street  Las Vegas, Nevada 89101  <a href="mailto:tpeterson@petersonbaker.com">tpeterson@petersonbaker.com</a>  <a href="mailto:nbaker@petersonbaker.com">nbaker@petersonbaker.com</a>  <a href="mailto:dastur@petersonbaker.com">dastur@petersonbaker.com</a></p> <p><i>Attorneys for Real Parties in Interest  Matthew Simon Jr. and Scott McCrae</i></p>

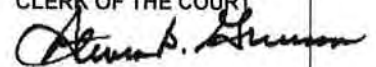
<p>Sheri M. Thome, Esq.  Rachel L. Wise, Esq.  <b>Wilson, Elser, Moskowitz,  Edelman &amp; Dicker LLP</b>  6689 Las Vegas Blvd., Suite 200  Las Vegas, Nevada 89119  <a href="mailto:Sheri.Thome@wilsonelser.com">Sheri.Thome@wilsonelser.com</a>  <a href="mailto:Rachel.Wise@wilsonelser.com">Rachel.Wise@wilsonelser.com</a></p> <p><i>Attorneys for Real Parties in Interest  Attorneys for Defendant James Marx,  John Maloney, Virginia Torres, and  Carlos Torres</i></p>	<p>Kurt R. Bonds, Esq.  Trevor R. Waite, Esq.  <b>Alverson Taylor &amp; Sanders</b>  6605 Grand Montecito Pkwy, Ste 200  Las Vegas, Nevada 89149  <a href="mailto:efile@alversontaylor.com">efile@alversontaylor.com</a></p> <p><i>Attorneys for Real Parties in Interest  Brenda Guffey</i></p>
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With a courtesy copy to

Judge Mark R. Denton  
Eighth Judicial District Court  
Clark County, Nevada  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

via email on April 1, 2021 to [Dept13lc@clarkcountycourts.us](mailto:Dept13lc@clarkcountycourts.us)

/s/ Andrea Lee Rosehill  
An Employee of Greenberg Traurig LLP



**MARB**

JOHN R. BAILEY

Nevada Bar No. 0137

JOSHUA M. DICKEY

Nevada Bar No. 6621

REBECCA L. CROOKER

Nevada Bar No. 15202

**BAILEY ♦ KENNEDY**

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

[JBailey@BaileyKennedy.com](mailto:JBailey@BaileyKennedy.com)

[JDickey@BaileyKennedy.com](mailto:JDickey@BaileyKennedy.com)

[RCrooker@BaileyKennedy.com](mailto:RCrooker@BaileyKennedy.com)

*Attorneys for Defendant*

*Criterion Claim Solutions of Omaha, Inc.*

DISTRICT COURT

CLARK COUNTY, NEVADA

BARBARA D. RICHARDSON IN HER  
CAPACITY AS THE STATUTORY  
RECEIVER FOR SPIRIT COMMERCIAL  
AUTO RISK RETENTION GROUP, INC.,

Plaintiff,

vs.

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;

Case No. A-20-809963-B

Dept. No. XIII

**DEFENDANT CRITERION CLAIM  
SOLUTIONS OF OMAHA, INC.'S  
MOTION TO COMPEL ARBITRATION**

**[HEARING REQUESTED]**

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,

Defendants.

Defendant Criterion Claim Solutions of Omaha, Inc. ("Criterion") moves the Court to compel arbitration of the claims asserted against it by Plaintiff Spirit Commercial Auto Risk Retention Group, Inc. ("Spirit")—through its statutory receiver Commissioner of Insurance Barbara D. Richardson (the "Receiver")—pursuant to the mandatory dispute resolution clause in the parties' September 1, 2011 Claims Administration Agreement ("Criterion/Spirit Agreement" or the

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1 “Agreement”). This motion is based on the pleading and papers on file, the attached memorandum  
2 of points and authorities, and any oral argument this Court may entertain.

3 DATED this 14<sup>th</sup> day of May, 2020.

4 BAILEY ♦ KENNEDY

5 By: /s/ Joshua M. Dickey

6 JOHN R. BAILEY

7 JOSHUA M. DICKEY

8 REBECCA L. CROOKER

9 *Attorneys for Defendant*

10 *Criterion Claim Solutions of Omaha, Inc.*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

By including claims against Criterion in this action, the Receiver—who stands in Spirit’s shoes and is acting on its behalf—seeks to circumvent the mandatory arbitration clause contained in the Criterion/Spirit Agreement. The Agreement expressly provides: “**Binding arbitration shall be the exclusive method for resolving disputes between the parties.**” Indeed, the Complaint acknowledges that the Agreement is valid and enforceable and alleges Criterion breached the terms of that Agreement. Moreover, notwithstanding the Receiver’s efforts to transform what should be a straight-forward dispute over contractual performance into a sinister conspiracy, the other claims conjured up by the Receiver against Criterion relate to Criterion’s contractual performance and are subject to arbitration.<sup>1</sup> The Receiver, who is solely acting on Spirit’s behalf, cannot, on the one hand, rely on the Criterion/Spirit Agreement, and on the other hand, refuse to honor its promise to arbitrate all “disputes between the parties.”

Here, there can be no legitimate quarrel that all the claims asserted against Criterion are subject to arbitration, and, in any event, the Federal Arbitration Act provides that any disagreements concerning the arbitrability of a dispute *must* be resolved in favor of arbitration. Consequently, this Court is required to compel arbitration of the claims asserted against Criterion and dismiss, or alternatively stay, this action pending arbitration.

**II. STATEMENT OF FACTS**

**A. The Criterion/Spirit Agreement**

Spirit is an insurance company formed to transact commercial auto liability insurance and it specialized in insuring commercial truck owners. On February 24, 2012, Spirit received its Nevada Certificate of Authority and was permitted to commence operations under the authority of NRS 694C. Spirit transacted business in Nevada until approximately January 2019.

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<sup>1</sup> Prior to the filing of this Motion, Criterion requested that the Receiver submit these claims to arbitration. The Receiver refused.

1 Criterion is a Nebraska entity hired by Spirit to act as a third-party administrator. On  
2 September 1, 2011, Spirit and Criterion entered into the Criterion/Spirit Agreement.<sup>2</sup> The Agreement  
3 was for the period of three years, with the option of renewal thereafter. Under the terms of the  
4 Agreement, Criterion was to provide claims management services to Spirit, including recommending  
5 loss reserves on claims, settling claims, and issuing loss payments and expense payments. Spirit  
6 agreed to fund the payment of all claims and claim related expenses, and to compensate Criterion for  
7 its fees and expenses.<sup>3</sup>

8 In addition to specifying the obligations of each party, the Agreement contained a mandatory  
9 arbitration clause; which expressly states:

10 **13. *Binding arbitration shall be the exclusive method for resolving disputes between***  
11 ***the parties.*** Any dispute concerning the terms of this agreement or performance by the  
12 parties under this agreement which cannot be resolved by agreement of the parties shall  
13 be submitted to binding arbitration before an arbitrator agreed upon by the parties. If  
14 the parties cannot agree, then each party shall select an arbitrator and these two  
15 arbitrators shall select a third arbitrator. The decision of the arbitrator or arbitrators  
16 shall be final. The arbitrator or arbitrators selected pursuant to this paragraph shall  
17 have significant property and casualty insurance company background and experience.  
18 Each party shall pay its own attorneys' fees and any other expenses in connection with  
19 the resolution of any dispute relating to this agreement. Notwithstanding the provisions  
20 of paragraph 21, "Choice of Law,"<sup>4</sup> this agreement to arbitrate is governed by the  
21 Federal Arbitration Act, 9 U.S.C. 1 through 15 (1988).<sup>5</sup>

17 **B. The Receivership**

18 On January 11, 2019, the Nevada Insurance Commissioner (the "Commissioner") filed a  
19 Petition for Appointment of Commissioner as Receiver in the Eighth Judicial District Court.<sup>6</sup>

21 <sup>2</sup> A true and correct copy of the Criterion/Spirit Agreement is attached hereto as Exhibit A.  
22 See Compl. ¶57 ("In 2011, Spirit entered into a claims administration agreement with Criterion . . .  
under which Criterion would provide claims management services to Spirit.").

23 <sup>3</sup> See *id.*

24 <sup>4</sup> The Criterion/Spirit Agreement contains a provision specifying that the "agreement shall be  
interpreted and enforced in accordance with the laws of the State of Nebraska." Agreement § 18,  
Ex. A. However, the enforcement of the arbitration is procedural and is accordingly governed by  
25 Nevada law. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 77-78 (1938); *Tipton v. Heeren*, 109 Nev. 920,  
922 n.3 (1993) ("Nevada law governs the procedural query.")

26 <sup>5</sup> Criterion/Spirit Agreement, Ex. A.

27 <sup>6</sup> See 1/11/2019 Petition for Appointment of Commissioner as Receiver and Other Permanent  
28 Relief, on file in case number A-19-787325-B).

1 Although Spirit held over \$40 million in assets, and had never failed to pay a valid claim on behalf  
2 of its policy holders, the court granted the Petition and appointed the Commissioner as Spirit's  
3 Permanent Receiver on February 27, 2019.<sup>7</sup>

4 C. The Instant Litigation

5 On February 6, 2020, the Receiver, acting on Spirit's behalf, filed the instant action.  
6 Significantly, this action does not involve a creditor or policy holder's claims against Spirit. Rather,  
7 Spirit, through the Receiver, asserts various breach of contract and tort claims against Spirit's  
8 contractors, third-party administrators, and the individual directors and owners of those entities. *See*  
9 *State ex. rel. Comm'r of Ins. v. Eighth Judicial Dist. Court of Nev.*, No. 77682, 2019 Nev. Unpub.  
10 LEXIS 1366, at \*3 (Nev. Dec. 19, 2019) (noting that the Commissioner was acting as a receiver on  
11 behalf of the insurance company and holding that the district court did not err in requiring arbitration  
12 of claims brought by the Commissioner on behalf of the insurer).

13 In this action, the Receiver points the finger at nearly everyone who did business with Spirit,  
14 while at the same time alleging that Spirit, itself, made false representations.<sup>8</sup> Criterion is one of  
15 twenty-four entities the Receiver has sued following its seizure of Spirit.

16 Criterion's inclusion in this litigation stems from the Criterion/Spirit Agreement. The  
17 Receiver acknowledges that "[o]n or about September 1, 2011, Criterion entered into a Claims  
18 Administration Agreement with Spirit (the "Criterion Agreement") for a three-year term which was  
19 subsequently renewed by the parties thereto."<sup>9</sup> Moreover, the Receiver states that the Agreement  
20 "was a valid and enforceable contract"<sup>10</sup> pursuant to which "Criterion was to provide claims  
21 management services on behalf of Spirit and had authority to recommend loss reserves on claims,  
22 settle claims and issue loss payments and expense payments up to an agreed upon claim amount."<sup>11</sup>

23  
24 <sup>7</sup> See 2/27/2019 Permanent Injunction and Order Appointing Commissioner as Permanent  
Receiver of Spirit Commercial Auto Risk Retention Group, Inc., on file in case number A-19-  
787325-B (the "Receivership Order" or "Order").

25 <sup>8</sup> See, e.g., Compl. ¶ 53.

26 <sup>9</sup> Compl. ¶ 141.

27 <sup>10</sup> Compl. ¶ 275.

28 <sup>11</sup> Compl. ¶ 142.

Each of the nine claims asserted against Criterion are premised upon the Criterion/Spirit Agreement.<sup>12</sup> Without the existence of the Agreement, Spirit—and thus its Receiver—would have no standard against which to measure Criterion’s performance as Third-Party Administrator to Spirit. Simply put, without the Criterion/Spirit Agreement, no basis would exist for the claims against Criterion.

<sup>12</sup> The Commissioner asserts the following claims against Criterion:

- Third Cause of Action—Breach of Contract (alleging that the “Criterion Agreement was a valid and enforceable contract,” that “Criterion failed to perform under the Criterion Agreement,” and “[a]s a direct and proximate result of Criterion’s conduct, Plaintiff has suffered damages...” (Compl. ¶¶ 275, 277–78));
- Ninth Cause of Action—Breach of the Implied Covenant of Good Faith and Fair Dealing arising out of the Criterion Agreement (alleging that “[e]very contract, including the Criterion Agreement, contains an implied covenant of good faith and fair dealing in which neither party will do anything which will injure the right of the other to receive the benefits under the contract.” (Compl. ¶ 322));
- Tenth Cause of Action—Nevada RICO (alleging that Criterion acted in contravention of the Criterion Agreement by “set[ting] claim reserves at artificially low amounts...with the intent of overstating Spirit’s financial performance and the effect of exposing Spirit to claim excessive exposure for policy losses without reserving sufficient funds to pay the losses.” (Compl. ¶ 335(f));
- Eleventh Cause of Action—Unjust Enrichment (alleging that Criterion wrongfully retained “funds and/or other property rightfully belonging to Spirit” which it received in connection with the Criterion Agreement (Compl. ¶ 346));
- Twelfth Cause of Action—Fraud (alleging that Criterion, who set claims reserves for Spirit pursuant to the Criterion Agreement, did so “at artificially low amounts... with the intent of overstating Spirit’s financial performance.” (Compl. ¶ 354, 363));
- Thirteenth Cause of Action—Civil Conspiracy (alleging that Criterion “set claim reserves at artificially low amounts... with the intent of overstating Spirit’s financial performance.” (Compl. ¶ 374(g));
- Fifteenth Cause of Action—Avoidance of Transfers (alleging that Criterion, through its performance under the Criterion Agreement, received from CTC “funds and/or other property rightfully belonging to Spirit.” (Compl. ¶ 388));
- Sixteenth Cause of Action—NRS 696B Voidable Transfers (alleging that Criterion, through its performance under the Criterion Agreement, “transferred funds and/or other property rightfully belonging to Spirit.” (Compl. ¶ 401);
- Seventeenth Cause of Action—NRS 696B Recovery of Distributions and Payments (alleging that Criterion, through its performance under the Criterion Agreement, “transferred funds and/or other property rightfully belonging to Spirit.” (Compl. ¶ 412);
- Eighteenth Cause of Action—NRS 692C.402 Recovery of Distributions and Payments (alleging that Criterion, through its performance under the Criterion Agreement, “transferred funds and/or other property rightfully belonging to Spirit.” (Compl. ¶ 424).

### III. ARGUMENT

#### A. The Federal Arbitration Act Requires Arbitration of the Claims Against Criterion

The arbitration clause contained in the Criterion/Spirit Agreement specifically provides that the “agreement to arbitrate is governed by the Federal Arbitration Act.” Under the Federal Arbitration Act (“FAA”), a written provision in a contract “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.”<sup>13</sup> 9 U.S.C. § 2. This provision reflects “both a liberal federal policy favoring arbitration, and the fundamental principle that arbitration is a matter of contract[.]” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (quotation marks omitted) (citations omitted).<sup>14</sup>

The purpose of the FAA is “to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983). To effectuate that goal, Congress limited the role of courts, allowing them to “consider only issues relating to the making and performance of the agreement to arbitrate.” *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967). Thus, where there is a written agreement to arbitrate and the dispute at issue is within the scope of the arbitration agreement, the court must compel arbitration. *See Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 218, (1985) (The FAA “leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.”); *Telepet USA, Inc. v. Qualcomm, Inc.*, No. 2:14-cv-00568-GMN-PAL, 2014 U.S. Dist. LEXIS 167320, at \*4 (D. Nev. Dec. 3, 2014) (“[T]he Court’s ‘role under the Act is ... limited to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue.’”) (quoting *Lee v. Intelius, Inc.*,

<sup>13</sup> These defenses include “generally applicable contract defenses, such as fraud, duress, or unconscionability,” none of which are applicable here. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). The Commissioner has raised no arguments as to the validity of the Criterion/Spirit Agreement.

<sup>14</sup> Nevada’s Uniform Arbitration Act contains virtually the same language as the FAA, and like the FAA, Nevada law strongly favors arbitration. *See Burch v. Second Judicial Dist. Ct.*, 118 Nev. 438, 442–43, 49 P.3d 647, 650 (2002).

1 737 F.3d 1254, 1261 (9th Cir. 2013)).<sup>15</sup> “The standard for demonstrating arbitrability is not  
2 high[]”<sup>16</sup> and “any doubts concerning the scope of arbitrable issues should be resolved in favor of  
3 arbitration, whether the problem at hand is the construction of the contract language itself or an  
4 allegation of waiver, delay, or a like defense to arbitrability.” *Moses H. Cone Mem’l Hosp. v.*  
5 *Mercury Constr. Corp.*, 460 U.S. at 24–25.<sup>17</sup>

6 Here, the arbitration provision in the Agreement provides that “[b]inding arbitration **shall be**  
7 **the exclusive method** for resolving disputes between the parties.” Under the clear language of this  
8 clause, any dispute between Spirit and Criterion *must* be resolved in arbitration. This clause  
9 encompasses each and every one of the claims asserted against Criterion. *See, e.g., Mentor Capital,*  
10 *Inc. v. Bhang Chocolate Co.*, No. 3:14-CV-3630 LB, 2014 U.S. Dist. LEXIS 162857, at \*7–\*8 (N.D.  
11 Cal. Nov. 19, 2014) (“The arbitration clause covers ‘any dispute’ between the parties. **Any**  
12 **dispute.**”) (emphasis added); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 336 (2011)  
13 (enforcing arbitration agreement providing “for arbitration of all disputes between the parties”);  
14 *Henderson v. Watson*, No. 64545, 2015 Nev. Unpub. LEXIS 525, at \*1 (Nev. April 29, 2015)  
15 (enforcing an arbitration agreement “providing that all disputes would be resolved through binding  
16 arbitration”).

17 That the claims against Criterion are being asserted by the Receiver on behalf of Spirit does  
18 not vitiate the FAA’s mandate that these claims be arbitrated. The Receiver “stands in the shoes” of  
19 Spirit, and her claims and defenses against Criterion are derivative of Spirit’s. *O’Melveny & Myers*  
20 *v. FDIC*, 512 U.S. 79, 86 (1994); *Ommen v. Ringlee*, No., 18-0335, 2020 Iowa Sup. LEXIS 36, at \*3  
21 (Iowa April 3, 2020). Indeed, the Nevada Supreme Court recently refused to overturn an order  
22

23 <sup>15</sup> *Accord Kindred v. Second Judicial Dist. Ct.*, 116 Nev. 405, 410, 996 P.2d 903, 907 (2000)  
24 (stating that a court, in determining whether to compel arbitration, must only consider “(1) whether  
25 the parties have made an agreement to arbitrate; (2) the scope of the agreement; and (3) whether the  
26 claims are arbitrable”).

27 <sup>16</sup> *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 719 (9th Cir. 1999).

28 <sup>17</sup> *Accord Exber, Inc. v. Sletten Constr. Co.*, 92 Nev. 721, 729, 558 P.2d 517, 522 (1976) (“All  
doubts concerning the arbitrability of the subject matter of the dispute are to be resolved in favor of  
arbitration. Once it is determined that an arbitrable issue exists, the parties are not to be deprived by  
the courts of the benefits of arbitration, for which they bargained—speed in the resolution of the  
dispute, and the employment of the specialized knowledge and competence of the arbitrator.”)

1 compelling this very Receiver to arbitrate claims in a similar matter. In *State ex rel. Comm’r of Ins.*  
2 *v. Eighth Jud. Dist. Ct.*, the Court declined to adopt the view that “enforcement of an arbitration  
3 agreement against an insurance liquidator pursuing contract and tort damages against third parties  
4 would thwart the insurance liquidator’s broad statutory powers and the general policy..., to  
5 concentrate creditor claims in a single, exclusive forum.” No. 77682, 2019 Nev. Unpub. LEXIS  
6 1366, at \*3 (Nev. December 19, 2019). Rather, the Court held that the “issue...is not a creditor’s  
7 claim against the Co-Op; at issue is Richardson’s breach-of-contract and tort claims against several  
8 third parties on behalf of the Co-Op, which happens to be in receivership.” *Id.* at \*3–\*4.  
9 Consequently, the Nevada Supreme Court refused to issue a writ overturning an order compelling  
10 the Receiver to arbitrate its claims.

11 So too here. The Receiver is bringing claims on behalf of Spirit, which happens to be in  
12 receivership. Just as Spirit was bound to arbitrate any claims against Criterion, so too is the  
13 Receiver, who is acting on its behalf. *See Milliman, Inc. v. Roof*, 353 F. Supp. 3d 588 (E.D. Ken.  
14 2018) (finding that the Insurance Commissioner, as Liquidator, was bound to the terms of the  
15 arbitration agreement between Milliman and the insolvent insurer); *Ommen v. Ringlee*, No. 18-0335,  
16 2020 Iowa Sup. LEXIS 36, at \*3 (Iowa April 3, 2020) (holding that “the court-appointed liquidator  
17 is bound by the arbitration provision because, under the principles of contract law and as pled, the  
18 liquidator stands in the shoes of the health-insurance provider and is bound by the preinsolvency  
19 arbitration agreement.”).<sup>18</sup>

20 **B. The Court Should Stay or Dismiss Proceedings Against Criterion Pending**  
21 **Arbitration**

22 Because these claims are subject to arbitration, the Court may stay these proceedings and  
23 compel arbitration. 9 U.S.C. § 3. Alternatively, the court may dismiss this action without prejudice.  
24 *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988) (discussing why a court may

25 \_\_\_\_\_  
26 <sup>18</sup> Moreover, the Receiver cannot, on the one hand, sue for Criterion’s alleged breach of the  
27 Agreement, and on the other, avoid the Agreement’s arbitration provision. *See Inter. Paper v.*  
28 *Schwabedissen Maschinen & Anlagen*, 206 F.3d 411, 418 (4th Cir. 2000) (“A nonsignatory is  
estopped from refusing to comply with an arbitration clause ‘when it receives a “direct benefit” from  
a contract containing an arbitration clause.’”) quoted with approval by *Truck Ins. Exch. v. Swanson*,  
124 Nev. 629, 634–35, 189 P.3d 656, 660 (2008).

1 dismiss an action that is properly suited for arbitration). Dismissal is proper where a party has  
2 “[f]ail[ed] to exhaust non-judicial remedies, such as the failure to arbitrate under an arbitration  
3 clause...” *Telepet USA, Inc. v. Qualcomm, Inc.*, No. 2:14-cv-00568-GMN-PAL, 2014 U.S. Dist.  
4 LEXIS 167320, at \*7 (D. Nev. Dec. 3, 2014). Such dismissal “is a proper, though ‘non-  
5 enumerated,’ reason for granting a Rule 12(b) motion to dismiss.” *Id.*; *see also Inlandboatmens*  
6 *Union of the Pac. v. Dutra Grp.*, 279 F.3d 1075, 1083–1084 (9th Cir. 2002) (discussing why the  
7 court properly granted a motion to dismiss in regards to the “jurisdictional issue” of arbitration);  
8 *Gonzales v. Sitel Operating Corp.*, 2020 U.S. Dist. LEXIS 3690, at \*10 (holding that “dismissal  
9 seems justified here because there are no remaining issues that would require the Court’s attention  
10 after compelling arbitration.”). For these reasons, dismissal, or in the alternative, a stay is proper.

#### 11 IV. CONCLUSION

12 The law is clear: where parties have entered into an arbitration agreement, all claims within  
13 the scope of that agreement *must* be arbitrated. Spirit and Criterion entered into a binding agreement  
14 providing for arbitration of all disputes. Consequently, Criterion respectfully requests that the court  
15 compel arbitration of the claims brought by the Receiver against Criterion and dismiss this action or  
16 stay it pending resolution through arbitration.

17 DATED this 14<sup>th</sup> day of May, 2020.

18 BAILEY ♦ KENNEDY

19 By: /s/ Joshua M. Dickey

20 JOHN R. BAILEY  
21 JOSHUA M. DICKEY  
22 REBECCA L. CROOKER

23 *Attorneys for Defendant*  
24 *Criterion Claim Solutions of Omaha, Inc.*  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 14<sup>th</sup> day of May, 2020, service of the foregoing **DEFENDANT CRITERION CLAIM SOLUTIONS OF OMAHA, INC.'S MOTION TO COMPEL ARBITRATION** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

MARK E. FERRARIO, ESQ.  
KARA B. HENDRICKS, ESQ.  
KYLE A. EWING, ESQ.  
**GREENBERG TRAURIG, LLP**  
10845 Griffith Peak Drive  
Suite 600  
Las Vegas, Nevada 89135

Email: ferrariom@gtlaw.com  
hendricksk@gtlaw.com  
ewingk@gtlaw.com

*Attorneys for Plaintiff Barbara D.  
Richardson in Her Capacity as Statutory  
Receiver for Spirit Commercial Auto Risk  
Retention Group, Inc.*

KURT R. BONDS, ESQ.  
**ALVERSON TAYLOR & SANDERS**  
6605 Grand Montecito Parkway  
Suite 200  
Las Vegas, Nevada 89149

Email: kbonds@alversontaylor.com  
efile@alversontaylor.com

*Attorneys for Defendant Brenda Guffey*

ROBERT S. LARSEN, ESQ.  
WING YAN WONG, ESQ.  
**GORDON REES SCULLY  
MANSUKHANI, LLP**  
300 South Fourth Street  
Suite 1550  
Las Vegas, Nevada 89101

Email: rlarsen@grsm.com  
wwong@grsm.com

*Attorneys for Defendants Lexicon  
Insurance Management LLC; Daniel  
George; and ICAP Management  
Solutions, LLC*

THOMAS E. MCGRATH, ESQ.  
CHRISTOPHER A. LUND, ESQ.  
**TYSON & MENDES LLP**  
3960 Howard Hughes Parkway  
Suite 600  
Las Vegas, Nevada 89169

Email: tmcgrath@tysonmendes.com  
clund@tysonmendes.com

*Attorneys for Defendants Pavel  
Kapelnikov; Igor Kapelnikov; Yanina  
Kapelnikov; Chelsea Financial Group,  
Inc.; Global Forwarding Enterprises,  
LLC; Kapa Management Consulting, Inc.;  
and Kapa Ventures, Inc.*

SHERI M. THOME, ESQ.  
**WILSON, ELSE, MOSKOWITZ,  
EDELMAN & DICKER LLP**  
6689 Las Vegas Boulevard South,  
Suite 200  
Las Vegas, Nevada 8911989119

Email: Sheri.Thome@wilsonelser.com

*Attorneys for Defendants James Marx;  
Carlos Torres; Virginia Torres; and John  
Maloney*

MATTHEW T. DUSHOFF, ESQ.  
JORDAN D. WOLFF, ESQ.  
**SALTZMAN MUGAN DUSHOFF**  
1835 Village Center Circle  
Las Vegas, Nevada 89134

Email: mdushoff@nvbusinesslaw.com  
jwolff@nvbusinesslaw.com

*Attorneys for Defendants CTC  
Transportation Insurance Services of  
Missouri, LLC; CTC Transportation  
Insurance Services LLC; and CTC  
Transportation Insurance Services of  
Hawaii LLC*

/s/ Karen Rodman  
Karen Rodman, an Employee of  
BAILEY ♦ KENNEDY

# EXHIBIT A

## Claims Administration Agreement

This agreement dated September 1, 2011 is entered into by and between Criterion Claim Solutions ("CCS"), a Nebraska Corporation with its principal place of business at 7101 Mercy Road, Omaha, NE 68106, and Spirit Commercial Auto Risk Retention Group Inc. ("Spirit"), with its principal place of business at (to be determined).

1. **Term.** The term of this agreement shall be three (3) years effective December 1, 2011, and it may be renewed for additional periods thereafter with the written consent of both CCS and Spirit. This agreement may be terminated at any time by either party with or without cause and for any reason whatsoever upon ninety (90) days written notice to the other party. Notwithstanding the foregoing, this Agreement may be terminated immediately by CCS if Spirit fails to fulfill any or all of its financial obligations to CCS in accordance with the terms and conditions of this Agreement. In addition, this Agreement may be terminated immediately by Spirit if CCS (a) is rendered or becomes insolvent, (b) is adjudicated a bankrupt, or files, or becomes subject to a petition of any insolvency or bankruptcy law, or (c) has a receiver, liquidator, or trustee of substantially all its assets appointed by a court of competent jurisdiction.

In the event this agreement is terminated for any reason, Spirit agrees to pay to CCS, within thirty (30) days of invoicing, any fees due or which may become due.

2. **Services and Standards.** CCS shall provide claims management services on behalf of Spirit in accordance with the requirements of this agreement (and as outlined in the attached Schedule of Services). All Claims will be investigated and handled by CCS in accordance with applicable law and generally accepted industry standards.
3. **Authority.** CCS will recommend loss reserves on Claims. CCS will settle Claims and issue loss payments and expense payments in accordance with the terms of this agreement, not exceeding a maximum amount of \$25,000 per Claim. Any loss reserve, settlement, or payment exceeding \$25,000 will require the specific authorization of Spirit.
4. **Claim Files.** It is agreed that CCS will maintain a separate file for each loss. All references to files herein will include electronically stored information and data. Each claim file will contain the following:
  - a) Original documents or legible copies of all correspondence relating to the Claim.
  - b) Copies of all investigative reports, file notes, and other material.
  - c) Copies of all lawsuits filed in connection with the claim.
  - d) Copies of all bills or invoices paid, and copies of all payments issued.
  - e) A history of all loss and expense reserves, loss and expense payments, and

all amounts recovered.

5. **Recoveries.** CCS will develop and pursue reasonable subrogation, contribution, or indemnity recoveries (as outlined in the schedule attached hereto).
6. **Spirit Property.** All files and related data generated by CCS as a result of activity under this agreement are, and shall remain, the property of Spirit. All closed files will be maintained by CCS for a period of at least one year. CCS shall not dispose of files without written notice to Spirit, which shall have the option to immediately take possession of the files. CCS agrees that Spirit shall have the right to immediately take possession of all claim files, files, data, and related information upon termination of this agreement. It is understood by CCS that this right of Spirit is necessary to preserve and assure continuity of the insurer-insured relationship.
7. **Monthly Report.** It is agreed that CCS will provide to Spirit a monthly report showing Claims activity during the prior month. The report will include information in content and format as agreed to by the parties.
8. **Ad Hoc Reports.** In the event that a Claim meets any of the criteria outlined in the Schedule of Reporting Standards attached hereto, CCS will notify Spirit as soon as practicable using a reporting format agreed to by the parties. CCS will, upon request, provide to Spirit a complete copy of any file, or any specific additional information concerning the Claim.
9. **Insurance Departments.** CCS will notify Spirit of any complaint or inquiry from a governmental official or authority including, but not limited to state insurance departments or other agencies. CCS will then submit appropriate responses, on a timely basis, to any Claim related complaints or inquiries, with copies of such inquiries and responses thereto provided to Spirit.
10. **Review.** It is agreed that Spirit may elect to conduct periodic on-site reviews of Claims and claims operations at CCS' place of business. Spirit will provide CCS five (5) days notice of a review and upon receipt of timely notification of such review, CCS will arrange for and make available to Spirit reports, Claim files, and personnel as requested.
11. **Claim Funds.** It is agreed that Spirit will provide all funds for payment of claims and claim related expenses in a manner and method to be agreed by the parties. The funding of any loss payments or expense payments shall be solely the responsibility of Spirit, and CCS shall not be responsible for the funding of any such payments under this agreement.
12. **Compensation.** CCS will be compensated for its services according to the

Schedule of Compensation which is attached to this agreement. CCS will submit its statement for fees and expenses to Spirit each month. Spirit will pay CCS all undisputed amounts within 15 business days of receipt of such statement.

13. **Arbitration.** Binding arbitration shall be the exclusive method for resolving disputes between the parties. Any dispute concerning the terms of this agreement or performance by the parties under this agreement which cannot be resolved by agreement of the parties shall be submitted to binding arbitration before an arbitrator agreed upon by the parties. If the parties cannot agree, then each party shall select an arbitrator and these two arbitrators shall select a third arbitrator. The decision of the arbitrator or arbitrators shall be final. The arbitrator or arbitrators selected pursuant to this paragraph shall have significant property and casualty insurance company background and experience. Each party shall pay its own attorneys' fees and any other expenses in connection with the resolution of any dispute relating to this agreement. Notwithstanding the provisions of paragraph 21, "Choice of Law", this agreement to arbitrate is governed by the Federal Arbitration Act, 9 U.S.C. 1 through 15 (1988).
14. **Indemnity.** CCS will indemnify, protect, defend, and hold harmless Spirit, its employees, agents, successors, and assigns from and against any and all losses, damage, liabilities, fines, penalties, costs and expenses whatsoever (including, without limitation, attorneys' fees and litigation expenses) incurred by Spirit by reason of any negligent actions or omissions to act or willful misconduct by CCS relating to services covered by this Agreement, which actions, omissions, or misconduct were not within the control of, or directed by Spirit. This indemnity shall survive termination of this Agreement.

Spirit will indemnify, protect, defend, and hold harmless CCS, its employees, agents, successors, and assigns from and against any and all losses, damage, liabilities, fines, penalties, costs and expenses whatsoever (including, without limitation, attorneys' fees and litigation expenses) incurred by CCS by reason of any negligent actions or omissions to act or willful misconduct by Spirit relating to services covered by this Agreement, which actions, omissions, or misconduct were not within the control of, or directed by CCS. This indemnity shall survive termination of this Agreement.
15. **Insurance.** CCS will provide Spirit with Certificates of Insurance evidencing adequate General Liability, Fidelity, and Professional Liability coverages.
16. **Licenses.** CCS warrants that its adjusters, investigators, and subcontractors hold proper licenses as required by the states in which their business is conducted.
17. **Non-waiver.** The waiver of the breach of any provision of this agreement by the either party shall not operate or be construed as a waiver of any subsequent breach, or prevent either party from thereafter enforcing any provision.

18. **Choice of Law.** This agreement shall be interpreted and enforced in accordance with the laws of the State of Nebraska.
19. **Notices.** Any notice required or permitted to be given under this agreement shall be sufficient if given in writing and by personal delivery, registered mail, certified mail, or overnight delivery by express courier to CCS or Spirit at the addresses set forth in Schedule A attached hereto. Notice is deemed given upon delivery (in person or by express delivery service) or four days following first class mailing.
20. **Changes.** It is agreed that any changes or additions to this agreement, other than those previously referenced herein, shall be made in writing and signed by all parties.
21. **Severability.** If any part of this agreement shall be deemed void or unenforceable, the remaining provisions of this agreement shall continue in effect.
22. **Entire Agreement.** This agreement is the entire agreement among the parties relating to the subject matter hereof. All prior or contemporaneous agreements, drafts, oral or written statements, representations, warranties, arrangements, understandings, or collateral provisions concerning the negotiation or preparation of this agreement, are merged and integrated into this agreement and are without further force and effect. This agreement may only be amended by mutual agreement of the parties or their successors or permitted assigns in a writing which specifically refers to this agreement and is signed by all such parties or entities.
23. **Counterparts.** This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of such together shall constitute one and the same instrument.
24. **Survival.** The representations and warranties in this agreement shall survive its execution and the performance of obligations hereunder.
25. **Headings.** The paragraph headings are for the purpose of facilitating reading and communication only, and may not be used for purposes of construing or interpreting this agreement.

IN WITNESS WHEREOF the parties hereto have executed this agreement in duplicate counterparts as of the date first written below.

ATTEST *Darcy Smyley* Criterion Claim Solutions Inc.  
DATE SIGNED 10/24/11

By: *Rick McGee*  
Printed Name: Rick McGee

ATTEST *[Signature]* Spirit Commercial Auto Risk Retention  
Group Inc.

DATE SIGNED 10/26/11

By: *[Signature]*  
Printed Name: Michael G. [Signature]

## **SCHEDULE A**

### **Schedule of Participants**

This Schedule of Participants forms a part of the Claims Administration Agreement entered into by Criterion Claim Solutions (CCS) and Spirit Commercial Auto Risk Retention Group Inc. (Spirit).

The following addresses and contact persons shall be used for purposes of any notices, mailings, or other communication under the terms of this agreement:

**Spirit Commercial Auto Risk Retention Group Inc.**

**Contact Person:** *Bertha O'Brien*

**Address**

12677 Portada Place

**Address**

San Diego, CA 92130

**Address**

**Tel.** 760-487-7391

**Fax** 760-487-7401

**E-Mail** [bobrien@coast-ins.com](mailto:bobrien@coast-ins.com)

**Criterion Claim Solutions Inc.**

**Contact Person:**

P.O. Box 247049

Rick McCord

Omaha, NE 68124

President

**Tel.**

**Fax**

**E-Mail** [rmccord@critterionclaim.com](mailto:rmccord@critterionclaim.com)

## **SCHEDULE B**

### **Schedule of Compensation**

This Schedule of Compensation forms a part of the Claims Administration Agreement entered into by Criterion Claim Solutions (CCS) and Spirit Commercial Auto Risk Retention Group Inc. (Spirit).

In exchange for professional claim management services provided, CCS will be compensated by Spirit in an amount equal to three and one-half (3 1/2) percent of the total written premium for the policies of insurance with which the claims handled by CCS are associated. Such charges will be calculated on a monthly basis, and Spirit will pay all undisputed amounts within 15 business days after the first day of each month.

Any additional fees for outside investigation, appraisals, fraud investigation, legal defense costs, or other outside services will be paid directly by or on behalf of Spirit upon receipt.

It is further agreed that attendance by CCS staff at mediations, settlement conferences, depositions, trials, and similar events in connection with claims handled on behalf of Spirit will be invoiced at a flat fee of \$750.00 per day, plus any associated travel costs.

## **SCHEDULE C**

### **Claim Funds Agreement**

This Claim Funds Agreement forms a part of the Claims Administration Agreement entered into by Criterion Claim Solutions (CCS) and Spirit Commercial Auto Risk Retention Group Inc. (Spirit).

Spirit agrees to provide adequate funding for a bank account which will be established and maintained, and from which CCS shall be authorized to make appropriate payments of losses and expenses on behalf of Spirit.

The funding of any such loss payments or expense payments shall be solely the responsibility of Spirit, and CCS shall not be responsible for the funding of any such payments under this agreement.

## **SCHEDULE D**

### **Schedule of Services**

This Schedule of Services forms a part of the Claims Administration Agreement entered into by Criterion Claim Solutions (CCS) and Spirit Commercial Auto Risk Retention Group Inc. (Spirit).

It is agreed that CCS shall provide claims management services to and on behalf of Spirit, including the following:

- New losses will be set up immediately upon receipt.
- A faxed or e-mail acknowledgement will be provided on all new reported losses.
- Losses will be assigned to an adjuster promptly upon set-up.
- Same day contact will be made with insureds and drivers.
- CCS will make available a toll free loss reporting facility at all hours.
- CCS will handle routine salvage, subrogation, and deductible recovery.
- All claim payments will be issued on a timely basis.
- CCS will appoint a Program Manager and specific claim technicians who will be dedicated to Spirit losses.

## **SCHEDULE E**

### **Schedule of Reporting Standards**

This Schedule of Reporting Standards forms a part of the Claims Administration Agreement entered into by Criterion Claim Solutions (CCS) and Spirit Commercial Auto Risk Retention Group Inc. (Spirit).

It is agreed that CCS will provide certain management reports in connection with claims handled on behalf of Spirit.

On a monthly basis, the following reports will be provided:

- Monthly Claim Activity Report
- Monthly Check Register
- Monthly Report on any individual loss exceeding \$ 5,000.00
- (Any other reports to be identified)

In addition, certain reports will be provided upon request, including:

- Reinsurance Reports on individual losses.
- Large Loss Reports on individual losses exceeding \$ 100,000
- (Any other reports to be identified)

Any such reports will be provided to Spirit by printed copy, or by electronic transfer. Monthly reports will be provided following month-end processing of data, and in no event later than the 10<sup>th</sup> day of each month.

**SALTZMAN MUGAN DUSHOFF PLLC**

1835 Village Center Circle  
Las Vegas, Nevada 89134  
Tel: (702) 405-8500 / Fax: (702) 405-8501

1 **MARB**  
2 MATTHEW T. DUSHOFF, ESQ.  
3 Nevada Bar No. 004975  
4 JORDAN D. WOLFF, ESQ.  
5 Nevada Bar No. 014968  
6 **SALTZMAN MUGAN DUSHOFF**  
7 1835 Village Center Circle  
8 Las Vegas, Nevada 89134  
9 Telephone: (702) 405-8500  
10 Facsimile: (702) 405-8501  
11 E-Mail: mdushoff@nvbusinesslaw.com  
12 jwolff@nvbusinesslaw.com

13 Attorneys for Defendants

14 **CTC TRANSPORTATION INSURANCE**  
15 **SERVICES OF MISSOURI, LLC; CTC**  
16 **TRANSPORTATION INSURANCE SERVICES**  
17 **LLC; and CTC TRANSPORTATION**  
18 **INSURANCE SERVICES OF HAWAII LLC**

19 **DISTRICT COURT**  
20 **CLARK COUNTY, NEVADA**

21 \* \* \*

22 BARBARA D. RICHARDSON IN HER  
23 CAPACITY AS THE STATUTORY RECEIVER  
24 FOR SPIRIT COMMERCIAL AUTO RISK  
25 RETENTION GROUP, INC.,

26 Plaintiff,

27 vs.

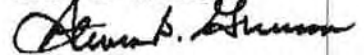
28 THOMAS MULLIGAN, an individual; CTC  
TRANSPORTATION INSURANCE SERVICES  
OF MISSOURI, LLC, a Missouri Limited  
Liability Company; CTC TRANSPORTATION  
INSURANCE SERVICES LLC, a California  
Limited Liability Company; CTC  
TRANSPORTATION INSURANCE SERVICES  
OF HAWAII LLC, a Hawaii Limited Liability  
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

CASE NO. A-20-809963-B

DEPT NO. XIII

HEARING REQUESTED

**DEFENDANTS CTC**  
**TRANSPORTATION INSURANCE**  
**SERVICES OF MISSOURI, LLC;**  
**CTC TRANSPORTATION**  
**INSURANCE SERVICES LLC; AND**  
**CTC TRANSPORTATION**  
**INSURANCE SERVICES OF**  
**HAWAII LLC'S MOTION TO**  
**COMPEL ARBITRATION**



SALTZMAN MUGAN DUSHOFF PLLC

1835 Village Center Circle

Las Vegas, Nevada 89134

Tel: (702) 405-8500 / Fax: (702) 405-8501

1 Corporation; CHELSEA HOLDING COMPANY,  
2 LLC, a Nevada Limited Liability Company;  
3 CHELSEA HOLDINGS, LLC, a Nevada Limited  
4 Liability Company; FOURGOREAN CAPITAL,  
5 LLC, a New Jersey Limited Liability Company;  
6 KAPA MANAGEMENT CONSULTING, INC., a  
7 New Jersey Corporation; KAPA VENTURES,  
8 INC., a New Jersey Corporation; GLOBAL  
9 FORWARDING ENTERPRISES LIMITED  
10 LIABILITY COMPANY, a New Jersey Limited  
11 Liability Company; GLOBAL CAPITAL  
12 GROUP, LLC, a New Jersey Limited Liability  
13 Company; GLOBAL CONSULTING; NEW  
14 TECH CAPITAL, LLC, a Delaware Limited  
15 Liability Company; LEXICON INSURANCE  
16 MANAGEMENT LLC, a North Carolina Limited  
17 Liability Company; ICAP MANAGEMENT  
18 SOLUTIONS, LLC, a Vermont Limited Liability  
19 Company; SIX ELEVEN LLC, a Missouri  
20 Limited Liability Company; 10-4 PREFERRED  
21 RISK MANAGERS INC., a Missouri  
22 Corporation; IRONJAB LLC, a New Jersey  
23 Limited Liability Company; YANINA G.  
24 KAPELNIKOV, an individual; IGOR  
25 KAPELNIKOV, an individual; QUOTE MY RIG  
26 LLC, a New Jersey Limited Liability Company;  
27 MATTHEW SIMON, an individual; DANIEL  
28 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,

Defendants.

**DEFENDANTS CTC TRANSPORTATION INSURANCE SERVICES OF MISSOURI,  
LLC; CTC TRANSPORTATION INSURANCE SERVICES LLC; AND CTC  
TRANSPORTATION INSURANCE SERVICES OF HAWAII LLC'S MOTION TO  
COMPEL ARBITRATION**

Defendants CTC TRANSPORTATION INSURANCE SERVICES OF MISSOURI, LLC  
("CTC-MO"); CTC TRANSPORTATION INSURANCE SERVICES LLC ("CTC-CA"); and  
CTC TRANSPORTATION INSURANCE SERVICES OF HAWAII LLC ("CTC-HI" and  
hereafter collectively referred to with CTC-MO and CTC-CA as "CTC"), by and through their  
counsel, Saltzman Mugan Dushoff, hereby move to compel arbitration of all claims brought

SALTZMAN MUGAN DUSHOFF PLLC

1835 Village Center Circle  
Las Vegas, Nevada 89134  
Tel: (702) 405-8500 / Fax: (702) 405-8501

1 against CTC as set forth in Plaintiff's Complaint (the "Complaint") as they are subject to a binding  
2 arbitration agreement between the parties.

3 This Motion is made and based upon NRS 38.221, the following Memorandum of Points  
4 and Authorities, the exhibits attached thereto, the pleadings and papers on file herein, and any  
5 argument presented at the time of hearing on this matter.

6 DATED this 10 day of May, 2020.

7 SALTZMAN MUGAN DUSHOFF

8  
9 By 

MATTHEW T. DUSHOFF, ESQ.  
Nevada Bar No. 004975  
JORDAN D. WOLFF, ESQ.  
Nevada Bar No. 0114968  
1835 Village Center Circle  
Las Vegas, Nevada 89134

Attorneys for Defendants  
CTC TRANSPORTATION INSURANCE  
SERVICES OF MISSOURI, LLC; CTC  
TRANSPORTATION INSURANCE  
SERVICES LLC; and CTC  
TRANSPORTATION INSURANCE  
SERVICES OF HAWAII LLC

**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

On February 6, 2020, Plaintiff, Barbara D. Richardson ("Richardson") in her capacity as the statutory receiver for Spirit Commercial Auto Risk Retention Group, Inc. ("Spirit" or "Plaintiff"), initiated the present action by filing the Complaint alleging numerous causes of action against many different parties, including CTC, to recover monies that are purportedly owed to Spirit. Through this Complaint, which contains seventy-seven pages and more than four hundred paragraphs of allegations, Spirit has gone to great lengths in order to overly complicate what is in actuality a simple breach of contract claim against CTC.

Pursuant to the CTC Agreement (as defined herein), CTC assisted Spirit with various aspects of its insurance business, including the collection of premiums from insureds, and held the collected money in a trust account for the benefit of Spirit. Spirit now claims that it has been underpaid by CTC for the past several years, and has named them in this action in order to recover this alleged underpayment. The relationship between Spirit and CTC is created and governed by the CTC Agreement, and so in the event Spirit is ultimately able to prove CTC owed Spirit money, such a claim would obviously arise out of the CTC Agreement.

Importantly, the CTC Agreement contains an arbitration provision that Spirit has breached by bringing claims against CTC in this Court. Therefore, CTC brings the present motion in order to enforce the arbitration provision and compel arbitration with respect to all of the claims brought against CTC in the Complaint.

**II. RELEVANT FACTS**

Spirit is a Nevada-domiciled associative captive insurance company that operates a commercial auto liability insurance business and specializes in providing insurance to commercial truck owners. Complaint, at ¶¶ 6, 52. On November of 2011, Spirit and CTC-CA entered into a Program Administrator Agreement, pursuant to which CTC-CA would act as the Program Administrator for Spirit (the "PAA"), a true and correct copy of which is annexed hereto as **Exhibit A**. *See also*, Complaint, at ¶ 55.

///

1 In 2016, CTC-CA sought to assign the PAA to CTC-MO, and also make certain  
2 amendments to the PAA, both of which would be subject to approval by the Nevada Division of  
3 Insurance (the "NVDI"). On June 29, 2016, the NVDI issued a letter approving both the  
4 assignment of the PAA from CTC-CA to CTC-MO and the amendment of the PAA, a true and  
5 correct copy of which is annexed hereto as **Exhibit B**.

6 Upon receiving the approval of the NVDI, CTC-MO and Spirit executed the amended  
7 Program Administration Agreement which became effective on July 1, 2016 (the "CTC  
8 Agreement"). See Complaint, at ¶ 55. A true and correct copy of the CTC Agreement is annexed  
9 hereto as **Exhibit C**.

10 Most importantly with respect to this Motion, Section 17 of the CTC Agreement contains  
11 the following mandatory arbitration provision:

12 **SECTION 17**  
13 **ARBITRATION**

- 14 A. Any controversy or claims of either of the parties arising out of or  
15 relating to this Agreement, or the breach of any term, condition, or  
16 obligation, may, upon the mutual consent of all parties, be submitted  
17 to non-binding mediation under the supervision of the American  
18 Arbitration Association or any other agency for alternative dispute  
19 resolution. In the event that mutual consent to mediation shall not  
20 be obtained within thirty (30) days of written notice from any party  
21 to the other concerning the existence of a claim or controversy, the  
22 application of this paragraph shall be null and void.
- 23 B. Any controversy or claim of either of the parties arising out of  
24 or relating to this Agreement, or the breach of any term,  
25 condition, or obligation, which is not resolved by non-binding  
26 mediation, shall be settled by final and binding arbitration  
27 before three (3) arbitrators chosen under and governed by the  
28 Commercial Arbitration Rules of the American Arbitration  
Association to be held in the District of Columbia, and judgment  
upon any award rendered by the arbitrators may be entered in any  
court having jurisdiction.
- C. All expenses of mediation or arbitration shall be borne equally by  
the parties, provided that each party shall be responsible for its own  
legal fees, expenses and costs. However, the mediators or  
arbitrators may, at their sole discretion, award reasonable attorneys  
fees, costs and expenses related to the mediation or arbitration to the  
prevailing party and such amounts will be in addition to any  
settlement.

CTC Agreement, at Section 17 (*emphasis added*).

1 Pursuant to Section 1 of the CTC Agreement, CTC-MO was appointed to be Spirit's  
2 general agent for the following purposes: (i) to solicit applications for new and renewal liability  
3 insurance policies on the blank forms of application; (ii) receive, evaluate, reject and accept  
4 requests for such policies; (iii) to underwrite, bind, and issue insurance policies in accordance with  
5 CTC-MO's guidelines, as approved by Spirit; (iv) to make customary endorsements, changes,  
6 transfers, and modifications of existing policies; (iv) to charge and collect payments for such  
7 policies in accordance with the CTC Agreement or as directed by Spirit; and (v) to adjust and pay  
8 certain claims. *See* CTC Agreement, Section 1.

9 Pursuant to Section 5 of the CTC Agreement, the general duties of CTC-MO included the  
10 marketing and underwriting of policies, endorsements, notices of cancellation, notices of  
11 nonrenewal, coding, premium collection, and all related activities incidental to the issuance of  
12 policies in the authorized classes of business and the marketing of the program. *See* CTC  
13 Agreement, Section 5.

14 Pursuant to Section 7 of the CTC Agreement, CTC-MO was responsible for collecting and  
15 paying to Spirit all premiums due on the business written pursuant to the CTC Agreement. CTC-  
16 MO was to hold all funds received by it in connection with the CTC Agreement as a fiduciary of  
17 Spirit, and could deposit said funds into a holding account, which could include premiums due to  
18 other carries as well as commissions due to CTC-MO. Spirit was to receive monthly reports  
19 concerning the assets held by CTC-MO on its behalf, and monthly payments of the amount due to  
20 Spirit. In the event that CTC-MO has not collected enough premiums to cover the amount owed,  
21 Spirit would be entitled to interest at a rate of 1.5% per month. *See* CTC Agreement, Section 7.

22 Pursuant to Section 8 of the CTC Agreement, CTC-MO agreed to accept and pay all  
23 expenses incurred by it in connection with the underwriting, production marketing, billing,  
24 accounting, and servicing of business written pursuant to the Agreement. *See* CTC Agreement,  
25 Section 8.

26 Pursuant to Section 10, Addendum A, and Addendum B of the CTC Agreement, CTC-MO  
27 was to receive compensation in the form of a management fee equal to twenty-three and one-half  
28 percent (23.5%), later reduced by subsequent amendment to twenty percent (20%), on all policies

1 written pursuant to the CTC Agreement, as well as an additional, annual bonus based upon the net  
2 paid loss ratio for the policies managed pursuant to the CTC Agreement. See CTC Agreement,  
3 Section 10, Addendum A, and Addendum B.

4 Finally, Section 19(D) of the CTC Agreement provides that "[t]his Agreement, **including**  
5 **the provisions relating to arbitration**, shall be governed by the laws of the District of Columbia."  
6 CTC Agreement, at Section 20(D) (*emphasis added*).

### 7 III. LEGAL ARGUMENT

#### 8 A. This Court Should Enforce the Arbitration Provision in the CTC Agreement

9 Pursuant to Nevada law, this Court has the authority to compel Spirit to arbitrate all claims  
10 against CTC arising out of or relating to the CTC Agreement by granting this Motion. Specifically,  
11 NRS 38.221 provides, in pertinent part, the following:

#### 12 NRS 38.221 Motion to Compel or stay arbitration.

- 13 1. On motion of a person showing an agreement to arbitrate and  
14 alleging another person's refusal to arbitrate pursuant to the  
15 agreement:  
16 (a) If the refusing party does not appear or does not oppose the  
17 motion, the court shall order the parties to arbitrate; and  
18 (b) If the refusing party opposes the motion, the court shall  
19 proceed summarily to decide the issue and order the parties  
20 to arbitrate unless it finds that there is no enforceable  
21 agreement to arbitrate.

22 \*\*\*\*

- 23 5. If a proceeding involving a claim referable to arbitration under  
24 an alleged agreement to arbitrate is pending in court, a motion  
25 under this section must be made in that court...<sup>1</sup>

26 Here, the enforceability of the CTC Agreement, including the arbitration provision, is not  
27 at issue as Spirit admits that the CTC Agreement "was a valid and enforceable contract."  
28 Complaint, at ¶ 264. However, even if enforceability was in dispute, the arbitration provision  
would be deemed enforceable pursuant to the Federal Arbitration Act (the "FAA"), 9 U.S.C.S. § 1,  
*et seq.* and laws of the District of Columbia.

<sup>1</sup> On May 11, 2020, CTC requested that Plaintiff voluntarily consent to arbitrate its claims against CTC in accordance with the arbitration provisions of the CTC Agreement and the PAA. On May 13, 2020, CTC was informed by Plaintiff's counsel that Plaintiff had declined CTC's request to consent to arbitration.

1           “The FAA provides for the enforcement of arbitration agreements in any contract affecting  
2 interstate commerce.” *Ellison v. Am. Homes 4 Rent, LP*, No. 2:19-CV-1137 JCM (DJA), 2019  
3 U.S. Dist. LEXIS 221543, at \*4-5 (D. Nev. Dec. 27, 2019). The FAA reflects a liberal federal  
4 policy in favor of arbitration and the fundamental principal that arbitration is a matter of contract.  
5 *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339, 131 S. Ct. 1740, 1745 (2011). As the CTC  
6 Agreement is a contract between Spirit, a Nevada corporation, and CTC-MO, a Missouri limited  
7 liability company, for the purpose of operating a nationwide insurance business, which allegedly  
8 also includes the approval and paying of claims for insureds in Mexico (*see, e.g.*, Complaint, at ¶  
9 211), it is evident that the contract affects interstate commerce, and so the FAA requires  
10 enforcement of the arbitration provision.

11           Even if the FAA did not govern the arbitration provision, it would still be enforceable  
12 pursuant to the District of Columbia’s own arbitration act. *See* D.C. Code § 16-4401, *et seq.*  
13 “Under the District’s arbitration act, a written agreement to ‘submit to arbitration any existing or  
14 subsequent controversy arising between the parties to the agreement is valid, enforceable, and  
15 irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.’”  
16 *Giron v. Dodds*, 35 A.3d 433, 437 (D.C. 2012) (quoting D.C. Code § 16-4406(a)). “Once it is  
17 established that the parties intended a particular dispute to be arbitrated, ‘a court may not override  
18 that agreement by itself deciding such a dispute.’” *Giron*, 35 A.3d at 437 (quoting *Hercules & Co.*  
19 *v. Beltway Carpet Serv., Inc.*, 592 A.2d 1069, 1072 (D.C. 1991)).

20           Further, if this Court was to apply Nevada law with respect to the arbitration provision, the  
21 result would be the same. *See Clark Cty. Pub. Emps. Ass’n v. Pearson*, 106 Nev. 587, 591, 798  
22 P.2d 136, 138 (1990) (“Disputes are presumptively arbitrable, and courts should order arbitration  
23 of particular grievances unless it may be said with positive assurance that the arbitration clause is  
24 not susceptible of and interpretation that covers the asserted dispute.”); *Int’l Ass’n of Firefighters,*  
25 *Local #1285 v. Las Vegas*, 104 Nev. 615, 618, 764 P.2d 478, 480 (1988) (“Nevada courts resolve  
26 all doubts concerning the arbitrability of the subject matter of a dispute in favor of arbitration.”).  
27 *See also, See, e.g. MMAWC v. Zion Wood Obi Wan Tr.*, 448 P.3d 568, 572 (Nev. 2019) (holding  
28 ///

1 that NRS 597.995 is preempted by the Federal Arbitration Act and therefore concluding that  
2 arbitration clause in a licensing agreement applies to claims alleged in the underlying complaint).

3 Therefore, the arbitration provision in Section 17 of the CTC Agreement is enforceable  
4 and the Court should compel arbitration pursuant to NRS 38.221.

5 **B. Every Cause of Action that Spirit Alleges Against CTC Arises out of the CTC**  
6 **Agreement and is Subject to Arbitration.**

7 The arbitration provision of the CTC Agreement covers any dispute "arising out of or  
8 relating to this Agreement, or the breach of any term, condition, or obligation." The law is well  
9 settled that such language should be interpreted broadly, and includes any claim that is related to  
10 the CTC Agreement, regardless of whether it sounds in contract, tort, or statute.

11 "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of  
12 arbitration." *Bank of N.Y. Mellon v. Christopher Cmty. at S. Highlands Golf Club Homeowners*  
13 *Ass'n*, No. 2:17-CV-1033 JCM (GWF), 2019 U.S. Dist. LEXIS 152830, at \*8 (D. Nev. Sep. 9,  
14 2019) (citations omitted). To require arbitration, the factual allegations need only "touch matters"  
15 covered by the contract containing the arbitration clause. *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d  
16 716, 721 (9th Cir. 1999). A tort claim will be arbitrable if it arises out of the agreement containing  
17 the arbitration provision. *Id.*, at 724.

18 Arbitration agreements are equally enforceable with respect to statutory claims, including  
19 claims for civil racketeering. *See Shearson/American Express v. McMahon*, 482 U.S. 220, 242,  
20 107 S. Ct. 2332, 2345 (1987) (stating that civil RICO claims are arbitrable and that parties who  
21 bargain to arbitrate such claims "will be held to their bargain"); *Mitsubishi Motors Corp. v. Soler*  
22 *Chrysler-Plymouth*, 473 U.S. 614, 624 n.13, 105 S. Ct. 3346, 3352 (1985) ("insofar as the  
23 allegations underlying the statutory claims touch matters covered by the enumerated articles, the  
24 Court of Appeals properly resolved any doubts in favor of arbitrability"); *Lozano v. AT&T Wireless*  
25 *Servs.*, 504 F.3d 718, 725 (9th Cir. 2007) ("Contractual arbitration agreements are equally  
26 applicable to statutory claims as to other types of common law claims.").

27 As set forth herein, each cause of action Spirit alleges against CTC in the Complaint is  
28 related to the CTC Agreement and is therefore subject to arbitration.

1           **i. Breach of Contract (First Cause of Action)<sup>2</sup>**

2           Spirit alleges that the CTC Agreement was a “valid and enforceable agreement” and that  
3           CTC failed to perform by “commingling Spirit funds with funds received on behalf of other  
4           entities, failing to remit payments due Spirit until CTC’s indebtedness to Spirit grew to over \$30  
5           million dollars for unpaid premiums alone, unlawfully writing off balances of an additional \$3.4  
6           million due to Spirit, failing to timely cancel policies for nonpayment, overpaying Spirit claims,  
7           under-reserving Spirit’s claims, failure to properly report and disclose financials and operation of  
8           Spirit, deceiving Spirit policyholders about their policies being premium financed and about their  
9           premiums being paid for viable insurance, aiding and abetting Chelsea Financial to abscond and  
10          dissipate assets belonging to Spirit, and failing to safeguard Spirit’s assets and using Spirit funds  
11          to pay the operating expenses of CTC and other entities in the Mulligan Enterprise.” Complaint,  
12          at ¶¶ 264, 266.

13          As the CTC Agreement is a valid and enforceable agreement which contains an arbitration  
14          provision, Spirit is clearly required to arbitrate this claim in accordance with the CTC Agreement.

15           **ii. Breach of Fiduciary Duty (Fifth Cause of Action)**

16          Spirit’s fifth claim for breach of fiduciary duty against CTC arises directly out of the CTC  
17          Agreement. With respect to that claim, Spirit alleges that the fiduciary duty at issue between CTC  
18          and Spirit existed “pursuant to the agreements between the parties.” Complaint, at ¶ 287. In  
19          addition, Spirit alleges that CTC breached its duty by committing many of the same alleged acts  
20          that were the basis for Spirit’s breach of contract claim described above, including, but not limited  
21          to “leav[ing] tens of millions of dollars unaccounted for and owing to Spirit,” “failing to disclose  
22          financial records to Spirit,” “failing to safeguard or account for Spirit’s funds,” “using Spirit’s  
23          assets for its own benefit rather than for the benefit of Spirit,” “deceiving Spirit policyholders  
24

25          <sup>2</sup> In the Complaint, Spirit makes all its allegations against CTC-CA, CTC-MO, and CTC-HI collectively, referring to  
26          them almost exclusively as “CTC” and, in doing so, alleges that CTC has breached the CTC Agreement. We note  
27          that the initial PAA between Spirit and CTC-CA as well as the CTC Agreement between CTC-MO both contain  
28          identical arbitration provisions, and that the Complaint is devoid of any distinct allegations against CTC-HI  
        whatsoever. However, at this stage of the litigation, CTC is bound to the four corners of the Complaint, and so this  
        Motion addresses Spirit’s claim that all three CTC entities are bound by the CTC Agreement and breached the CTC  
        Agreement as alleged by Spirit.

1 about their policies being premium financed and about their premiums being paid for viable  
2 insurance,” and “by otherwise failing to conduct its affairs in a manner faithful to the parties’  
3 agreement...” Complaint, at ¶ 288. Some of these alleged breaches of duty directly reference the  
4 CTC Agreement, and several are copied verbatim from Spirit’s allegations concerning its breach  
5 of contract. As such, Spirit’s breach of duty claim arises from the CTC Agreement and is subject  
6 to arbitration.

7 **iii. Breach of the Implied Covenant of Good Faith and Fair Dealing – Tortious**  
8 **(Seventh Cause of Action)**

9 Spirit’s seventh claim against CTC for breach of the implied covenant of good faith and  
10 fair dealing arises directly from the CTC Agreement. In support of that claim, Spirit again alleges  
11 that Spirit and CTC entered into the CTC Agreement, and that it is valid and enforceable.  
12 Complaint, at ¶ 301. Spirit then alleges that the CTC Agreement results in “a special element of  
13 reliance” and imposes a fiduciary duty upon CTC. Complaint, at ¶ 303. Spirit goes on to state  
14 that the CTC Agreement also contains an implied covenant of good faith and fair dealing, that  
15 CTC breached that duty by “acting in a manner unfaithful to the purpose” of the CTC Agreement,  
16 and Spirit’s reasonable, justified expectations were denied as a result. Complaint, at ¶¶ 304-306.  
17 As such, Spirit’s breach of the implied covenant of good faith and fair dealing claim arises from  
18 the CTC Agreement and is subject to arbitration.

19 **iv. Breach of the Implied Covenant of Good Faith and Fair Dealing – Contract**  
20 **(Eighth Cause of Action)**

21 Spirit’s eighth claim against CTC for breach of the implied covenant of good faith and fair  
22 dealing is essentially the same as its seventh claim, and again arises directly from the CTC  
23 Agreement. In support of that claim, Spirit reiterates that Spirit and CTC entered into the CTC  
24 Agreement, and that it is valid and enforceable. Complaint, at ¶ 312. Spirit goes on to allege the  
25 CTC Agreement contains an implied covenant of good faith and fair dealing, that CTC breached  
26 that duty, and that as a result of that breach Spirit’s reasonable, justified expectations were denied.  
27 Complaint, at ¶¶ 314-316. Again, it is clear that this claim arises out of the CTC Agreement and  
28 is subject to arbitration.

1           v.       **Nevada RICO Claim (Tenth Cause of Action)**

2           Spirit's tenth cause of action pursuant to the Nevada RICO statute arises directly out of the  
3   CTC Agreement. The predicate acts underlying the RICO claim which are attributed to CTC arise  
4   exclusively in accordance the CTC Agreement, and are again essentially identical to the actions  
5   supporting Spirit's breach of contract claim. For example, with respect to CTC's alleged  
6   "unlawful conduct," Spirit's allegations include the following:

7           "CTC's failure to remit premiums collected by CTC to Spirit **consistent with the CTC**  
8   **Agreement** and instead using funds properly belonging to Spirit (and held in trust for Spirit) to  
9   fund CTC, Criterion, Chelsea Financial, and other entities in the Mulligan Enterprise." Complaint,  
10   at ¶ 335a (emphasis added). This allegation is an express breach of contract claim.

11          "Causing CTC to fail to collect premiums due to Spirit and misreporting those failures as  
12   canceled policies or 'FPA' transactions retroactively to avoid paying Spirit premiums to which it  
13   is entitled." Complaint, at ¶ 335b. These alleged failures to collect premiums and properly report  
14   and disclose the financials and operation of Spirit not only relate to CTC's duties pursuant to the  
15   CTC Agreement, but those **same allegations** are also stated in support Spirit's breach of contract  
16   claim against CTC. See Complaint, at ¶ 266.

17          "Causing CTC to overpay commissions and other amounts due to CTC, Criterion, Chelsea  
18   Financial, and other entities in the Mulligan Enterprise in an effort to avoid paying Spirit amounts  
19   owed to it by CTC, Criterion, Chelsea Financial, and other entities in the Mulligan Enterprise."  
20   Complaint, at ¶ 335c. Once more, CTC's duty to pay Spirit the amounts set forth in this allegation  
21   exists pursuant to the CTC Agreement, and so this is essentially another claim for breach of  
22   contract against CTC. Spirit also made the almost identical allegation that CTC "fail[ed] to  
23   safeguard Spirit's assets and us[ed] Spirit funds to pay the operating expenses of CTC and other  
24   entities in the Mulligan Enterprise" in support of its breach of contract claim. Complaint, at ¶ 266.

25          Spirit also makes additional, generalized allegations about many Defendants, collectively  
26   referred to (but never explicitly defined) as the Mulligan Enterprise, but to the extent these  
27   allegations involve CTC, they are again **identical** to the actions Spirit alleged in support of its  
28   breach of contract claim. For example, in paragraph 333 of the Complaint, Spirit alleges that

1 Defendants (i) misrepresented to policyholders the nature of the Chelsea Financial financing  
2 arrangements, (ii) misrepresented Spirit's financial condition to the NVDOI, and (iii) concealed  
3 transfers of assets away from CTC and Spirit to other members of the Mulligan Enterprise.  
4 Complaint, at ¶ 333. As with other previous RICO allegations, all three of these acts are also  
5 alleged in support of Spirit's breach of contract claim. *See* Complaint, at ¶ 266 (alleging CTC  
6 "deceiv[ed] Spirit policyholders about their policies being premium financed and about their  
7 premiums being paid for viable insurance," "fail[ed] to properly report and disclose financials and  
8 operation of Spirit," and "fail[ed] to safeguard Spirit's assets and us[ed] Spirit funds to pay the  
9 operating expenses of CTC and other entities in the Mulligan Enterprise").

10 In conclusion, Spirit's allegations in support of its RICO claim against CTC are solely  
11 based upon the CTC Agreement, and as such, they arise out of the agreement. Thus, the RICO  
12 claim is subject to arbitration. *Shearson/American Express, supra*, 482 U.S. 220, at 242.

13 **vi. Unjust Enrichment (Eleventh Cause of Action)**

14 Spirit's eleventh claim for unjust enrichment arises directly out of the CTC Agreement. In  
15 support of this Claim, Spirit alleges that CTC transferred money rightfully belonging to Spirit to  
16 other entities included in the Mulligan Enterprise, and improperly "wrote off" or "reclassified"  
17 debts that would otherwise be due to Spirit. *See* Complaint, at ¶¶ 346-348. Again, the amounts  
18 Spirit claims to be owed by CTC are only allegedly due pursuant to the CTC Agreement, and the  
19 failure to make such payments is the basis for Spirit's breach of contract claim against CTC. *See*  
20 Complaint, at ¶ 266. Thus, the unjust enrichment claim arises out of the CTC Agreement and is  
21 subject to arbitration.

22 **vii. Fraud (Twelfth Cause of Action)**

23 Spirit's twelfth claim for fraud arises directly out of the CTC Agreement. As previously  
24 explained with respect to Spirit's RICO claim, the specific acts attributed to CTC in perpetuating  
25 a fraud solely relate to CTC's duties pursuant to the CTC Agreement, and CTC's alleged breaches  
26 of the same.

27 In fact, many allegations appear verbatim with respect to Spirit's fraud and RICO claims.  
28 For example, Spirit claims that CTC participated in a fraud and violated RICO by failing "to remit

1 premiums collected by CTC to Spirit **consistent with the CTC Agreement** and instead using  
2 funds properly belonging to Spirit (and held in trust for Spirit) to fund CTC, Criterion, Chelsea  
3 Financial, and other entities in the Mulligan Enterprise” and also “[c]ausing CTC to fail to collect  
4 premiums due to Spirit and misreporting those failures as canceled policies or ‘FPA’ transactions  
5 retroactively to avoid paying Spirit premiums to which it is entitled.” Complaint, at ¶ 362(b)  
6 (emphasis added). *Cf.* Complaint, at ¶¶ 335(a), 335(b).

7 Similarly, Spirit’s allegations supporting both fraud and RICO also provide that  
8 Defendants “[c]aus[ed] CTC to overpay commissions and other amounts due to CTC, Criterion,  
9 Chelsea Financial, and other entities in the Mulligan Enterprise in an effort to avoid paying Spirit  
10 amounts owed to it by CTC, Criterion, Chelsea Financial, and other entities in the Mulligan  
11 Enterprise.” Complaint, at ¶ 362(c). *Cf.* Complaint, at ¶ 335(c).

12 Hence, for the same reasons already discussed herein, Spirit’s fraud claim against CTC  
13 arises out of the CTC Agreement and is subject to arbitration.

14 **viii. Civil Conspiracy (Thirteenth Cause of Action)**

15 Spirit’s thirteenth claim for civil conspiracy arises directly out of the CTC Agreement. As  
16 previously discussed in subsections (v) and (vii) herein, many of Spirit’s allegations concerning  
17 CTC’s alleged participation in a conspiracy are once more copied verbatim from Spirit’s fraud and  
18 RICO claims, and again, all its allegations are directly related to CTC’s duties pursuant to the CTC  
19 Agreement. *See, e.g.,* Complaint, at ¶¶ 374(b), 374(c), and 374(d). Furthermore, certain  
20 allegations concerning CTC, such as its alleged misrepresentations concerning Spirit to the  
21 NVDOI were also previously made in direct support of its breach of contract claim. Complaint,  
22 at ¶ 374(k). *Cf.* Complaint, at ¶ 266 (alleging that CTC breached the CTC Agreement by, *inter*  
23 *alia*, its “failure to properly report and disclose the financials and operations of Spirit.”).

24 Therefore, as already discussed, Spirit’s claim for civil conspiracy inarguably arises out of  
25 the CTC Agreement and is subject to arbitration.

26 ///

27 ///

28 ///

ix. **NRS 112 – Avoidance of Transfers; NRS 696B – Voidable Transfers; NRS 696B – Recovery of Distributions and Payments; and NRS 692C.402 – Recovery of Distributions and Payments (Cause of Action Fifteen through Eighteen)**

Spirit's statutory causes of action pursuant to NRS 112, NRS 696B, and NRS 692C are discussed collectively, as each is premised on several identical allegations were also previously alleged verbatim in support of Spirit's claim for unjust enrichment. Specifically, all these claims are premised upon the same series of transactions between CTC and other entities in the Mulligan enterprises, debt write-off's, and debt reclassification. *See* Complaint, at ¶¶ 388-390, 401-403, 412-414, and 424-426. These same allegations are also used to support Spirit's claim for unjust enrichment. *See* Complaint, at ¶¶ 346-348. For the same reason, they also arise out of the CTC Agreement, as CTC's obligation to pay these amounts to Spirit (as opposed to these other entities) would be pursuant to the CTC Agreement, and its failure to do so is the basis for Spirit's breach of contract claim against CTC. *See* Complaint, at ¶ 266.

Therefore, these aforementioned statutory claims are subject to arbitration pursuant to the CTC Agreement.

C. **Richardson, in her Capacity as Spirit's Receiver, is Bound by the Arbitration Provision in the CTC Agreement.**

The fact that this Complaint is brought on Spirit's behalf by Richardson, in her capacity as receiver, has no bearing on the enforceability of the arbitration provision in the CTC Agreement. This exact issue was recently considered by the Supreme Court of Nevada.

In *State ex rel. Comm'r of Ins. v. Eighth Judicial Dist. Court of Nev.*, 454 P.3d 1260 (Nev. 2019), the Supreme Court affirmed a decision of the district court holding that Richardson, when acting in her capacity as receiver for an insurance company in liquidation that is pursuing breach of contract and tort claims against third parties on the insurance company's behalf, is bound by an arbitration agreement between the insurance company and such a third party. As a result, the Trial Court's order compelling all claims in the underlying action against defendant Milliman, Inc. to be resolved through arbitration was upheld. *See Nevada Commissioner of Insurance, v. Milliman Inc, et al.*, Case No. A-17-760558-C.

1 In addition, it should be noted that many of the same claims that Richardson/Spirit are now  
2 alleging against CTC in this action are the same claims that Richardson, on behalf of the Nevada  
3 Health Co-op, brought against Milliman, Inc. in that prior complaint, including: (i) fraud; (ii)  
4 breach of fiduciary duty; (iii) breach of contract; (iv) tortious breach of the implied covenant of  
5 good faith and fair dealing; (v) breach of the implied duty of good faith and fair dealing; (vi) unjust  
6 enrichment; and (vii) civil conspiracy.

7 Therefore, as recently upheld by the Supreme Court of Nevada, Richardson is bound by  
8 the arbitration provision in the CTC Agreement when pursuing claims against CTC as receiver.  
9 Hence, the claims against CTC, all arising under the CTC Agreement, should be dismissed from  
10 this action.

11 **IV. CONCLUSION**

12 As set forth herein, the CTC Agreement is a valid, enforceable agreement pursuant to  
13 which Spirit and CTC agreed to arbitrate any disputes arising from the CTC Agreement. The  
14 claims alleged in Spirit's Complaint all arise out of the CTC Agreement, so the Court should grant  
15 this Motion and compel arbitration with respect to all claims against CTC in this action.

16 DATED this 14 day of May, 2020.

17 **SALTZMAN MUGAN DUSHOFF**

18  
19 By 

20 MATTHEW T. DUSHOFF, ESQ.  
Nevada Bar No. 004975  
21 JORDAN D. WOLFF, ESQ.  
Nevada Bar No. 014968  
22 1835 Village Center Circle  
Las Vegas, Nevada 89134

23 Attorneys for Defendants  
24 **CTC TRANSPORTATION INSURANCE**  
25 **SERVICES OF MISSOURI, LLC; CTC**  
26 **TRANSPORTATION INSURANCE**  
27 **SERVICES LLC; and CTC**  
28 **TRANSPORTATION INSURANCE**  
**SERVICES OF HAWAII LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SALTZMAN MUGAN DUSHOFF, and that on the day of May, 2020, I caused to be served a true and correct copy of the foregoing DEFENDANTS CTC TRANSPORTATION INSURANCE SERVICES OF MISSOURI, LLC; CTC TRANSPORTATION INSURANCE SERVICES LLC; AND CTC TRANSPORTATION INSURANCE SERVICES OF HAWAII LLC'S MOTION TO COMPEL ARBITRATION in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed below:

**Barbara D Richardson:**

Andrea Rosehill (rosehill@gtlaw.com)  
Mark Ferrario (ferrario@gtlaw.com)  
Megan Sheffield (sheffieldm@gtlaw.com)  
Kara Hendricks (hendricksk@gtlaw.com)  
LVGT docketing (lvlitdock@gtlaw.com)  
Andrea Flintz (flintza@gtlaw.com)  
Kyle Ewing (ewingk@gtlaw.com)

**CTC Transportation Insurance Services of Missouri, LLC:**

Matthew Dushoff (mdushoff@nvbusinesslaw.com)  
Jordan Wolff (jwolff@nvbusinesslaw.com)

**Criterion Claims Solutions of Omaha, Inc.:**

Joshua Dickey (jdickey@baileykennedy.com)  
John Bailey (jbailey@baileykennedy.com)  
Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)  
Rebecca Crooker (rcrooker@baileykennedy.com)

**Lexicon Insurance Management LLC, a North Carolina LLC:**

Sean Owens (sowens@grsm.com)  
Gayle Angulo (gangulo@grsm.com)  
Robert Larsen (rlarsen@grsm.com)  
Wing Wong (wwong@grsm.com)  
E-serve GRSM (WL\_LVSupport@grsm.com)

**James Marx:**

Efile LasVegas (efilelasvegas@wilsonelser.com)  
Sheri Thome (sheri.thome@wilsonelser.com)  
Lani Maile (lani.maile@wilsonelser.com)

**Brenda Guffey:**

Copy Room (efile@alversontaylor.com)  
Kurt Bonds (kbonds@alversontaylor.com)


SALTZMAN MUGAN DUSHOFF PLLC

1835 Village Center Circle  
Las Vegas, Nevada 89134

Tel: (702) 405-8500 / Fax: (702) 405-8501

Other Service Contacts not associated with a party on the case:

Olivia Swibies (oswibies@nevadafirm.com)  
Alejandro Pestonit (apestonit@nevadafirm.com)  
Richard Holley, Esq. (rholley@nevadafirm.com)  
Mary Langsner (mlangsner@nevadafirm.com)  
Thomas McGrath (tmcgrath@tysonmendes.com)  
Scarlett Fisher (sfisher@tysonmendes.com)  
Christopher Lund (clund@tysonmendes.com)  
Christina Espinosa (cespinosa@tysonmendes.com)  
Denise Doyle (service@cb-firm.com)

  
An Employee of SALTZMAN MUGAN DUSHOFF

# **Exhibit A**

## **(CTC-CA Program Administrator Agreement)**

## PROGRAM ADMINISTRATOR AGREEMENT

This PROGRAM ADMINISTRATOR AGREEMENT effective November 3, 2011 ("hereinafter referred to as the "Agreement") made by and between Spirit Commercial Auto Risk Retention Group, Inc., a Nevada corporation having its principal place of business at 5430 W. Sahara Avenue, Las Vegas, NV 89146 (hereinafter referred to as the "Company"), and CTC Transportation Insurance Services, a California Corporation having its principal place of business at 12677 Portada Place, San Diego, CA, 92130, (hereinafter referred to as the "Program Administrator").

FOR AND IN CONSIDERATION OF mutual covenants and agreements, the parties hereto agree as follows:

### SECTION 1 APPOINTMENT OF PROGRAM ADMINISTRATOR

- A. The Company appoints the Program Administrator as its general agent, subject to the terms and conditions of this Agreement, in the territory defined and for the business specified herein for the following purposes: To solicit applications for new and renewal liability insurance policies on the blank forms of application; to receive, evaluate, reject and accept requests for such policies; to underwrite, bind, and issue insurance policies in accordance with the Program Administrator's underwriting guidelines, as approved by the Company, and as may be modified or amended from time-to-time ("Underwriting Guidelines"); to make customary endorsements, changes, transfers, and modifications of existing policies; and to charge and collect payments for such policies in accordance with the terms and conditions of such policies and this Agreement or as directed by Company; and to adjust and pay certain claims.
- B. The Program Administrator shall, at all times, act as an independent contractor. Nothing contained herein shall be construed to create an employer/employee relationship between the Company and the Program Administrator.
- C. In conducting business contemplated by this Agreement, the Program Administrator shall, at all times, strictly comply with the Underwriting Guidelines and such rules, regulations, instructions, guidelines and procedures as the Company may promulgate from time to time and with all applicable laws in the jurisdictions in which the Program Administrator does business.
- D. In entering into this Agreement, the Program Administrator warrants and represents that:
  - 1. It is a business entity duly organized under the laws of its state of domicile;

2. It is in good standing in its state of domicile and, as an ongoing obligation throughout the term of this Agreement, shall take all necessary steps to remain in good standing;
3. That it or any officer, principal, or employee has the requisite licenses in its state of domicile, and in the territory defined in Section 4.A of this Agreement to accept this appointment and to carry out its duties under this Agreement.

## **SECTION 2**

### **TERM OF AGREEMENT**

The terms of this Agreement shall be for five (5) years, commencing with date Company receives its Certificate of Authority date hereof, subject to the termination provisions set forth in Section 16 of this Agreement (the "initial term"). This Agreement shall automatically be extended for successive five (5) year terms (each, a "renewal period") unless either party provides at least 180 days notice prior to the expiration of the initial term, or the then current renewal period, as appropriate, of such party's intention not to renew or extend this Agreement. Pursuant to R071-09 of Chapter 694C of the NAC renewal of this agreement shall require the approval of the majority of the Company's directors.

## **SECTION 3**

### **LINES OF BUSINESS**

The lines of business over which the Program Administrator shall have jurisdiction in the territory defined in Section 4 of this Agreement for the program mutually known by the Company and the Program Administrator as "Government Technology Program" (the "Program"). The Program Administrator's authority over said business shall be subject to and not greater than the authority granted to the Company by each state jurisdiction to write such business in each state within the territory defined in Section 4 of this Agreement. The Company may, from time to time, modify and revise the specific extensions of authority and/or general and specific conditions and exclusions contained in Section 4 by written notice, and all modifications and/or revisions shall be binding on the Program Administrator as soon as reasonably possible, but in no event later than ten (10) days after receipt of written notice from the Company.

## **SECTION 4**

### **TERRITORY**

- A. The territory within which the Program Administrator shall have authority to operate and represent the Company shall be those jurisdictions of the United States in which the Company advises the Program Administrator that it has registered to do business as a risk retention group under the federal Liability Risk Retention Act (the "Territory"). The Program Administrator shall have no authority to operate or represent the Company in any other territory unless such authority is granted in writing from the Company to the Program Administrator.

- B. In the Territory set forth above, the Company shall be the exclusive carrier for the Program Administrator with respect to the lines of business and the Program set forth in Section 3 of this Agreement for all accounts. The Program Administrator may tender business to an alternate carrier only after that business has failed to meet the Company's Underwriting Guidelines or the Company has declined the risk. The Program Administrator may represent other carriers for purposes of producing business other than that defined in Section 3 of this Agreement.

**SECTION 5**  
**GENERAL DUTIES OF PROGRAM ADMINISTRATOR**

- A. The Program Administrator shall be responsible for the marketing and underwriting of policies, endorsements, notices of cancellation, notices of nonrenewal, coding, premium collection and all related activities incidental to the issuance of policies in the authorized classes of business and the marketing of the program. With respect to business for which the Program Administrator is authorized to represent the Company, the Program Administrator will not solicit or accept proposals or contractually bind the Company on the following:
1. Risks which do not meet the Company's Underwriting Guidelines;
  2. Limits of liability which exceed the Program Administrator's authority;
  3. Risks which do not comply with the exact terms of applicable rates, rules, forms, and filings of the Company or to the laws and regulations of the various jurisdictions in the Territory.
- B. The Program Administrator is authorized to issue only those policies and related forms approved by the Company and regulatory authorities, if required, prior to issuance.
- C. The Program Administrator shall solicit business through direct marketing, licensed independent insurance agents, insurance brokers and other means in accordance with law. The Program Administrator shall have the right to exercise its own judgment as to the persons and/or entities from whom it will solicit business and the place of such solicitation. The authority granted to the Program Administrator under this Agreement shall not alter or extend the general practices and policies of the Company.
- D. When required by applicable laws, the Program Administrator shall solicit business through insurance brokers and licensed independent insurance agents, but only so long as such agents or brokers solicit business directly from prospective insured, direct marketing and otherwise in accordance with the law. The Program Administrator shall have the fullest discretion as to the method and means of operation of its business; however, the authority of the Program

Administrator under this Agreement shall not extend to or alter the general practices and policies of the Company.

- E. The Program Administrator will issue all policies bound and written within sixty (60) days of the effective date of such policies.

**SECTION 6**  
**LIMITATIONS ON AUTHORITY OF PROGRAM ADMINISTRATOR**

- A. The Program Administrator shall have no authority to act on behalf of the Company for any purposes outside the business subject to this Agreement. The Program Administrator shall have no authority to waive any rights of the Company, or to collect any amounts other than premiums for policies which have been issued or service fees as permitted by law or this Agreement, or to bind the Company in any way, except as herein expressly stated.
- B. The Program Administrator shall not take legal proceedings against any third party in connection with any matter pertaining to the business of the Company and in the name of the Company without prior written consent of the Company.
- C. The Program Administrator shall not incur any indebtedness for any purpose whatsoever on behalf of the Company without the prior written consent of the Company.
- D. The Program Administrator shall have no authority to appoint agents or sub-agents on behalf of the Company, but may recommend agents or sub-agents to be appointed by the Company at the Company's sole option and discretion. In the event that the Company does not consent to an appointment recommended by the Program Administrator, the Company shall give the Program Administrator written notice of such denial within thirty (30) business days of the Program Administrator's request. Brokers, unless appointed by the Company as agents, shall not be deemed to be agents of the Company.
- E. The Program Administrator shall have no authority to negotiate, facilitate, accept, bind or enter into reinsurance treaties on behalf of the Company.
- F. The Program Administrator may, from time to time, benefit from the work product of the Company's staff services, including but not limited to, legal, actuarial, consulting, systems and financial support services. The Program Administrator agrees that any such benefit shall be gratuitous, and neither the Company nor any of its employees shall have any professional responsibility to, or create any professional relationship with, the Program Administrator other than as specifically set forth in this Agreement.

**SECTION 7**  
**RECEIPT OF FUNDS: ACCOUNTS**

- A. The Program Administrator shall hold all funds received by it in connection with this Agreement as a fiduciary of the Company. The Program Administrator may deposit said funds into its a holding account (the "Agency Account") which may include premiums due to other carriers and commissions due to the Program Administrator.
- B. The Program Administrator shall be responsible for collecting and paying to the Company all premiums due on the business written pursuant to this Agreement. Failure to collect shall not operate as a defense against full payment by the Program Administrator to the Company of all amounts due and owing to the Company for all liability assumed by the Company. The Program Administrator may, in its own name and on its own behalf, take all reasonable actions as it deems appropriate to collect premiums on the business written pursuant to this Agreement, provided that the Program Administrator shall promptly notify the Company of any such action taken.
- C. Premiums shall be collected, deposited, and remitted to the Company as follows:
  - 1. The Program Administrator shall, on a monthly basis, transfer all amounts due to the Company by electronic fund transfer, wire transfer or any other banking transaction acceptable to the Company;
  - 2. The type of account and the bank where the Agency Account is established shall be mutually agreed upon by the Company and the Program Administrator. The Program Administrator agrees to change the type of account or the bank where such account is maintained upon the direction of the Company. The Program Administrator shall be entitled to receive all interest imputed to the Agency Account and the Company hereby grants, as may be required by law, the Program Administrator's specific right to such interest;
  - 3. No later than fifteen business (15) days after the close of each calendar month, the Program Administrator shall prepare and submit to the Company a report in a form and manner acceptable to the Company listing gross premiums written and collected for all policies issued in the previous accounting month, less return premiums and cancellations, reconciliations to previous monthly reports and Program Administrator Commissions and Fees (hereinafter referred to as the "Account Current");
  - 4. No later than forty-five business (45) days after the close of each month, the Company shall transfer all amounts due to the Company in accordance with the reconciled Account Current for that calendar month to the Company's home office account by electronic fund transfer, wire transfer,

or any other banking transaction acceptable by the Company. In cases of a pre-arranged partial payment plan between Program Administrator and a client, the amount due the Company will be pro-rated based on the payment plan and will be indicated as such on the account current and remitted as collected.

5. In the event that amounts transferred from the Company Account to the Company's home office account are not sufficient to pay the total net premium due the Company as shown on the Program Administrator's Account Current, upon written notice from the Company stating the additional amount due, the Program Administrator shall promptly remit all further premium due and owing, irrespective of whether the Program Administrator has collected it, within two (2) days following written notice from the Company. If payment is not made within two (2) days of written notice, interest on amounts owing will accrue at a rate of 1.5% per month; and
  6. The Company shall have a first lien upon commissions and/or service fees due under this Agreement for any indebtedness of the Program Administrator to the Company, including premiums, and the right of the Program Administrator or any other person to receive commissions shall at all times be subordinate to the right of the Company to offset commissions against any indebtedness of the Program Administrator to the Company. This right of offset shall also apply against any liability incurred by the Company to any persons by reason of the negligence or unauthorized acts committed by the Program Administrator.
- D. The Program Administrator or any person under contract with the Program Administrator is authorized, where permitted by law, to charge and collect service fees for each account on a yearly basis only. In the event that the Program Administrator or any person under contract with the Program Administrator charges and collects service fees as provided in this Paragraph:
1. The Program Administrator or any person and/or entity under contract with the Program Administrator shall be entitled to and shall retain all such service fees, and such services fees shall not be included in any calculations relating to the premium rates charged for policies, for the commissions paid by the Company to the Program Administrator or pursuant to Section 10A; and
  2. The Program Administrator shall notify the Company monthly of the amount of service fees collected on business issued pursuant to this Agreement and shall, upon Company's written request, make available to the Company reasonable access to and/or true and correct copies of all records relating to such service fees.

**SECTION 8**  
**EXPENSES**

- A. The Program Administrator shall accept and pay all expenses incurred by it in connection with the underwriting, production, marketing, billing, accounting, and servicing of business written under this Agreement, including, but not limited to, the following:
1. Promotional, marketing and public relation expenses;
  2. The Program Administrator's general office expenses, including, but not limited to, rent, salaries, utilities, transportation, furniture, fixtures, equipment, supplies telephone, attorney's and consulting fees and expenses, postage, and other general overhead expenses;
  3. Costs of printing and producing policies, premium notices, records and reports, and all documents required to fulfill the Program Administrator's obligations under this Agreement; and
  4. Costs of obtaining and renewing personal licenses.
- B. The Company shall accept and fund all reported losses arising out of claims under policies issued pursuant to this Agreement, including all allocated and unallocated claims expenses and attorney's fees, but not including office expenses of the Program Administrator related to claims handling, which shall remain the responsibility of the Program Administrator.
- C. The Company shall accept and pay all other expenses incurred by the Company in compliance with the laws and statutes of the various jurisdictions wherein the Company operates, including fees and assessments of rating or service organizations and premium taxes.
- D. The Program Administrator will accept and pay all fines, penalties, fees, administrative payments, and costs levied against the Company or the Program Administrator, individually or jointly, by any regulatory agency, governmental unit, trier of fact or court of competent jurisdiction for any violation of law or regulation directly attributable solely to the error, omission, or negligence of the Program Administrator. The Company will accept and pay all fines, penalties, administrative payments, and costs levied against the Company or the Program Administrator, individually or jointly, by any regulatory agency, governmental unit, trier of fact or court of competent jurisdiction for any violation of law or regulation directly attributable solely to the error, omission, or negligence of Company. In the event of a finding of comparative negligence, financial responsibility will be allocated pro rata between the Company and the Program Administrator.

**SECTION 9**  
**BOOKS, ACCOUNTS AND RECORDS**

- A. The Company shall be entitled to receive true and correct financial and document records for all business produced under this Agreement. The Program Administrator shall at all times maintain true, accurate, and complete books, bank accounts, records and accountings of all business arising out of this Agreement, including, but not limited to, premiums, reimbursements, and all financial matters (hereinafter referred to as "Business Records"). All Business Records shall be maintained at all times in accordance with generally accepted accounting principles and regulatory practices. All Business Records shall be subject, at all reasonable times, to inspection, duplication, and/or audit by a duly authorized representative of the Company and shall be made available for inspection at the Program Administrator's offices after termination.
- B. All records related to the business of the Company as defined in Section 1.A and Section 3 of this Agreement, including, but not limited to, underwriting, policy, financial records and account files (hereinafter referred to as "Underwriting Files") shall be the property of the Program Administrator but shall be subject, at all reasonable times, to inspection, duplication, and/or audit by a duly authorized representative of the Company and/or representative of any authorized reinsurer or regulatory agency. Copies of all original Underwriting Files shall, at the expense of the Company, be promptly delivered to the Company upon request of in the event of termination of this Agreement. The Company shall be entitled to a complete copy of all data the Program Administrator has provided at the Company's sole expense. The obligations of the Program Administrator under this Agreement shall not be discharged, altered or modified by the delivery of any copies of Underwriting Files to the Company. Except as provided in Section 16.I.2 of this Agreement, the Program Administrator shall retain ownership of the account relationship for business which falls within the terms of this Agreement.
- C. The books and accounts of the Company shall be accepted as full and final evidence in all financial matters relating to this Agreement, provided that the Program Administrator may offer documentation from its files in the event of any disagreement with the Company.

**SECTION 10**  
**COMPENSATION**

- A. Subject to compliance by the Program Administrator with the terms and conditions of this Agreement and all applicable laws and regulations, the Company shall allow, as full compensation for all program administration services rendered and expenses incurred by the Program Administrator, a commission at rates and on terms as agreed by the parties hereto as satisfactory.

- B. Commissions to sub-producers, brokers, other entities and all other third parties for services rendered and expenses incurred with respect to the marketing or issuance of policies written pursuant to this Agreement shall be the exclusive obligation of the Program Administrator.
- C. The Company may offset any amounts due to the Company from the Program Administrator against any compensation due from the Company to the Program Administrator with respect to the business written under this Agreement. The Program Administrator shall not be entitled to offset premium payments by any amount claimed to be owed by the Company to the Program Administrator.
- D. Commissions paid to the Program Administrator on business written under this Agreement shall be refunded to policyholders at the same rates at which such commissions were originally earned by the Program Administrator with respect to cancelled policies and return premiums. The Program Administrator shall be responsible for refund of all commissions paid to sub-producers, brokers, and other entities, irrespective of return payments actually made by sub-producers, brokers, and other entities. The Program Administrator may, in its own name and on its own behalf, take all reasonable actions as it deems appropriate to recover return premiums due from sub-producers, brokers or other entities, provided that the Program Administrator shall promptly notify the Company of any action taken.
- E. Compensation for program administration services on behalf of the Company shall be paid to the Program Administrator according to the schedule attached hereto in Addendum "1".

**SECTION 11**  
**FORMS, APPLICATIONS, AND OTHER MATERIALS**

- A. The Program Administrator agrees that no forms, pamphlets, booklets, advertising materials, or any other printed matter utilizing the name or logo of the Company or any of its affiliates and/or concerning business written under this Agreement shall be used, issued, modified or circulated by it without the prior written authorization of the Company, but the format of any such item for bulk circulation may be approved in advance and used by the Program Administrator until such approval is specifically withdrawn.
- B. The Company will give the Program Administrator at least sixty (60) days written notice of any change or discontinuance of any such forms, booklets, applications, pamphlets, advertising materials, or any other printed matter relating to the Company and/or concerning this Agreement, unless an action or requirement of a government agency having jurisdiction over such materials requires less notice, in which case, the Company shall give the Program Administrator notice consistent with such action or requirement.

**SECTION 12**  
**CLAIMS HANDLING**

- A. The Program Administrator shall promptly notify the Company of any claims, or losses which, in the opinion of the Company, may give rise to a claim, received by or coming to the attention of the Program Administrator or any circumstances which may give rise to claims or losses and shall adhere to the claims reporting procedures which the Company may promulgate from time to time. Additionally Program Administrator will provide oversight of Company's selected Claims Handler.

**SECTION 13**  
**COMPLIANCE WITH LAWS AND REGULATIONS**

- A. In the conduct of business under this Agreement, the Program Administrator will observe and comply with all rules and regulations of the Company now existing or hereafter promulgated and with all applicable laws, regulations, and rulings by any governmental authority, agency, bureau, or commission. All policies and other documents will be issued and delivered pursuant to the applicable laws, regulations, and rulings of any governmental authority, agency, bureau, or commission.
- B. In entering into this Agreement, the Program Administrator warrants and represents that it, its principals and/or its duly appointed employees/representatives are duly licensed in accordance with the law and that they hold appropriate resident agents' licenses, non-resident agents' licenses, brokers' licenses, or other licenses, as required by law, in each state in the Territory. The Program Administrator understands and agrees that the Company shall rely on such representations. The Program Administrator shall indemnify and hold harmless the Company for any breach of this warranty.
- C. The Program Administrator will procure any license necessary as directed by the District of Columbia Insurance Commissioner or the insurance regulatory bodies of any State or Territory to conduct the business of the Program Administrator.
- D. The Company shall be responsible for the maintenance of all Company licenses, for making all filings required by statute or governmental authority with respect to business written under this Agreement, and for compliance with all applicable laws and regulations pertaining to its authority to issue policies. The Company understands and agrees that the Program Administrator shall rely on such representations. The Company shall indemnify and hold harmless the Program Administrator for any breach of this warranty.

**SECTION 14**  
**MODIFICATION**

- A. This agreement may only be revised and/or modified by written amendment, signed by the Company and the Program Administrator and attached to this Agreement. No other manner of change, modification, addition, or deletion of any portion of this Agreement will be valid or binding upon either the Company or the Program Administrator.
- B. The failure of the Company to enforce any condition, right, or power established under this Agreement or by operation of law shall not operate as a waiver or modification of such condition, right, or power, and the Company may, at any time, pursue any and all rights or remedies available to it under law, equity, or this Agreement.

**SECTION 15**  
**FIDELITY COVERAGE**

The Program Administrator shall, at all times during this Agreement, maintain fidelity coverage issued by an admitted insurer rated at least "A" by A.M. Best Company in the with liability limits of \$500,000, with a deductible not to exceed \$10,000, for each employee of the Program Administrator handling any funds subject to this Agreement and the Company shall be given a copy of such fidelity policy. The Program Administrator shall immediately notify the Company in writing if any of the following occurs:

- 1. The Program Administrator and/or any named insured under the policy received notice of cancellation or changes carrier for any reason; or
- 2. The deductible increases by more than twenty (20%) percent; or
- 3. Any claim is brought under the policy relating to the Program.

**SECTION 16**  
**TERMINATION**

- A. This Agreement may be terminated without cause only pursuant to Section 2 of this Agreement.
- B. The authority of the Program Administrator under this Agreement shall terminate automatically without notice in the event of bankruptcy, insolvency, receivership, liquidation, or assignment for the benefit of creditors by either party.
- C. In the event of default in any material term of this Agreement, this Agreement shall terminate effective forty-five (45) days after written notice by one party to

the other, if said default has not been cured within said forty-five (45) days by the non-breaching parties.

- D. Upon the finding of persuasive evidence by either party indicating the existence of fraud, this Agreement shall terminate effective immediately after written notice by one party to the other.
- E. In the event of termination of this Agreement for any reason, neither party shall have any claim against the other for loss of prospective profits, loss of income, or damage to business arising therefrom. Upon the termination of this Agreement, no charges shall be made by the Program Administrator for services in settlement of this Agreement or winding up affairs among the parties.
- F. In the event of termination of this Agreement, all lines of business as set forth in Section 3 of this Agreement arising up to and until the effective date of termination for any account in existence prior to receipt of notice of termination shall be placed with the Company, provided they meet the Underwriting Guidelines, unless otherwise agreed by the Company in writing. It is further understood and agreed that all lines of business as set forth in Section 3 of this Agreement arising up to and until the effective date of termination for any new account arising subsequent to the date of notice of termination shall be submitted to the Company for prior written approval.
- G. In the event of termination of this Agreement, any business remaining with the Company shall be permitted to continue normal expiration. The Program Administrator will make no material changes in coverage or limits of liability without prior written approval of the Company.
- H. Upon termination of this Agreement, the Company may withhold payment of any compensation earned by the Program Administrator until the Program Administrator has certified in writing to the Company that all known claims and losses in reference to business written under this Agreement have been duly reported to the Company.
- I. In the event of termination of this Agreement:
  - 1. The obligations of each party to the other specified in this Agreement shall survive with reference to business in force at the time of termination and shall continue to be discharged promptly.
  - 2. The Company's record or knowledge of names of policyholders and expiration dates shall not be disclosed by the Company to any agent, broker, or other person, unless required by law, nor used by the Company for purposes of solicitation. This Paragraph shall not apply in the event of termination of this Agreement for acts involving the Program Administrator pursuant to Paragraphs B, C or D of this Section.

3. Should the Program Administrator fail to properly account for and pay all amounts due to the Company for which the Program Administrator is liable, the Company shall at its sole option have the right to draw upon the letter of credit established by the Program Administrator pursuant to Section 8 of this Agreement.

#### **SECTION 17** **ASSIGNMENT**

This Agreement shall not inure to the benefit of any successor in interest of the Program Administrator of the Company, nor may any interest under this Agreement be assigned by any party without prior written consent of the other, except that the Program Administrator may, upon no less than ten (10) days prior written notice, assign its rights and obligations under this Agreement, in whole or in part, to any Company.

#### **SECTION 18** **ARBITRATION**

- A. Any controversy or claims of either of the parties arising out of or relating to this Agreement, or the breach of any term, condition, or obligation, may, upon the mutual consent of all parties, be submitted to non-binding mediation under the supervision of the American Arbitration Association or any other agency for alternative dispute resolution. In the event that mutual consent to mediation shall not be obtained within thirty (30) days of written notice from any party to the other concerning the existence of a claim or controversy, the application of this paragraph shall be null and void.
- B. Any controversy or claim of either of the parties arising out of or relating to this Agreement, or the breach of any term, condition, or obligation, which is not resolved by non-binding mediation, shall be settled by final and binding arbitration before three (3) arbitrators chosen under and governed by the Commercial Arbitration Rules of the American Arbitration Association to be held in the District of Columbia, and judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction.
- C. All expenses of mediation or arbitration shall be borne equally by the parties, provided that each party shall be responsible for its own legal fees, expenses and costs. However, the mediators or arbitrators may, at their sole option and discretion, award reasonable attorneys fees, costs and expenses related to mediation or arbitration to the prevailing party and such amounts will be in addition to any settlement.

**SECTION 19**  
**INDEMNIFICATION**

- A. The Program Administrator shall indemnify and hold the Company harmless for all losses and costs resulting from any negligent act, omission, intentional misconduct or unauthorized transaction by the Program Administrator or persons under contract with the Program Administrator.
- B. The Company shall hold the Program Administrator harmless and indemnify the Program Administrator for claims, including the cost of defense arising out of claims or suites arising out of loss to policyholders, caused directly by the Company's negligent act, omission or intentional misconduct.
- C. In no event does the Company agree to indemnify and hold the Program Administrator harmless for actions of any sub-producers, brokers, other entities and other third parties.

**SECTION 20**  
**GENERAL PROVISIONS**

- A. To be validly given, all notices, requests, consents, and other communications arising out of this Agreement must be in writing and mailed by registered or certified first class mail, postage paid, to the last known address of the party. Notice shall be deemed to be given upon receipt or refusal of receipt.
- B. This Agreement shall not become effective until signed by a duly authorized representative of each party.
- C. Headings or titles to the several sections herein are for identification purposes only and shall not be construed as forming a part hereof.
- D. This Agreement, including the provisions relating to arbitration, shall be governed by the laws of the District of Columbia.
- E. Wherever possible, each provision of this Agreement shall be interpreted in such a manner and to such an extent as to be effective and valid under applicable law. In the even that any section, sub-section, or provision of this Agreement is declared by statute or a court of competent jurisdiction to be illegal or void only to the extent of such illegality or invalidity, and all other sections, sub-sections, terms, conditions and provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

**SPIRIT COMMERCIAL AUTO RISK  
RETENTION GROUP, INC.**

Witness: Antonia Caray

By: [Signature]  
Name: Michael Caray  
Title: President

**CTC TRANSPORTATION INSURANCE  
SERVICES, LLC**

Witness: Karla Wilby

By: [Signature]  
Name: Barbara O'Brien  
Title: President

**PROGRAM ADMINISTRATOR AGREEMENT**

BETWEEN

**SPIRIT COMMERCIAL AUTO**  
**RISK RETENTION GROUP, INC.**

AND

**CTC TRANSPORTATION INSURANCE SERVICES**

**COMPENSATION**

1. **PROGRAM MANAGEMENT FEE.** For the services of the agents marketing and selling and administrative services including but not limited to: providing documents, customer service and support, payment collection, and interacting with Company, Program Administrator shall be entitled to a Program Management Fee of 23.5% (twenty three point five percent) on all policies written under this agreement.
2. **CALCULATION.** All compensation is calculated from the base premium quoted to a prospective client.
3. **RETENTION.** Retention of compensation payments on a contemporaneous transfer to Company is not deemed to be an offset under Section 10-C of this Agreement
4. **TIMING OF PAYMENTS.** Compensation will be paid to Program Manager under the provisions of Section 7 of this Agreement and shall not be paid until Company is paid in accordance with Section 7.C.4 through 7.C.6 of this Agreement.

Addendum B

PROGRAM ADMINISTRATOR AGREEMENT

BETWEEN

SPIRIT COMMERCIAL AUTO  
RISK RETENTION GROUP, INC.

AND

CTC TRANSPORTATION INSURANCE SERVICES

PRIMARY LAYER PROFIT COMISSION BONUS

1. PURPOSE. As an incentive to produce and manage to a profitable loss ratio, the Administrator will receive a Primary Layer Profit Commission Bonus based on the net paid loss ratio for each respective program year subject to this Agreement.
2. CALCULATION OF LOSS RATIO. Paid loss ratio for a program year shall be calculated as the net ultimate losses and loss adjustment expenses paid for all claims made during a program year as a percentage of the net premium (i.e. gross net written premium less premium ceded) as reported to the Company's reinsurers for that program year.
3. CALCULATION OF BONUS. The Primary Layer Profit Commission Bonus due to the Administrator shall be based on the following schedule:

0%-40% losses:	7.5% of respective program year net premium
40%-45% losses:	5% of respective program year net premium
45%-47.5% losses:	2.5% of respective program year net premium
4. PAYMENTS.
  - a. The first payment shall be made on December 31<sup>st</sup> following the end of the policy year. This payment will consist of the Bonus derived from the above schedule for the "Claims Made" policies issued by the Company.
  - b. The second payment will be made 15 months after the end of the policy year. This payment will consist fifty percent of the amount due on the Bonus derived from the above schedule for the "Occurrence" policies issued by the Company.

- c. The third payment will be made 27 months after the end of the policy year. This payment will consist fifty percent of the amount due on the Bonus derived from the above schedule for the "Occurrence" policies issued by the Company.
  - d. The final payment will be made 39 months after the end of the policy year. This payment will consist fifty percent of the amount due on the Bonus derived from the above schedule for the "Occurrence" policies issued by the Company subject to all claims made during that program year being closed.
5. DATA. Case reserves and actuarially established IBNR reserves shall be used in the determination of the net loss ratio for the first three payments due, but not in the determination of the loss ratio for the final settlement as the final settlement shall not be made until all respective program year claims are closed.
6. OVERPAYMENT. Any amounts due back from the Administrator to the Company as a result of adverse claims development for a program year occurring subsequent to payment of future bonus payments for that program year will be withheld from future bonus payments on subsequent program years until such time as the amounts due back from the Administrator have been satisfied.

PROGRAM ADMINISTRATOR AGREEMENT

BETWEEN

SPIRIT COMMERCIAL AUTO  
RISK RETENTION GROUP, INC.

AND

CTC TRANSPORTATION INSURANCE SERVICES

EXCESS LAYER PROFIT COMMISSION BONUS

1. **PURPOSE.** As an incentive to produce and manage to a profitable loss ratio, the Program Administrator will receive a Reinsurance Layer Profit Commission Bonus based on profit sharing provisions within the Company's reinsurance agreement(s).
2. **CALCULATION OF BONUS.** The Reinsurance Layer Profit Commission Bonus due to the Program Administrator shall be 17.5% of all reinsurance premium returns due to the Company as a result of profit sharing provisions within its reinsurance agreement(s).
3. **COMMUTATION.** In the event of a commutation, any excess claims are considered to be reinsurance expense and added to the final commutation rate in order to determine the actual final reinsurance rate.
4. **PAYMENTS.** Reinsurance Layer Profit Commission Bonus amounts due to the Administrator shall be paid to the Program Administrator within 60 days of those funds becoming available for payment to the Company by the Company's reinsurers, except for any claims reserves in the excess layer which deemed as reinsurance expense as noted above and accordingly will be netted against funds due to Program Administrator until such time as the excess claims settle.
5. **OVERPAYMENT.** Any amounts due back from the Program Administrator to the Company as a result of adverse claims development for a program year occurring subsequent to payment of future bonus payments for that program year will be withheld from future bonus payments on subsequent program years until such time as the amounts due back from the Program Administrator have been satisfied.

# **Exhibit B**

(June 29, 2016 Letter)

BRIAN SANDOVAL  
Governor

STATE OF NEVADA

BRUCE H. DRESLOW  
Director

BARBARA D. RICHARDSON  
Commissioner



DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE  
1818 East College Pkwy., Suite 103  
Carson City, Nevada 89706  
(775) 687-0700 • Fax (775) 687-0787  
Website: [doi.nv.gov](http://doi.nv.gov)  
E-mail: [insinfo@doI.nv.gov](mailto:insinfo@doI.nv.gov)

June 29, 2016

Sent Via Electronic Mail [matthews@pboa.com](mailto:matthews@pboa.com)

Teresa Matthews  
Risk Services - Nevada, Inc.  
1605 Main Street, Suite 800  
Sarasota, FL 34236

Re: Spirit Commercial Auto RRG, Inc., NV #117423  
Amendment to Program Administration Agreement (CTC)  
Assignment Agreement (CTC and CTC Missouri)  
Membership Agreement (CTC Missouri)

Dear Ms. Matthews:

Please be advised that the three agreements referenced above have been reviewed by Nevada Division of Insurance staff and approved by Commissioner of Insurance, Barbara D. Richardson.

If you have any questions or comments, please do not hesitate to contact me. My phone number is (775) 687-0755 and my e-mail address is [kdsterm@doi.nv.gov](mailto:kdsterm@doi.nv.gov).

Sincerely

A handwritten signature in black ink, appearing to read "Ken Stern", written over a horizontal line.

Ken Stern  
Management Analyst III

APP0515

# **Exhibit C**

## **(CTC Agreement)**

## **PROGRAM ADMINISTRATOR AGREEMENT**

This PROGRAM ADMINISTRATOR AGREEMENT effective July 1, 2016 ("hereinafter referred to as the "Agreement") made by and between Spirit Commercial Auto Risk Retention Group, Inc., a Nevada corporation having its principal place of business at 9550 S. Eastern Avenue, Suite #253, Las Vegas, NV 89123 (hereinafter referred to as the "Company"), and CTC Transportation Insurance Services of Missouri, LLC, a Missouri Corporation having its principal place of business at 611 W. Fort Scott St. Butler, MO 64730 (hereinafter referred to as the "Program Administrator").

FOR AND IN CONSIDERATION OF mutual covenants and agreements, the parties hereto agree as follows:

### **SECTION 1**

#### **APPOINTMENT OF PROGRAM ADMINISTRATOR**

- A. The Company appoints the Program Administrator as its general agent, subject to the terms and conditions of this Agreement, in the territory defined and for the business specified herein for the following purposes: To solicit applications for new and renewal liability insurance policies on the blank forms of application; to receive, evaluate, reject and accept requests for such policies; to underwrite, bind, and issue insurance policies in accordance with the Program Administrator's underwriting guidelines, as approved by the Company, and as may be modified or amended from time-to-time ("Underwriting Guidelines"); to make customary endorsements, changes, transfers, and modifications of existing policies; and to charge and collect payments for such policies in accordance with the terms and conditions of such policies and this Agreement or as directed by Company; and to adjust and pay certain claims. Company shall provide to the Program Administrator its underwriting standards, procedures and manuals setting forth the rates to be charged and the conditions for the acceptance or rejection of risk. Program Administrator shall adhere to the standards, rules, rates, and conditions of Company.
- B. The Program Administrator shall, at all times, act as an independent contractor. Nothing contained herein shall be construed to create an employer/employee relationship between the Company and the Program Administrator.
- C. In conducting business contemplated by this Agreement, the Program Administrator shall, at all times, strictly comply with the Underwriting Guidelines and such rules, regulations, instructions, guidelines and procedures as the Company may promulgate from time to time and with all applicable laws in the jurisdictions in which the Program Administrator does business.
- D. In entering into this Agreement, the Program Administrator warrants and represents that:

1. It is a business entity duly organized under the laws of its state of domicile;
2. It is in good standing in its state of domicile and, as an ongoing obligation throughout the term of this Agreement, shall take all necessary steps to remain in good standing;
3. That it or any officer, principal, or employee has the requisite licenses in its state of domicile and in the territory defined in Section 4.A of this Agreement to accept this appointment and to carry out its duties under this Agreement.

## **SECTION 2**

### **TERM OF AGREEMENT**

The terms of this Agreement shall be for five (5) years, commencing July 1, 2016, subject to the termination provisions set forth in Section 16 of this Agreement (the "initial term"). This Agreement shall automatically be extended for successive five (5) year terms (each, a "renewal period") unless either party provides at least 180 days' notice prior to the expiration of the initial term, or the then current renewal period, as appropriate, of such party's intention not to renew or extend this Agreement. Renewal of this agreement shall require the approval of the majority of the Company's directors.

## **SECTION 3**

### **LINES OF BUSINESS**

The lines of business over which the Program Administrator shall have jurisdiction in the territory defined in Section 4 of this Agreement for the program mutually known by the Company and the Program Administrator as "Spirit Commercial Auto Program" (the "Program"). The Program Administrator's authority over said business shall be subject to and not greater than the authority granted to the Company by each state jurisdiction to write such business in each state within the territory defined in Section 4 of this Agreement. The Company may, from time to time, modify and revise the specific extensions of authority and/or general and specific conditions and exclusions contained in Section 4 by written notice, and all modifications and/or revisions shall be binding on the Program Administrator as soon as reasonably possible, but in no event later than ten (10) days after receipt of written notice from the Company.

## **SECTION 4**

### **TERRITORY**

- A. The territory within which the Program Administrator shall have authority to operate and represent the Company shall be those jurisdictions of the United States in which the Company advises the Program Administrator that it has registered to do business as a risk retention group under the federal Liability Risk Retention Act (the "Territory"). The Program Administrator shall have no

authority to operate or represent the Company in any other territory unless such authority is granted in writing from the Company to the Program Administrator.

In the Territory set forth above, the Company shall be the exclusive carrier for the Program Administrator with respect to the lines of business and the Program set forth in Section 3 of this Agreement for all accounts. The Program Administrator may tender business to an alternate carrier only after that business has failed to meet the Company's Underwriting Guidelines or the Company has declined the risk.

**SECTION 5**  
**GENERAL DUTIES OF PROGRAM ADMINISTRATOR**

- A. The Program Administrator shall be responsible for the marketing and underwriting of policies, endorsements, notices of cancellation, notices of nonrenewal, coding, premium collection and all related activities incidental to the issuance of policies in the authorized classes of business and the marketing of the program. With respect to business for which the Program Administrator is authorized to represent the Company, the Program Administrator will not solicit or accept proposals or contractually bind the Company on the following:
  - 1. Risks which do not meet the Company's Underwriting Guidelines;
  - 2. Limits of liability which exceed the Program Administrator's authority;
  - 3. Risks which do not comply with the exact terms of applicable rates, rules, forms, and filings of the Company or to the laws and regulations of the various jurisdictions in the Territory.
- B. The Program Administrator is authorized to issue only those policies and related forms approved by the Company and regulatory authorities, if required, prior to issuance.
- C. The Program Administrator shall solicit business through direct marketing, licensed independent insurance agents, insurance brokers, and other means in accordance with law. The Program Administrator shall have the right to exercise its own judgment as to the persons and/or entities from whom it will solicit business and the place of such solicitation. The authority granted to the Program Administrator under this Agreement shall not alter or extend the general practices and policies of the Company.
- D. When required by applicable laws, the Program Administrator shall solicit business through insurance brokers and licensed independent insurance agents, but only so long as such agents or brokers solicit business directly from prospective insured, direct marketing and otherwise in accordance with the law. The Program Administrator shall have the fullest discretion as to the method and means of operation of its business; however, the authority of the Program

Administrator under this Agreement shall not extend to or alter the general practices and policies of the Company.

- E. The Program Administrator will issue all policies bound and written within sixty (60) days of the effective date of such policies.
- F. Program Administrator, before the effective date of a policy of insurance shall deliver written notice to the prospective insured that discloses the relationship between Program Administrator and Company as to the Producer Controller Insurer status as between Program Administrator and Company.
- G. Should the Program Administrator place insurance business with Company through a non-affiliated Producer other than the Program Administrator, the Program Administrator shall retain in its records a signed statement from the other producer indicating that the other producer is aware of the producer controller insurer relationship between Program Administrator and Company.

#### **SECTION 6**

##### **LIMITATIONS ON AUTHORITY OF PROGRAM ADMINISTRATOR**

- A. The Program Administrator shall have no authority to act on behalf of the Company for any purposes outside the business subject to this Agreement. The Program Administrator shall have no authority to waive any rights of the Company, or to collect any amounts other than premiums for policies which have been issued or service fees as permitted by law or this Agreement, or to bind the Company in any way, except as herein expressly stated.
- B. The Program Administrator shall not take legal proceedings against any third party in connection with any matter pertaining to the business of the Company and in the name of the Company without prior written consent of the Company.
- C. The Program Administrator shall not incur any indebtedness for any purpose whatsoever on behalf of the Company without the prior written consent of the Company.
- D. The Program Administrator shall have no authority to appoint agents or sub-agents on behalf of the Company, but may recommend agents or sub-agents to be appointed by the Company at the Company's sole option and discretion. In the event that the Company does not consent to an appointment recommended by the Program Administrator, the Company shall give the Program Administrator written notice of such denial within thirty (30) business days of the Program Administrator's request. Brokers, unless appointed by the Company as agents, shall not be deemed to be agents of the Company.
- E. The Program Administrator shall have no authority to negotiate, facilitate, accept, bind, or enter into reinsurance treaties on behalf of the Company.

- F. The Program Administrator may, from time to time, benefit from the work product of the Company's staff services, including but not limited to, legal, actuarial, consulting, systems and financial support services. The Program Administrator agrees that any such benefit shall be gratuitous, and neither the Company nor any of its employees shall have any professional responsibility to, or create any professional relationship with, the Program Administrator other than as specifically set forth in this Agreement.

**SECTION 7**  
**RECEIPT OF FUNDS: ACCOUNTS**

- A. Program Administrator shall provide accounting to Company that sets forth all material transactions executed by Program Administrator that affect Company, including information necessary to identify and explain all commissions, charges, and other fees already received by Program Administrator or still owing by Company to the Program Administrator.
- B. The Program Administrator shall hold all funds received by it in connection with this Agreement as a fiduciary of the Company in one or more bank accounts established by Company in banks that are members of the Federal Reserve System. The Program Administrator may deposit said funds into its holding account (the "Agency Account") which may include premiums due to other carriers and commissions due to the Program Administrator. Program Administrator shall maintain records of all insurance business separate from all other records of the Program Administrator.
- C. The Program Administrator shall be responsible for collecting and paying to the Company all premiums due on the business written pursuant to this Agreement. Failure to collect shall not operate as a defense against full payment by the Program Administrator to the Company of all amounts due and owing to the Company for all liability assumed by the Company. The Program Administrator may, in its own name and on its own behalf, take all reasonable actions as it deems appropriate to collect premiums on the business written pursuant to this Agreement, provided that the Program Administrator shall promptly notify the Company of any such action taken.
- D. Premiums shall be collected, deposited, and remitted to the Company as follows:
1. The Program Administrator shall, on a monthly basis, transfer all amounts due to the Company by electronic fund transfer, wire transfer or any other banking transaction acceptable to the Company.
  2. The type of account and the bank where the Agency Account is established shall be mutually agreed upon by the Company and the Program Administrator. The Program Administrator agrees to change the

type of account or the bank where such account is maintained upon the direction of the Company. The Program Administrator shall be entitled to receive all interest imputed to the Agency Account and the Company hereby grants, as may be required by law, the Program Administrator's specific right to such interest;

3. No later than fifteen business (15) days after the close of each calendar month, the Program Administrator shall prepare and submit to the Company a report in a form and manner acceptable to the Company listing gross premiums written and collected for all policies issued in the previous accounting month, less return premiums and cancellations, reconciliations to previous monthly reports and Program Administrator Commissions and Fees (hereinafter referred to as the "Account Current");
4. No later than twenty-five business (25) days after the close of each month, the Company shall transfer all amounts due to the Company in accordance with the reconciled Account Current for that calendar month to the Company's home office account by electronic fund transfer, wire transfer, or any other banking transaction acceptable by the Company. In cases of a pre-arranged partial payment plan between Program Administrator and a client, the amount due the Company will be pro-rated based on the payment plan and will be indicated as such on the account current and remitted as collected.
5. In the event that amounts transferred from the Company Account to the Company's home office account are not sufficient to pay the total net premium due the Company as shown on the Program Administrator's Account Current, upon written notice from the Company stating the additional amount due, the Program Administrator shall promptly remit all further premium due and owing, irrespective of whether the Program Administrator has collected it, within two (2) days following written notice from the Company. If payment is not made within two (2) days of written notice, interest on amounts owing will accrue at a rate of 1.5% per month; and
6. The Company shall have a first lien upon commissions and/or service fees due under this Agreement for any indebtedness of the Program Administrator to the Company, including premiums, and the right of the Program Administrator or any other person to receive commissions shall at all times be subordinate to the right of the Company to offset commissions against any indebtedness of the Program Administrator to the Company. This right of offset shall also apply against any liability incurred by the Company to any persons by reason of the negligence or unauthorized acts committed by the Program Administrator.

- E. The Program Administrator or any person under contract with the Program Administrator is authorized, where permitted by law, to charge and collect service fees for each account on a yearly basis only. In the event that the Program Administrator or any person under contract with the Program Administrator charges and collects service fees as provided in this Paragraph:
1. The Program Administrator or any person and/or entity under contract with the Program Administrator shall be entitled to and shall retain all such service fees, and such services fees shall not be included in any calculations relating to the premium rates charged for policies, for the commissions paid by the Company to the Program Administrator or pursuant to Section 10A; and
  2. The Program Administrator shall notify the Company monthly of the amount of service fees collected on business issued pursuant to this Agreement and shall, upon Company's written request, make available to the Company reasonable access to and/or true and correct copies of all records relating to such service fees.

#### **SECTION 8** **EXPENSES**

- A. The Program Administrator shall accept and pay all expenses incurred by it in connection with the underwriting, production, marketing, billing, accounting, and servicing of business written under this Agreement, including, but not limited to, the following:
1. Promotional, marketing and public relation expenses;
  2. The Program Administrator's general office expenses, including, but not limited to, rent, salaries, utilities, transportation, furniture, fixtures, equipment, supplies telephone, attorney's and consulting fees and expenses, postage, and other general overhead expenses;
  3. Costs of printing and producing policies, premium notices, records and reports, and all documents required to fulfill the Program Administrator's obligations under this Agreement; and
  4. Costs of obtaining and renewing personal licenses.
- B. The Company shall accept and fund all reported losses arising out of claims under policies issued pursuant to this Agreement, including all allocated and unallocated claims expenses and attorney's fees, but not including office expenses of the Program Administrator related to claims handling, which shall remain the responsibility of the Program Administrator.

- C. The Company shall accept and pay all other expenses incurred by the Company in compliance with the laws and statutes of the various jurisdictions wherein the Company operates, including fees and assessments of rating or service organizations and premium taxes.
- D. The Program Administrator will accept and pay all fines, penalties, fees, administrative payments, and costs levied against the Company or the Program Administrator, individually or jointly, by any regulatory agency, governmental unit, tier of fact of court of competent jurisdiction for any violation of law of regulation directly attributable solely to the error, omission, or negligence of the Program Administrator. The Company will accept and pay all fines, penalties, administrative payments and costs levied against the Company or the Program Administrator, individually or jointly, by any regulatory agency, governmental unit, tier of fact or court of competent jurisdiction for any violation of law or regulation directly attributable solely to the error, omission, or negligence of Company. In the event of a finding of comparative negligence, financial responsibility will be allocated pro rata between the Company and the Program Administrator.

**SECTION 9**  
**BOOKS, ACCOUNTS AND RECORDS**

- A. The Company shall be entitled to receive true and correct financial and document records for all business produced under this Agreement. The Program Administrator shall at all times maintain true, accurate, and complete books, bank accounts, records and accountings of all business arising out of this Agreement, including, but not limited to, premiums, reimbursements, and all financial matters (hereinafter referred to as "Business Records"). All Business Records shall be maintained at all times in accordance with generally accepted accounting principles and regulatory practices. All Business Records shall be subject, at all reasonable times, to inspection, duplication, and/or audit by a duly authorized representative of the Company and shall be made available for inspection at the Program Administrator's offices after termination.
- B. All records related to the business of the Company as defined in Section 1.A and Section 3 of this Agreement, including, but not limited to, underwriting, policy, financial records and account files (hereinafter referred to as "Underwriting Files") shall be the property of the Program Administrator but shall be subject, at all reasonable times, to inspection, duplication, and/or audit by a duly authorized representative of the Company and/or representative of any authorized reinsurer or regulatory agency. Copies of all original Underwriting Files shall, at the expense of the Company, be promptly delivered to the Company upon request of in the event of termination of this Agreement. The Company shall be entitled to a complete copy of all data the Program Administrator has provided at the Company's sole expense. The obligations of the Program Administrator under this Agreement shall not be discharged, altered or modified by the delivery of any

copies of Underwriting Files to the Company. Except as provided in Section 16.I.2 of this Agreement, the Program Administrator shall retain ownership of the account relationship for business which falls within the terms of this Agreement.

- C. The books and accounts of the Company shall be accepted as full and final evidence in all financial matters relating to this Agreement, provided that the Program Administrator may offer documentation from its files in the event of any disagreement with the Company.

#### **SECTION 10** **COMPENSATION**

- A. Subject to compliance by the Program Administrator with the terms and conditions of this Agreement and all applicable laws and regulations, the Company shall allow, as full compensation for all program administration services rendered and expenses incurred by the Program Administrator, a commission at rates and on terms as agreed by the parties hereto as satisfactory.
- B. Commissions to sub-producers, brokers, other entities and all other third parties for services rendered and expenses incurred with respect to the marketing or issuance of policies written pursuant to this Agreement shall be the exclusive obligation of the Program Administrator.
- C. The Company may offset any amounts due to the Company from the Program Administrator against any compensation due from the Company to the Program Administrator with respect to the business written under this Agreement. The Program Administrator shall not be entitled to offset premium payments by any amount claimed to be owed by the Company to the Program Administrator.
- D. Commissions paid to the Program Administrator on business written under this Agreement shall be refunded to policyholders at the same rates at which such commissions were originally earned by the Program Administrator with respect to cancelled policies and return premiums. The Program Administrator shall be responsible for refund of all commissions paid to sub-producers, brokers, and other entities, irrespective of return payments actually made by sub-producers, brokers, and other entities. The Program Administrator may, in its own name and on its own behalf, take all reasonable actions as it deems appropriate to recover return premiums due from sub-producers, brokers or other entities, provided that the Program Administrator shall promptly notify the Company of any action taken.
- E. Compensation for program administration services on behalf of the Company shall be paid to the Program Administrator according to the schedule attached hereto in Addendum "I".

**SECTION 11**  
**FORMS, APPLICATIONS, AND OTHER MATERIALS**

- A. The Program Administrator agrees that no forms, pamphlets, booklets, advertising materials, or any other printed matter utilizing the name or logo of the Company or any of its affiliates and/or concerning business written under this Agreement shall be used, issued, modified or circulated by it without the prior written authorization of the Company, but the format of any such item for bulk circulation may be approved in advance and used by the Program Administrator until such approval is specifically withdrawn.
- B. The Company will give the Program Administrator at least sixty (60) days written notice of any change or discontinuance of any such forms, booklets, applications, pamphlets, advertising materials, or any other printed matter relating to the Company and/or concerning this Agreement, unless an action or requirement of a government agency having jurisdiction over such materials requires less notice, in which case, the Company shall give the Program Administrator notice consistent with such action or requirement.

**SECTION 12**  
**NOTICE OF CLAIMS**

- A. The Program Administrator shall promptly notify the Company of any claims, or losses which, in the opinion of the Company, may give rise to a claim, received by or coming to the attention of the Program Administrator or any circumstances which may give rise to claims or losses and shall adhere to the claims reporting procedures which the Company may promulgate from time to time.

**SECTION 13**  
**COMPLIANCE WITH LAWS AND REGULATIONS**

- A. In the conduct of business under this Agreement, the Program Administrator will observe and comply with all rules and regulations of the Company now existing or hereafter promulgated and with all applicable laws, regulations, and rulings by any governmental authority, agency, bureau, or commission. All policies and other documents will be issued and delivered pursuant to the applicable laws, regulations, and rulings of any governmental authority, agency, bureau, or commission.
- B. In entering into this Agreement, the Program Administrator warrants and represents that it, its principals and/or its duly appointed employees/representatives are duly licensed in accordance with the law and that they hold appropriate resident agents' licenses, non-resident agents' licenses, brokers' licenses, or other licenses, as required by law, in each state in the Territory. The Program Administrator understands and agrees that the Company shall rely on

such representations. The Program Administrator shall indemnify and hold harmless the Company for any breach of this warranty.

- C. The Program Administrator will procure any license necessary as directed by the Nevada Division of Insurance Commissioner or the insurance regulatory bodies of any State or Territory to conduct the business of the Program Administrator.
- D. The Company shall be responsible for the maintenance of all Company licenses, for making all filings required by statute or governmental authority with respect to business written under this Agreement, and for compliance with all applicable laws and regulations pertaining to its authority to issue policies. The Company understands and agrees that the Program Administrator shall rely on such representations. The Company shall indemnify and hold harmless the Program Administrator for any breach of this warranty.

#### **SECTION 14** **MODIFICATION**

- A. This agreement may only be revised and/or modified by written amendment, signed by the Company and the Program Administrator and attached to this Agreement. No other manner of change, modification, addition, or deletion of any portion of this Agreement will be valid or binding upon either the Company or the Program Administrator.
- B. The failure of the Company to enforce any condition, right, or power established under this Agreement or by operation of law shall not operate as a waiver or modification of such condition, right, or power, and the Company may, at any time, pursue any and all rights or remedies available to it under law, equity, or this Agreement.

#### **SECTION 15** **FIDELITY COVERAGE**

The Program Administrator shall, at all times during this Agreement, maintain fidelity coverage issued by an admitted insurer rated at least "A" by A.M. Best Company with liability limits of at least \$500,000, with a deductible not to exceed \$25,000, for each employee of the Program Administrator handling any funds subject to this Agreement and the Company shall be given a copy of such fidelity policy.

**SECTION 16**  
**TERMINATION**

- A. This Agreement may be terminated for cause.
- B. The authority of the Program Administrator under this Agreement shall terminate automatically without notice in the event of bankruptcy, insolvency, receivership, liquidation, or assignment for the benefit of creditors by either party.
- C. In the event of default in any material term of this Agreement, this Agreement shall terminate effective forty-five (45) days after written notice by one party to the other, if said default has not been cured within said forty-five (45) days by the non-breaching parties.
- D. Upon the finding of persuasive evidence by either party indicating the existence of fraud, this Agreement shall terminate effective immediately after written notice by one party to the other.
- E. In the event of termination of this Agreement for any reason, neither party shall have any claim against the other for loss of prospective profits, loss of income, or damage to business arising therefrom. Upon the termination of this Agreement, no charges shall be made by the Program Administrator for services in settlement of this Agreement or winding up affairs among the parties.
- F. In the event of termination of this Agreement, all lines of business as set forth in Section 3 of this Agreement arising up to and until the effective date of termination for any account in existence prior to receipt of notice of termination shall be placed with the Company, provided they meet the Underwriting Guidelines, unless otherwise agreed by the Company in writing. It is further understood and agreed that all lines of business as set forth in Section 3 of this Agreement arising up to and until the effective date of termination for any new account arising subsequent to the date of notice of termination shall be submitted to the Company for prior written approval.
- G. In the event of termination of this Agreement, any business remaining with the Company shall be permitted to continue normal expiration. The Program Administrator will make no material changes in coverage or limits of liability without prior written approval of the Company.
- H. Upon termination of this Agreement, the Company may withhold payment of any compensation earned by the Program Administrator until the Program Administrator has certified in writing to the Company that all known claims and losses in reference to business written under this Agreement have been duly reported to the Company.

- I. In the event of termination of this Agreement:
1. The obligations of each party to the other specified in this Agreement shall survive with reference to business in force at the time of termination and shall continue to be discharged promptly.
  2. The Company's record or knowledge of names of policyholders and expiration dates shall not be disclosed by the Company to any agent, broker, or other person, unless required by law, nor used by the Company for purposes of solicitation. This Paragraph shall not apply in the event of termination of this Agreement for acts involving the Program Administrator pursuant to Paragraphs B, C or D of this Section.
  3. Should the Program Administrator fail to properly account for and pay all amounts due to the Company for which the Program Administrator is liable, the Company shall at its sole option have the right to draw upon the letter of credit established by the Program Administrator pursuant to Section 8 of this Agreement.
  4. Company shall not accept insurance business from Program Administrator during the pendency of any dispute regarding the cause for termination of this Agreement.

#### **SECTION 17** **ARBITRATION**

- A. Any controversy or claims of either of the parties arising out of or relating to this Agreement, or the breach of any term, condition, or obligation, may, upon the mutual consent of all parties, be submitted to non-binding mediation under the supervision of the American Arbitration Association or any other agency for alternative dispute resolution. In the event that mutual consent to mediation shall not be obtained within thirty (30) days of written notice from any party to the other concerning the existence of a claim or controversy, the application of this paragraph shall be null and void.
- B. Any controversy or claim of either of the parties arising out of or relating to this Agreement, or the breach of any term, condition, or obligation, which is not resolved by non-binding mediation, shall be settled by final and binding arbitration before three (3) arbitrators chosen under and governed by the Commercial Arbitration Rules of the American Arbitration Association to be held in the District of Columbia, and judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction.
- C. All expenses of mediation or arbitration shall be borne equally by the parties, provided that each party shall be responsible for its own legal fees, expenses and costs. However, the mediators or arbitrators may, at their sole option and

discretion, award reasonable attorneys fees, costs and expenses related to mediation or arbitration to the prevailing party and such amounts will be in addition to any settlement.

#### **SECTION 18** **INDEMNIFICATION**

- A. The Program Administrator shall indemnify and hold the Company harmless for all losses and costs resulting from any negligent act, omission, intentional misconduct or unauthorized transaction by the Program Administrator or persons under contract with the Program Administrator.
- B. The Company shall hold the Program Administrator harmless and indemnify the Program Administrator for claims, including the cost of defense arising out of claims or suites arising out of loss to policyholders, caused directly by the Company's negligent act, omission or intentional misconduct.
- C. In no event does the Company agree to indemnify and hold the Program Administrator harmless for actions of any sub-producers, brokers, other entities and other third parties.

#### **SECTION 19** **GENERAL PROVISIONS**

- A. To be validly given, all notices, requests, consents, and other communications arising out of this Agreement must be in writing and mailed by registered or certified first class mail, postage paid, to the last known address of the party. Notice shall be deemed to be given upon receipt or refusal of receipt.
- B. This Agreement shall not become effective until signed by a duly authorized representative of each party.
- C. Headings or titles to the several sections herein are for identification purposes only and shall not be construed as forming a part hereof.
- D. This Agreement, including the provisions relating to arbitration, shall be governed by the laws of the District of Columbia.
- E. Wherever possible, each provision of this Agreement shall be interpreted in such a manner and to such an extent as to be effective and valid under applicable law. In the even that any section, sub-section, or provision of this Agreement is declared by statute or a court of competent jurisdiction to be illegal or void only to the extent of such illegality or invalidity, and all other sections, sub-sections, terms, conditions and provisions shall remain in full force and effect.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

**SPIRIT COMMERCIAL AUTO RISK  
RETENTION GROUP, INC.**

Witness:



By:

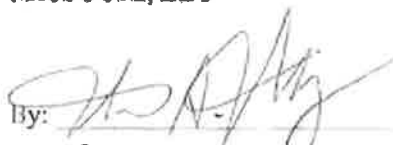
  
Name: Brenda Gutley  
Title: President

**CTC TRANSPORTATION  
INSURANCE SERVICES OF  
MISSOURI, LLC**

Witness:



By:

  
Name: Thomas A. Mallen  
Title: CEO

**PROGRAM ADMINISTRATOR AGREEMENT**

**BETWEEN**

**SPIRIT COMMERCIAL AUTO  
RISK RETENTION GROUP, INC.**

**AND**

**CTC TRANSPORTATION INSURANCE SERVICES OF  
MISSOURI, LLC**

**COMPENSATION**

1. **PROGRAM MANAGEMENT FEE.** For the services of the agents marketing and selling administrative services including but not limited to: providing documents, customer service and support, payment collection, and interacting with Company, Program Administrator shall be entitled to a Program Management Fee of 23.5% (twenty-three point five percent) on all policies written under this agreement.
2. **CALCULATION.** All compensation is calculated from the base premium quoted to a prospective client.
3. **RETENTION.** Retention of compensation payments on a contemporaneous transfer to Company is not deemed to be an offset under Section 10-C of this Agreement
4. **TIMING OF PAYMENTS.** Compensation will be paid to Program Manager under the provisions of Section 7 of this Agreement and shall not be paid until Company is paid in accordance with Section 7.D.4 through 7.D.6 of this Agreement.

Addendum B

**PROGRAM ADMINISTRATOR AGREEMENT**

BETWEEN

**SPIRIT COMMERCIAL AUTO  
RISK RETENTION GROUP, INC.**

AND

**CTC TRANSPORTATION INSURANCE SERVICES OF  
MISSOURI, LLC**

**PRIMARY LAYER PROFIT COMISSION BONUS**

1. **PURPOSE.** As an incentive to produce and manage to a profitable loss ratio, the Administrator will receive a Primary Layer Profit Commission Bonus based on the net paid loss ratio for each respective program year subject to this Agreement.
2. **CALCULATION OF LOSS RATIO.** Paid loss ratio for a program year shall be calculated as the net ultimate losses and loss adjustment expenses paid for all claims made during a program year as a percentage of the net premium (i.e. gross net written premium less premium ceded) as reported to the Company's reinsurers for that program year.
3. **CALCULATION OF BONUS.** The Primary Layer Profit Commission Bonus due to the Administrator shall be based on the following schedule:

0%-40% losses:	7.5% of respective program year net premium
40%-45% losses:	5% of respective program year net premium
45%-47.5% losses:	2.5% of respective program year net premium
4. **PAYMENTS.** Any compensation paid to Program Administrator under this Addendum and Section 7 of this Agreement, may not be paid until the adequacy of the Company's reserves on remaining claims have been independently verified pursuant to Nevada Administrative Code 693A.750(1). Payments shall be made, subject to regulatory approval, no less than five (5) years after the insurance premium on which said bonus is based has become fully earned.

- a. The first payment shall be made on December 31<sup>st</sup> following the end of the policy year. This payment will consist of the Bonus derived from the above schedule for the "Claims Made" policies issued by the Company.
  - b. The second payment will be made 15 months after the end of the policy year. This payment will consist fifty percent of the amount due on the Bonus derived from the above schedule for the "Occurrence" policies issued by the Company.
  - c. The third payment will be made 27 months after the end of the policy year. This payment will consist fifty percent of the amount due on the Bonus derived from the above schedule for the "Occurrence" policies issued by the Company.
  - d. The final payment will be made 39 months after the end of the policy year. This payment will consist fifty percent of the amount due on the Bonus derived from the above schedule for the "Occurrence" policies issued by the Company subject to all claims made during that program year being closed.
5. DATA. Case reserves and actuarially established IBNR reserves shall be used in the determination of the net loss ratio for the first three payments due, but not in the determination of the loss ratio for the final settlement as the final settlement shall not be made until all respective program year claims are closed.
6. OVERPAYMENT. Any amounts due back from the Administrator to the Company as a result of adverse claims development for a program year occurring subsequent to payment of future bonus payments for that program year will be withheld from future bonus payments on subsequent program years until such time as the amounts due back from the Administrator have been satisfied.

**PROGRAM ADMINISTRATOR AGREEMENT**

BETWEEN

**SPIRIT COMMERCIAL AUTO  
RISK RETENTION GROUP, INC.**

AND

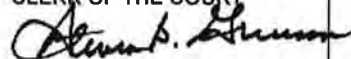
**CTC TRANSPORTATION INSURANCE SERVICES OF  
MISSOURI, LLC**

**EXCESS LAYER PROFIT COMMISSION BONUS**

1. **PURPOSE.** As an incentive to produce and manage to a profitable loss ratio, the Program Administrator will receive a Reinsurance Layer Profit Commission Bonus based on profit sharing provisions within the Company's reinsurance agreement(s).
2. **CALCULATION OF BONUS.** The Reinsurance Layer Profit Commission Bonus due to the Program Administrator shall be 17.5% of all reinsurance premium returns due to the Company as a result of project sharing provisions within its reinsurance agreement(s).
3. **COMMUTATION.** In the event of a commutation, any excess claims are considered to be reinsurance expense and added to the final commutation rate in order to determine the actual final reinsurance rate.
4. **PAYMENTS.** The reinsurance Layer Profit Commission Bonus amounts due to the Administrator shall be paid to the Program Administrator within 60 days of those funds becoming available for payment to the Company by the Company's reinsurers, except for any claims reserves in the excess layer which deemed as reinsurance expense as noted above and accordingly will be netted against funds due to Program Administrator until such time as the excess claims settle.
5. **OVERPAYMENT.** Any amounts due back from the Program Administrator to the Company as a result of adverse claims development for a program year occurring subsequent to payment of future bonus payments for that program year will be withheld from future bonus payments on subsequent program years until

such time as the amounts due back from the Program Administrator have been satisfied.

6. Company shall only accrue and/or pay the Excess Layer Profit Commission Bonus to the Program Administrator in the event such accrual or payment shall not drop the Company's RBC calculation below 225% of the Authorized control Level value.



1 **APEN**

2 MARK E. FERRARIO, Bar No. 1625  
3 KARA B. HENDRICKS, Bar No. 7743  
4 KYLE A. EWING, Bar No. 14051  
5 GREENBERG TRAURIG, LLP  
6 10845 Griffith Peak Drive, Suite 600  
7 Las Vegas, NV 89135  
8 Telephone: (702) 792-3773  
9 Facsimile: (702) 792-9002  
10 Email: [ferrariom@gtlaw.com](mailto:ferrariom@gtlaw.com)  
11 [hendricksk@gtlaw.com](mailto:hendricksk@gtlaw.com)  
12 [ewingk@gtlaw.com](mailto:ewingk@gtlaw.com)

13 *Counsel for Plaintiff*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 STATE OF NEVADA, EX REL.  
17 COMMISSIONER OF INSURANCE,  
18 BARBARA D. RICHARDSON, IN HER  
19 OFFICIAL CAPACITY AS RECEIVER FOR  
20 SPIRIT COMMERCIAL AUTO RISK  
21 RETENTION GROUP, INC.,

22 Plaintiff,

23 v.

24 THOMAS MULLIGAN, et al.

25 Defendants.

Case No.: A-20-809963-B

Dept. No.: XIII

**APPENDIX OF EXHIBIT IN SUPPORT  
OF PLAINTIFF'S OPPOSITION TO CTC  
DEFENDANTS' MOTION TO COMPEL  
ARBITRATION**

**Hearing: June 18, 2020, 9:00 a.m.**

Exhibit No.	Exhibit Title	Exhibit Pages
1	Permanent Injunction and Order Appointing Commissioner as Permanent Receiver of SCARRG, dated February 27, 2018	1 - 16
2	FTI Consulting Report, dated December 20, 2019	17 - 62
3	Letter re Disclaimer of Affiliation Disallowed, dated July 11, 2015	63 - 64

4	Form B, dated June 26, 2016	65 – 72
5	Forms B C F, dated June 26, 2017	73 – 83
6	Change No 1 Amended Form B, dated August 31, 2017	84 – 112
7	Form B, dated June 29, 2018	113 - 123

By: /s/ Kara B. Hendricks

MARK E. FERRARIO, Bar No. 1625  
KARA B. HENDRICKS, Bar No. 7743  
KYLE A. EWING, Bar No. 14051  
GREENBERG TRAURIG, LLP  
10845 Griffith Peak Drive, Suite 600  
Las Vegas, NV 89135

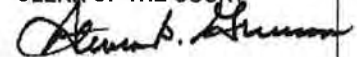
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/s/ Andrea Lee Rosehill  
An employee of Greenberg Traurig, LLP

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# EXHIBIT 1

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1 **ORD**

2 AARON D. FORD

3 Attorney General

4 RICHARD PAULI YIEN, Bar No. 13035

5 Deputy Attorney General

6 State of Nevada

7 Business and Taxation Division

8 100 N. Carson Street

9 Carson City, NV 89701

10 Telephone: (775) 684-1129

11 Facsimile: (775) 684-1156

12 Email: [ryien@ag.nv.gov](mailto:ryien@ag.nv.gov)

13 MARK E. FERRARIO, Bar No. 1625

14 KARA B. HENDRICKS, Bar No. 7743

15 TAMI D. COWDEN, Bar No. 8994

16 GREENBERG TRAURIG, LLP

17 10845 Griffith Peak Drive, Suite 600

18 Las Vegas, NV 89135

19 Telephone: (702) 792-3773

20 Facsimile: (702) 792-9002

21 Email: [ferrariom@gtlaw.com](mailto:ferrariom@gtlaw.com)

22 [hendricksk@gtlaw.com](mailto:hendricksk@gtlaw.com)

23 [cowdent@gtlaw.com](mailto:cowdent@gtlaw.com)

24 *Attorneys for the Plaintiff*

16 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

17 **CLARK COUNTY, NEVADA**

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

21 Plaintiff,

22 vs.

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

25 Defendant.

Case No. A-19-787325-B

Dept. No. 27

**PERMANENT INJUNCTION AND ORDER  
APPOINTING COMMISSIONER AS  
PERMANENT RECEIVER OF SPIRIT  
COMMERCIAL  
AUTO RISK RETENTION GROUP, INC.**

1                   **PERMANENT INJUNCTION AND ORDER APPOINTING COMMISSIONER AS**  
2                   **PERMANENT RECEIVER OF SPIRIT COMMERCIAL**  
3                   **AUTO RISK RETENTION GROUP, INC.**

4                   On January 11, 2019, Barbara D. Richardson, Commissioner of Insurance ("Commissioner"),  
5                   filed her Petition for Appointment Of Commissioner as Receiver and Other Permanent Relief; Request  
6                   for Temporary Injunction Pursuant to NRS 696B.270(1), against Defendant SPIRIT COMMERCIAL  
7                   AUTO RISK RETENTION GROUP, INC. ("SCARRG"); on January 15, 2019, the Commissioner filed  
8                   an Errata to the Petition For Appointment Of Commissioner as Receiver and Other Permanent Relief;  
9                   Request for Temporary Injunction Pursuant to NRS 696B.270(1); on January 18, 2019, this Court entered  
10                  its Order Appointing Insurance Commissioner, Barbara D. Richardson, as Temporary Receiver Pending  
11                  Further Orders of the Court and Granting Temporary Injunctive Relief Pursuant to NRS 696B.270(1),  
12                  and authorizing the Temporary Receiver to appoint a special deputy receiver.

13                 On January 23, 2019, SCARRG filed its Motion for Relief From January 18, 2019 Order or,  
14                 Alternatively, Motion for Reconsideration, as well as an Ex Parte Application for Order Shortening Time  
15                 for Hearing on Motion for Relief from January 18, 2019 Order or, Alternatively, Motion for  
16                 Reconsideration; on January 29, 2019, the Temporary Receiver filed her Opposition to Motion for Relief  
17                 / Motion for Reconsideration; and Request to Set Hearing for Order to Show Cause; on January 30, 2019,  
18                 the Temporary Receiver filed an Errata to Opposition to Motion for Relief / Motion for Reconsideration;  
19                 and Request to Set Hearing for Order to Show Cause, and on that same date SCARRIG filed its Reply in  
20                 Support of Motion for Relief from January 18, 2019 Order or, Alternatively, Motion for Reconsideration.

21                 On January 30, 2019, this Court held a hearing on the Motion for Relief from January 18, 2019  
22                 Order or, Alternatively, Motion for Reconsideration, at which the Court: (a) granted in part SCARRG's  
23                 alternate motion for reconsideration, consolidating it with the hearing to Show Cause to be held on  
24                 February 28 and March 1, 2019 ("Consolidated Hearing"); and (b) stayed the appointment of a receiver;  
25                 and (c) limited the injunctive relief in the January 18, 2019 Order, pending the Consolidated Hearing, by  
26                 requiring SCARRG to notify the State and the Court immediately if Accredited Surety and Casualty  
27                 Company, Inc. ("Accredited"), the counterparty to a certain Loss Portfolio Transfer ("LPT") with  
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1 SCARRG, were to act on its assertion of SCARRG's default under the LPT, enjoining all payments by  
2 SCARRG to any affiliate or related party, authorizing the State to have a person on the premises of  
3 SCARRG's operations to observe the transaction of business, and prohibiting SCARRG from paying any  
4 claims. On February 11, 2019, Accredited gave notice it was terminating the LPT pursuant to the Special  
5 Termination provision of the LPT for failure to pay premium owed under the LPT which includes a 15  
6 day notice provision making the termination effective on February 27, 2019.

7 On February 12, 2019, the Temporary Receiver filed a Notice of Accredited's Decision to Act  
8 on Default and Request for Immediate Hearing and Application for Order Shortening Time for  
9 Hearing Regarding Notice of Accredited's Decision to Act on Default and Request for Immediate  
10 Hearing. On February 19, 2019, Spirit filed its Opposition to Notice of Accredited's Decision to Act  
11 on Default and Request for Immediate Hearing.

12 On February 20, 2019, the Court held a hearing on the Notice of Accredited's Decision to Act  
13 on Default, at which the Court: (a) decided to take no further action on Spirit's status and to maintain  
14 the status quo of its Order rendered from the January 30, 2019, hearing on the Motion for Relief filed  
15 by Spirit; and (b) set a hearing on February 27, 2019, at 10:30 a.m. to further consider and address the  
16 issues raised in the Notice of Accredited's Decision to Act on Default and related filings.

17 SCARRG having been unable to cure the default identified by Accredited and set forth in the  
18 Notice of Accredited's Decision to Act on Default, the parties hereby stipulate and agree that the  
19 Consolidated Hearing should and is vacated and further agree to a Permanent Receivership of SCARRG  
20 without the need for and waiving all rights to a Show Cause Hearing.

21 The Court having reviewed the points and authorities submitted by counsel and exhibits in  
22 support thereof, and the parties having proffered this Order to the Court by agreement, for good cause,  
23 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- 24 (1) The Consolidated Hearing scheduled for February 28 and March 1, 2019 is hereby  
25 vacated, the parties having stipulated and agreed to the appointment of a Permanent  
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1 Receiver of SCARRG without the need for and waiving all rights to a Show Cause  
2 Hearing.

3 (2) SCARRG is in a hazardous financial condition in that, based on its present or reasonably  
4 anticipated financial condition, it is unlikely to be able to meet obligations to policyholders  
5 with respect to known claims and reasonably anticipated claims, or to pay other  
6 obligations in the normal course of business and, moreover, is insolvent for purposes of  
7 Sections 696B.110(1), 696B.220(2), and 696B.210(1).

8 (3) Pursuant to NRS 696B.220, the Commissioner is hereby appointed Permanent Receiver  
9 for conservation, rehabilitation or liquidation ("Receiver"), and is authorized to employ  
10 and to fix the compensation of a Special Deputy Receiver ("SDR") and such other  
11 deputies, counsel, employees, accountants, actuaries, investment counselors, asset  
12 managers, consultants, assistants, and other personnel as she considers necessary, and to  
13 enter the business and immediately oversee the operation and conservation, rehabilitation,  
14 or liquidation of the business. All compensation and expenses of such persons and of  
15 taking possession of SCARRG and conducting this proceeding shall be paid out of the  
16 funds and assets of SCARRG in accordance with NRS 696B.290.

17 (4) The SDR shall have all the responsibilities, rights, powers, and authority of the Receiver  
18 subject to supervision and removal by the Receiver and the further Orders of this Court.  
19 Whenever this Order refers to the Receiver, it will equally apply to the SDR.

20 (5) The Receiver is hereby directed to conserve and preserve the affairs of SCARRG and is  
21 vested, in addition to the powers set forth herein, with all the powers and authority  
22 expressed or implied under the provisions of chapter 696B of the Nevada Revised Statute  
23 ("NRS"), and any other applicable law. The Receiver is hereby authorized to rehabilitate  
24 or liquidate SCARRG's business and affairs as and when deemed appropriate under the  
25 circumstances and for that purpose may do all acts necessary or appropriate for the  
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1 conservation, rehabilitation, or liquidation of SCARRG. Whenever this Order refers to the  
2 Receiver, it will equally apply to the SDR.

3 (6) Pursuant to NRS 696B.290, the Receiver is hereby vested with exclusive title both legal  
4 and equitable to all of SCARRG's property wherever located, to administer under the  
5 general supervisions of the Court, and whether in the possession of SCARRG or its  
6 officers, directors, employees, consultants, attorneys, agents, subsidiaries, affiliated  
7 corporations, or those acting in concert with any of these persons, and any other persons  
8 (referred to hereafter as the "Property"), including but not limited to:

- 9 a. Assets, books, records, property, real and personal, including all property or  
10 ownership rights, choate or inchoate, whether legal or equitable of any kind or  
11 nature;
- 12 b. Offices maintained or utilized by SCARRG, furniture, fixtures, office supplies,  
13 safe deposit boxes, legal/litigation files, accounts, books, paper and electronic  
14 documents and records of every kind, computers, internal and external  
15 computer memory devices, and software;
- 16 c. Causes of action, defenses, and rights to participate in legal proceedings other  
17 than the right to participate in arbitration proceedings, and the Receiver's rights  
18 will include the right to initiate or maintain suit in the name of SCARRG or in  
19 the Receiver's name, in any state or federal court in any state in which the  
20 Receiver deems such action necessary or appropriate to protect the interests of  
21 the receivership estate, and any such filings outside of this Court by the  
22 Receiver will be without prejudice to the exclusive jurisdiction of this Court  
23 over SCARRG's affairs;
- 24 d. Letters of credit, contingent rights, stocks, debt, bonds, debentures, cash, cash  
25 equivalents, contract rights, reinsurance contracts and reinsurance  
26 recoverables, in force insurance contracts, loss portfolio transfers, and  
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1 business, deeds, mortgages, leases, book entry deposits, bank deposits,  
2 certificates of deposit, evidences of indebtedness, bank accounts, securities of  
3 any kind or nature, both tangible and intangible, including but without being  
4 limited to any special, statutory or other deposits or accounts made by or for  
5 SCARRG with any officer or agency of any state government or the federal  
6 government or with any banks, savings and loan associations, or other  
7 depositories;

8 e. All such rights and property of SCARRG described herein now known or  
9 which may be discovered hereafter, wherever the same may be located and in  
10 whatever name or capacity they may be held; and

11 f. Pursuant to NRS 696B.290 and 696B.270, the Receiver is hereby directed to  
12 take immediate and exclusive possession and control of the Property except as  
13 she may deem in the best interest of the receivership estate. In addition to  
14 vesting title to all of the Property in the Receiver or her successors, the said  
15 Property is hereby placed in the *custodia legis* of this Court and the Receiver,  
16 and the Court hereby assumes and exercises sole and exclusive jurisdiction  
17 over all the Property and any claims or rights respecting the Property to the  
18 exclusion of any other court or tribunal, such exercise of sole and exclusive  
19 jurisdiction being hereby found to be essential to the safety of the public and  
20 of the claimants against SCARRG.

21 (7) Pursuant to NRS 696B.270, SCARRG, its officers, directors, stockholders, members,  
22 subscribers, agents, employees, and all other persons, corporations, partnerships,  
23 associations and all other entities wherever located, are hereby permanently enjoined and  
24 restrained from interfering in any manner with the Receiver's possession of the Property  
25 or her title to or right therein and from interfering in any manner with the conduct of the  
26 receivership of SCARRG. Said officers, directors, stockholders, members, subscribers,  
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1 agents, employees, and all other persons, corporations, partnerships, associations and all  
2 other entities are hereby permanently enjoined and restrained from wasting, transferring,  
3 selling, disbursing, disposing of, withdrawing, removing or assigning the Property or any  
4 portion thereof, and from attempting to do so except as provided herein.

5 (8) All landlords, vendors and parties to executory contracts with SCARRG are hereby  
6 enjoined and restrained from discontinuing services to, or disturbing the possession of  
7 premises and leaseholds, including of equipment and other personal property, by  
8 SCARRG or the Receiver on account of amounts owed prior to January 18, 2019, or as a  
9 result of the institution of this proceeding and the causes therefor, provided that SCARRG  
10 or the Receiver pays within a reasonable time for premises, goods, or services delivered  
11 or provided by such persons on and after January 18, 2019, at the request of the Receiver  
12 and provided further that all such persons shall have claims against the estate of SCARRG  
13 for all amounts owed by SCARRG prior to January 18, 2019.

14 (9) Pursuant to NRS 696B.340, during the pendency of delinquency proceedings in this or  
15 any reciprocal state, no action or proceeding in the nature of an attachment, garnishment  
16 or execution shall be commenced or maintained in the courts of this state against SCARRG  
17 or the Property, and any lien obtained by any such action or proceeding within 4 months  
18 prior to the commencement of any such delinquency proceedings or at any time thereafter  
19 is void as against any rights arising in such delinquency proceedings.

20 (10) Pursuant to this Court's exclusive jurisdiction over the Property as the first court to assert  
21 *in rem* jurisdiction over the Property, all claims against the Property must be submitted to  
22 the Receiver as specified herein to the exclusion of any other method of submitting or  
23 adjudicating such claims in any forum, court, arbitration proceeding, or tribunal subject to  
24 the further Order of this Court. The Receiver is hereby authorized to establish a  
25 receivership claims and appeal procedure, for all receivership claims. The receivership  
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1 claims and appeal procedures shall be used to facilitate the orderly disposition or  
2 resolution of claims or controversies involving the receivership or the receivership estate.

3 (11) The Receiver may change to her own name the name of any of SCARRG's accounts, funds  
4 or other property or assets, held with any bank, savings and loan association, other  
5 financial institution, or any other person, wherever located, and may withdraw such funds,  
6 accounts and other assets from such institutions or take any lesser action necessary for the  
7 proper conduct of the receivership.

8 (12) All secured creditors or parties, pledge holders, lien holders, collateral holders or other  
9 persons claiming secured, priority or preferred interest in any property or assets of  
10 SCARRG, including any governmental entity, are hereby enjoined from taking any steps  
11 whatsoever to transfer, sell, encumber, attach, dispose of or exercise purported rights in or  
12 against the Property.

13 (13) The officers, directors, trustees, partners, affiliates, brokers, agents, creditors, insureds,  
14 employees, members, and enrollees of SCARRG, and all other persons or entities of any  
15 nature including, but not limited to, claimants, plaintiffs, petitioners, and any  
16 governmental agencies who have claims of any nature against SCARRG, including cross-  
17 claims, counterclaims and third party claims, are hereby permanently enjoined and  
18 restrained from doing or attempting to do any of the following, except in accordance with  
19 the express instructions of the Receiver or by Order of this Court:

- 20 a. Conducting any portion or phase of the business of SCARRG;  
21 b. Commencing, bringing, maintaining or further prosecuting any action at law, suit in  
22 equity, arbitration, or special or other proceeding against SCARRG or its estate, or  
23 the Receiver and her successors in office, or any person appointed pursuant to  
24 Paragraph (2) hereinabove;

- 1 c. Making or executing any levy upon, selling, hypothecating, mortgaging, wasting,  
2 conveying, dissipating, or asserting control or dominion over the Property or the  
3 estate of SCARRG;  
4 d. Seeking or obtaining any preferences, judgments, foreclosures, attachments, levies,  
5 or liens of any kind against the Property;  
6 e. Interfering in any way with these proceedings or with the Receiver, any successor in  
7 office, or any person appointed pursuant to Paragraph (2) hereinabove in their  
8 acquisition of possession of, the exercise of dominion or control over, or their title to  
9 the Property, or in the discharge of their duties as Receiver thereof; or  
10 f. Commencing, maintaining or further prosecuting any direct or indirect actions,  
11 arbitrations, or other proceedings against any insurer of SCARRG for proceeds of any  
12 policy issued to SCARRG.
- 13 (14) No bank, savings and loan association or other financial institution shall, without first  
14 obtaining permission of the Receiver, exercise any form of set-off, alleged set-off, lien, or  
15 other form of self-help whatsoever or refuse to transfer the Property to the Receiver's  
16 control.
- 17 (15) The Receiver shall have the power and is hereby authorized to:  
18 a. Collect all debts and monies due and claims belonging to SCARRG, wherever  
19 located, and for this purpose: (i) to institute and maintain actions in other jurisdictions,  
20 in order to forestall garnishment and attachment proceedings against such debts; (ii)  
21 to do such other acts as are necessary or expedient to marshal, collect, conserve or  
22 protect its assets or property, including the power to sell, compound, compromise or  
23 assign debts for purposes of collection upon such terms and conditions as she deems  
24 appropriate, and the power to initiate and maintain actions at law or equity, in this  
25 and other jurisdictions; (iii) to pursue any creditor's remedies available to enforce her  
26 claims;

- 1 b. Conduct public and private sales of the assets and property of SCARRG, including  
2 any real property;
- 3 c. Acquire, invest, deposit, hypothecate, encumber, lease, improve, sell, transfer,  
4 abandon, or otherwise dispose of or deal with any asset or property of SCARRG, and  
5 to sell, reinvest, trade or otherwise dispose of any securities or bonds presently held  
6 by, or belonging to, SCARRG upon such terms and conditions as she deems to be fair  
7 and reasonable, irrespective of the value at which such property was last carried on  
8 the books of SCARRG. She shall also have the power to execute, acknowledge and  
9 deliver any and all deeds, assignments, releases and other instruments necessary or  
10 proper to effectuate any sale of property or other transaction in connection with the  
11 receivership;
- 12 d. Borrow money on the security of SCARRG's assets, with or without security, and to  
13 execute and deliver all documents necessary to that transaction for the purpose of  
14 facilitating the receivership;
- 15 e. Enter into such contracts as are necessary to carry out this Order, and to affirm or  
16 disavow as more fully provided in subparagraph p., below, any contracts to which  
17 SCARRG is a party;
- 18 f. Designate, from time to time, individuals to act as her representatives with respect to  
19 affairs of SCARRG for all purposes, including, but not limited to, signing checks and  
20 other documents required to effectuate the performance of the powers of the Receiver;
- 21 g. Establish employment policies for SCARRG employees, including retention,  
22 severance and termination policies as she deems necessary to effectuate the  
23 provisions of this Order;
- 24 h. Institute and prosecute, in the name of SCARRG or in her own name, any and all  
25 suits, to defend suits in which SCARRG or the Receiver is a party in this state or  
26 elsewhere, whether or not such suits are pending as of the date of this Order, to  
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- abandon the prosecution or defense of such suits, legal proceedings and claims which she deems inappropriate, to pursue further and to compromise suits, legal proceedings or claims on such terms and conditions as she deems appropriate;
- i. Prosecute any action for common (*i.e.*, not personal) claims that may exist on behalf of the members, enrollees, insureds or creditors, of SCARRG as a group against any officer or director of SCARRG, or any other person, for such common claims as are derivative of injury or damages to SCARRG;
  - j. Remove any or all records and other property of SCARRG to the offices of the Receiver or to such other place as may be convenient for the purposes of the efficient and orderly execution of the receivership, and to dispose of or destroy, in the usual and ordinary course, such of those records and property as the Receiver may deem or determine to be unnecessary for the receivership;
  - k. File any necessary documents for recording in the office of any recorder of deeds or record office in this County or wherever the Property of SCARRG is located;
  - l. Intervene in any proceeding wherever instituted that might lead to the appointment of a conservator, receiver or trustee of SCARRG or its subsidiaries, and to act as the receiver or trustee whenever the appointment is offered;
  - m. Enter into agreements with any ancillary receiver of any other state as she may deem to be necessary or appropriate, if such ancillary receivership is proper;
  - n. Perform such further and additional acts as she may deem necessary or appropriate for the accomplishment of or in aid of the purpose of the receivership, it being the intention of this Order that the aforestated enumeration of powers shall not be construed as a limitation upon the Receiver;
  - o. Terminate and disavow the authority previously granted SCARRG's agents, brokers, or marketing representatives to represent SCARRG in any respect, including the underlying agreements, and any continuing payment obligations created therein, as

1 of the receivership date, with reasonable notice to be provided and agent  
2 compensation accrued prior to any such termination or disavowal to be deemed a  
3 general creditor expense of the receivership; and

4 p. Affirm, reject, or disavow part or all of any leases or executory contracts to which  
5 SCARRG is a party. The Receiver is authorized to reject, or disavow any leases or  
6 executory contracts at such times as she deems appropriate under the circumstances,  
7 provided that payment due for any goods or services received after appointment of  
8 the Receiver, with her consent, will be deemed to be an administrative expense of the  
9 receivership, and provided further that other unsecured amounts properly due under  
10 the disavowed contract, and unpaid solely because of such disavowal, will give rise  
11 to a general unsecured creditor claim in the Receivership proceeding.

12 (16) SCARRG, its officers, directors, partners, agents, brokers and employees, any person  
13 acting in concert with them, and all other persons, having any property or records  
14 belonging to SCARRG, including data processing information and records of any kind  
15 such as, by way of example only, source documents and electronically stored information,  
16 are hereby ordered and directed to surrender custody and to assign, transfer and deliver to  
17 the Receiver all of such property in whatever name the same may be held, and any persons,  
18 firms or corporations having any books, papers or records relating to the business of  
19 SCARRG shall preserve the same and submit these to the Receiver for transfer and/or  
20 examination at all reasonable times. Any property, books, or records asserted to be  
21 simultaneously the property of SCARRG and other parties, or alleged to be necessary to  
22 the conduct of the business of other parties though belonging in part or entirely to  
23 SCARRG, shall nonetheless be delivered immediately to the Receiver who shall make  
24 reasonable arrangements for copies or access for such other parties without compromising  
25 the interests of the Receiver or SCARRG.

- 1 (17) In addition to that provided by statute or by SCARRG's policies or contracts of insurance,  
2 and to the extent not in conflict with the other provisions of this Paragraph (17), the  
3 Receiver may, at such time she deems appropriate, without prior notice, subject to the  
4 following provisions, impose such full or partial moratoria or suspension upon  
5 disbursements owed by SCARRG, provided that
- 6 a. Any such suspension or moratorium shall apply in the same manner or to the same  
7 extent to all persons similarly situated. However, the Receiver may, in her sole  
8 discretion, impose the same upon only certain types, but not all, of the payments due  
9 under any particular type of contract;
- 10 b. Under no circumstances shall the Receiver be liable to any person or entity for her  
11 good faith decision to impose, or to refrain from imposing, such moratorium or  
12 suspension; and
- 13 c. Notice of such moratorium or suspension, which may be by publication, shall be  
14 provided to the holders of all policies or contracts affected thereby.
- 15 (18) It is hereby ordered that all evidences of coverage, insurance policies and contracts of  
16 insurance of SCARRG are hereby terminated effective on April 15, 2019, unless the  
17 Receiver determines that any such contracts should be cancelled as of an earlier date.
- 18 (19) No judgment, order, attachment, garnishment sale, assignment, transfer, hypothecation,  
19 lien, security interest or other legal process of any kind with respect to or affecting  
20 SCARRG or the Property shall be effective or enforceable or form the basis for a claim  
21 against SCARRG or the Property unless entered by the Court, or unless the Court has  
22 issued its specific order, upon good cause shown and after due notice and hearing,  
23 permitting same.
- 24 (20) All reasonable costs, expenses, fees or any other charges of the Receivership, including  
25 but not limited to reasonable fees and expenses of accountants, peace officers, actuaries,  
26 investment counselors, asset managers, attorneys, special deputies, and other assistants  
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employed by the Receiver, the giving of the Notice required herein, and other expenses incurred in connection herewith shall be paid from the assets of SCARRG. Provided, further, that the Receiver may, in her sole discretion, require third parties, if any, who propose rehabilitation plans with respect to SCARRG to reimburse the estate of SCARRG for the expenses, consulting or attorney's fees and other costs of evaluating and/or implementing any such plan.

- (21) The Commissioner is part of the government of the State of Nevada, acting in her official capacity, and as such, should be exempt from any bond requirements that might otherwise be required when seeking the relief sought in this proceeding. Accordingly, it is Ordered that no bond shall be required from the Commissioner as Receiver.
- (22) If any provision of this Order or the application thereof is for any reason held to be invalid, the remainder of this Order and the application thereof to other persons or circumstances shall not be affected thereby.
- (23) The Receiver may at any time make further application for such further and different relief as she sees fit.
- (24) The Court shall retain jurisdiction for all purposes necessary to effectuate and enforce this Order.

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1 (25) The Receiver is authorized to deliver to any person or entity a copy or certified copy of  
2 this Order, or of any subsequent order of the Court, such copy, when so delivered, being  
3 deemed sufficient notice to such person or entity of the terms of such Order. But nothing  
4 herein shall relieve from liability, nor exempt from punishment by contempt, any person  
5 or entity that, having actual notice of the terms of any such Order, shall be found to have  
6 violated the same.

7 **IT IS SO ORDERED**

8 DATED this 27 day of February, 2019. 10:58am

9  
10 Nancy L. Allie  
11 DISTRICT COURT JUDGE

12  
13 Case No. A-19-787325-B  
14 Dept. No. 27

15 **Submitted by:**

16 GREENBERG TRAURIG, LLP

17 Kara B. Hendricks

18 MARK E. FERRARIO, Bar No. 1625

19 [ferrariom@gtlaw.com](mailto:ferrariom@gtlaw.com)

20 KARA B. HENDRICKS, Bar No. 7743

21 [hendricksk@gtlaw.com](mailto:hendricksk@gtlaw.com)

22 TAMI D. COWDEN, Bar No. 8994

23 [cowdent@gtlaw.com](mailto:cowdent@gtlaw.com)

24 AARON D. FORD

25 Attorney General

26 RICHARD PAILI YIEN, Bar No. 13035

27 Deputy Attorney General

28 State of Nevada

Business and Taxation Division

[ryien@ag.nv.gov](mailto:ryien@ag.nv.gov)

1 **Approved as to form and content by:**

2 BROWNSTEIN HYATT EARBER SCHRECK, LLP

3 

4 KIRK B. LENHARD, ESQ., Nevada Bar No. 1437  
5 [abult@bhfs.com](mailto:abult@bhfs.com)

6 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800  
7 [tchance@bhfs.com](mailto:tchance@bhfs.com)

8 *Attorneys for Defendant Spirit Commercial Auto Risk  
Retention Group, Inc.*

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## EXHIBIT 2

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CONSULTING REPORT TO  
GREENBERG TRAURIG, LLC  
(ON BEHALF OF SPIRIT COMMERCIAL AUTO RISK RETENTION GROUP, INC  
(IN RECEIVERSHIP FOR LIQUIDATION) AND  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
(ON BEHALF OF CTC TRANSPORTATION INSURANCE SERVICES OF MO, LLC)

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DECEMBER 20, 2019

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APP0558

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#### APPENDIX (SEPARATE DOCUMENT)

##### APPENDIX A – ORGANIZATIONAL CHART SPIRIT AND COUNTY HALL

#### EXHIBITS (SEPARATE DOCUMENTS)

##### EXHIBIT 1 – WORK PROGRAM

##### EXHIBIT 2 – BANK ACCOUNT LISTING

##### EXHIBIT 3 – PAYMENT SUMMARY BY PAYEE BY DISBURSEMENT

##### EXHIBIT 4 – CTC OPERATING CASH ALLOCATIONS

##### EXHIBIT 5 – DAILY CASH BALANCE – ALL CASH DISBURSEMENTS

##### EXHIBIT 6 – DAILY CASH BALANCE – CASH DISBURSEMENTS COUNTY HALL ONLY

##### EXHIBIT 7 – ASPIRE VS QUICKBASE COMPARISON / REALLOCATIONS

## 1. EXECUTIVE SUMMARY

CTC Transportation Insurance Services of MO, LLC (“CTC MO”) and Spirit Commercial Auto Risk Retention Group, Inc. (in Receivership for Liquidation) (“Spirit”) retained FTI Consulting Inc. (“FTI”) as co-clients. FTI’s plan included gaining an understanding of CTC’s financial controls and operations, quantify the amount of money owed to Spirit, determine if CTC collected the money owed Spirit, identify where the money went if collected and evaluate fees paid for program administration and claims handling.

CTC MO was contracted by Spirit to be a Program Administrator. Spirit was incorporated on January 5, 2012 and was funded with capital of \$1,773,805. CTC MO’s services per the contract included but were not limited to underwriting risks, issuing policies, collecting premium, accounting services and safeguarding assets. Significant financial records for CTC MO were maintained by a related party, CTC Transportation Insurance Services, a California Corporation (“CTC CA”). Thomas Mulligan controlled or owned many companies that provided services to Spirit and CTC.

The following key observations were noted based on FTI’s review and analysis of CTC’s records:

### Financial Controls and Operations:

- a) CTC CA and CTC MO operated with limited financial controls. CTC functioned with limited financial oversight, allowed management and owners to override controls and used technology systems with limited internal controls (**Section 8**).
- b) FTI identified approximately \$40.4 million of insurance carrier (Spirit and other carriers) commingled funds<sup>1</sup> maintained in CTC CA “General Trust Account<sup>2</sup>” (“GTA”) that was moved into CTC CA operational bank accounts or directly disbursed for CTC operations (**Section 10**).
- c) CTC CA management<sup>3</sup> and outside professionals confirmed in interviews that funds transferred to CTC CA operations were premium collections due insurance carriers and were not funds due CTC CA (**Section 11**).
- d) FTI identified funds paid to County Hall Insurance Company, Inc., a Risk Retention Group (“County Hall<sup>4</sup>”) that exceeded amounts collected by CTC CA during 2017 and 2018 for County Hall insurance policies (**Section 11**).
- e) FTI identified Error and Omission and Crime policies maintained by CTC (**Section 15**).
- f) Thomas Mulligan obtained mortgages of \$3,350,000 in 2011 and 2012 for property with a current assessed value of \$440,500 from Global Consultants LLC and Global Capital Group LLC. These companies were controlled by Dmitry Suprunov and/or Pavel Kapelnikov (**Section 3**).
- g) CTC’s policy listing for Spirit business contained 63 policies with negative premium totaling (\$141,308) (**Section 8**).
- h) CTC’s claims listing for Spirit business contained 40 claims with a total incurred loss of \$849,240 for policies with zero or negative premium. (**Section 8**).

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<sup>1</sup> See Definitions section

<sup>2</sup> See Definitions section

<sup>3</sup> See Definitions section

<sup>4</sup> County Hall is a separate Risk Retention Group that CTC Transportation Insurance Services of Hawaii, LLC has contracted with to be a Program Administrator

Quantification of money due Spirit from CTC for amounts collected by CTC, corrections for commissions, claim fees and amounts not collected by CTC:

- a) FTI identified cash basis losses recorded on CTC CA's federal tax returns totaling approximately \$28.7 million for the years 2013 to 2018. The owner of CTC did not provide capital to fund the CTC losses (**Section 14**).
- b) FTI identified based on CTC's records at least \$34.0 million currently due Spirit from CTC. CTC's records show CTC collected the money due, overpaid commissions and claim fees but did not send the money to Spirit (**Section 9**).
- c) An additional amount of approximately \$4.1 million is due Spirit for uncollected premium which CTC wrote off and identified as "final premium audit" endorsements. The amount due Spirit is net of CTC commissions. (**Section 9**).
- d) Additional endorsements recorded by CTC wrote off balances that may be due Spirit for approximately \$3.0 million. These endorsements were entered into the CTC policy system after the corresponding policy expired. Spirit may have provided coverage without receiving premium (**Section 9**).

Uses of money collected by CTC and not remitted to Spirit:

- a) CTC operational cash disbursements included at least \$32.7 million paid to related parties<sup>5</sup> or for unusual transactions (**Exhibit 3**). The transactions had limited or no support for the payments made and the financial manager made payments based on verbal approvals by the CTC owner and management.
- b) CTC CA recorded intercompany receivables on the 2017 tax return of \$9.9 million (**Section 14**).
- c) CTC provided a loan to Criterion Claim Solutions of Omaha, Inc. (CCS or Criterion) of \$2.8 million (**Exhibit 3**).
- d) CTC wired two payments totaling \$664,040 to Thomas Mulligan and a Thomas Mulligan controlled entity that represented Spirit funds received by CTC (**Section 13.2**).
- e) CTC recorded a receivable due from Thomas Mulligan of \$706,000 (**Schedule I**).
- f) Based upon an updated QuickBooks General Ledger for 2018 received on October 30, 2019, when compared to the prior 2018 General Ledgers received, it is evident that significant intercompany balances were adjusted and are now reflected as being written off. In addition, balances due from related parties<sup>6</sup> were reclassified to dividends paid (**Section 13**).
  - i. CTC wrote off balances of \$4.5 million due CTC from Chelsea.
  - ii. CTC wrote off balances of \$451,000 due CTC from Criterion.
  - iii. CTC wrote off balances of \$25,000 due CTC from County Hall.
  - iv. CTC recorded "Dividends Paid" of \$793,000 to Thomas Mulligan, owner of CTC.
- g) CTC through their control of Spirit, had Spirit loan Chelsea \$3,500,000 in 2017 to fund insureds' loans.
- h) CTC through their control of Spirit had Spirit send \$500,000 to New Tech Capital, LLC, which is owned by Thomas Mulligan, which then invested in Iterative Capital LP.

<sup>5</sup> See Definitions section

<sup>6</sup> See Definitions section

## 2. FTI ENGAGEMENT

CTC MO and Spirit retained FTI as co-clients by and through their counsel respectively, the law firms of Brownstein Hyatt Farber Schreck, LLP and Greenberg Traurig, LLP on May 21, 2019. This agreement supersedes and replaces the former Engagement Agreement between CTC MO and FTI, dated April 12, 2019.

FTI was engaged to investigate certain financial records of CTC MO and related companies (including but not limited to CTC Transportation Insurance Services, a California Corporation ("CTC CA"), Criterion, and CTC Transportation Insurance Services of Hawaii, LLC ("CTC HI"), collectively referred to as "CTC"). CTC entities are owned by Thomas Mulligan per Schedule Y of the Spirit quarterly statutory statement as of September 30, 2018 (See **Appendix A**).

CTC MO and Spirit through their outside counsel requested FTI perform an investigation of certain CTC financial records to accomplish the following:

- a) Gain an understanding of CTC's financial controls and operations.
- b) Quantify the amount of money owed to Spirit from CTC.
- c) Determine if the money owed to Spirit from CTC had been collected by CTC.
- d) Identify what happened to the money due Spirit.
- e) Determine if commissions retained by CTC and Claims Handling Fees paid to Criterion were correct.

See the FTI detail work plan at **Exhibit 1**.

### 2.1. ASSUMPTIONS

The following are assumptions made and used throughout this report:

- a) Cancelled checks were not provided by CTC; therefore, we assumed payees listed in the General Ledger transactions were the payee that received the check.
- b) Return premiums were assumed to be recorded correctly for approved cancellations and paid to the appropriate party.
- c) The written premium referenced in this report is based upon the amounts shown in QuickBase and were not independently traced to insurance policy documents.
- d) The cash receipts reports provided by CTC were assumed to be complete and accurate.
- e) The Chase bank statements received by FTI were assumed to include all relevant CTC bank accounts.

## 3. BACKGROUND OF CTC AND SPIRIT RELATIONSHIP

CTC CA entered into an agreement on November 3, 2011 to be a program administrator on behalf of Spirit. This agreement was amended in 2015, 2016 and 2017. Key changes included changes to the commission rates and on July 1, 2016 a new Program Administration Agreement ("PAA") was created that effectively changed the relationship in that Spirit entered into a new PAA with CTC MO instead of CTC CA. This Agreement was amended in 2016 and 2017. There was no change in the day-to-day operations in how CTC managed the business.

Spirit was placed into receivership February 27, 2019 by the Eighth Judicial Court of the State of Nevada and the Nevada Insurance Commissioner was appointed as the Receiver. There was a final court order that placed Spirit into Liquidation on November 6, 2019.

Spirit was incorporated on January 5, 2012 with the ultimate parent being Spirit Commercial Auto Association, a company controlled by Thomas Mulligan. For the first-year of operations Spirit reported in their Annual Statement corporate capital of:

### 3.1. SPIRIT CAPITAL 2012

**Table 1**

Spirit capital first year of operation:	Amount in US\$
Common stock issued in 2012	\$ 750,000
Gross paid in and contributed capital 2012	\$ 1,023,805
Total capital contributed during 2012	\$ 1,773,805

Around the same time as the start-up of Spirit operations, between March 31, 2011 and March 30, 2012 '19 Bridge Avenue LLC', a company controlled by Thomas Mulligan, obtained \$3,350,000 in mortgages. The mortgages were provided by companies controlled by Dmitry Suprunov and Pavel Kapelnikov. The property was acquired in 2009 by '19 Bridge Avenue LLC' for \$430,000 and today operates as CTC's New Jersey office at 19 North Bridge Avenue in Red Bank, New Jersey. The current assessed value of the property is \$440,500.

## 4. CTC PRIMARY FINANCIAL RECORDS

Spirit business was recorded on CTC CA's QuickBooks General Ledger. CTC maintained additional general ledgers for various program administration and brokerage agreements. CTC MO had a QuickBooks General Ledger which contained additional records for CTC Business related to Spirit.

CTC CA is the entity used by CTC Management<sup>7</sup> for recording transaction detail for the CTC entities including CTC CA, CTC MO and CTC HI.

- a) CTC MO – program administrator for Spirit business.
- b) CTC HI – program administrator for County Hall.
- c) CTC CA – original program administrator for Spirit. After CTC MO became the Spirit program administrator in 2016, CTC CA continued to be used to record financial activity. CTC CA also recorded financial activity for other insurance carriers for which CTC entities brokered insurance business.

CTC CA's QuickBooks General Ledger (the primary financial record) included the following:

- a) Cash collections from brokers and finance companies for each insurance carrier where CTC acts as program administrator or broker.

<sup>7</sup> See Definitions section

- b) Cash disbursements for CTC operations and payments to insurance carriers.
- c) Cash disbursements made for employee costs.
- d) Financial accruals (however the accruals do not appear to have been made on a consistent basis).

The QuickBooks CTC CA General Ledger and supporting records were analyzed, as were bank statements, cash receipts journals and cash disbursement journals.

For the listing of identified CTC bank accounts see **Exhibit 2**.

## 5. CTC FINANCIAL SYSTEMS AND THIRD-PARTY SUPPORT

Financial records and third-party service providers for the program administration of Spirit and other insurance carrier programs and brokered business included the following:

- a) Nexsure General Ledger (limited use during the years 2011 to 2015) and cash disbursement journal – for the years 2011 to 2018.
- b) Concept One / EPIC - General Ledger (limited use during 2018) and cash disbursement journal during 2018.
- c) QuickBooks main General Ledger (an Intuit software solution) – for the years 2015-forward.
- d) Third party billing outsourced system – AIS based in Missouri during years 2014 to 2016.
- e) Third party billing outsourced system – “Input 1” started in 2016 and forward.
- f) Third party billing outsourced provider – Chelsea Financial Group, Inc. (Chelsea) (Note Chelsea is a premium finance company<sup>8</sup> but did not provide premium financing for Spirit as premiums were paid to Spirit on an installment basis known as the “voucher system<sup>9</sup>.”) Chelsea is owned by Thomas Mulligan and Pavel Kapelnikov.
- g) Third party administrator for claims – Criterion Claim Solutions of Omaha, Inc. (owned by Thomas Mulligan.)
- h) Policy administration records were maintained on the following systems:
  - i. Aspire (by Maple Technologies which is owned by a former Treasurer and board member of Spirit).
  - ii. QuickBase (an Intuit software solution)

CTC used QuickBase (an Intuit software product) for a policy system starting in 2015. During the system conversion, carrier premium collected for years 2011 to 2015 were entered into the QuickBase system as a bulk entry. Therefore, the payment history for the years 2011 to 2015 was lost in the transition from Aspire to the QuickBase policy system. See **Section 9.1** for additional details on this QuickBase conversion.

## 6. INTERVIEW SCHEDULE

FTI conducted initial interviews with the following people involved with CTC:

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<sup>8</sup> See Definitions section

<sup>9</sup> See Definitions section

- a) **Matt Simon and Hollie Whittaker** on May 30, 2019
- b) **Hollie Whittaker and Peter Santos** on June 11, 2019
- c) **John Mahoney** on June 11, 2019 via phone
- d) **Dan George** on July 10, 2019 via phone
- e) **Hollie Whittaker and Matt Westrich** on October 4, 2019

Additional calls and meetings were held throughout the project.

## 7. KEY PEOPLE AND COMPANIES

### 7.1. KEY PEOPLE

- a) **Thomas Mulligan** – owner of CTC and related companies – see key companies listed later in this section.
- b) **Dan George** – “Risk Retention Group manager services for Spirit” through his company Lexicon Management. Per conversation with Dan George, Lexicon Management is 50% owned by Thomas Mulligan. Dan was the corporate secretary for Spirit and County Hall. He also has another services company which he owns 100% called ICAP which received payments from CTC. Hollie Whittaker on October 4, 2019 stated, “Dan George was responsible for putting a CTC process in place to apply cash receipts to the oldest policies and not based on specific identification of payment by insured.” Dan George did not agree with this statement by Hollie Whittaker.

Per Dan George - County Hall Holdings has Class A shares owned by a company controlled by Thomas Mulligan. Mulligan invested \$1M in County Hall common stock. Class B shares via policyholder capital payments total approximately \$23.9M as of June 30, 2019. Note: this policyholder capital is similar to Association Fees charged to Spirit policyholders. Dan George is currently the County Hall Secretary.

- c) **John Maloney** – outside accountant for CTC. Maloney said - he stopped working for CTC CA in 2018 because “expenses went through the roof.” The issue of CTC spending insurance carrier trust funds was not new in 2018. Significant losses in 2015, 2016 and 2017 on the CTC CA tax returns per Maloney were funded by money from Insurance Company premium funds. John Maloney stated on June 4, 2019 when asked how CTC funded losses - “It would have come from premium dollars.” When asked if the funding was from commission due CTC he said “No, from premium dollars.” Per FTI’s discussion with John Maloney and review of the prepared CTC 2018 Federal tax return Mr. Maloney worked with CTC to prepare the tax return.
- d) **Hollie Whittaker** – CTC accountant. Whittaker has responsibility for maintaining the CTC general ledger and oversees cash receipts and cash disbursements at CTC. She made payments as directed by Thomas Mulligan and other management at CTC.
- e) **Matt Simon** – Chief Operations Officer at CTC. He has maintained many positions with CTC and related companies. Simon was the primary contact at CTC for FTI. Mr. Simon is not an employee of CTC, instead he is paid as a consultant.
- f) **Scott McCrae** – CTC President and County Hall President.

- g) **Peter Santos** – CTC lawyer. He participated in a meeting with Hollie Whittaker on June 11, 2019. He has not made himself available for an interview. FTI requested to speak to him about his involvement with Thomas Mulligan and a number of related companies. In addition, FTI requested background on an agreement with Brenda Guffey which resulted in a payment from CTC to Brenda Guffey (payment went to the law firm Borsen Law LLC) for \$256,085. Also, an additional payment of \$194,222 was identified as related to this settlement to Siro Smith Dickson in **Schedule I**. Mr. Santos also monitored several calls between FTI and Matt Simon.
- h) **Brenda Guffey** – former Spirit President and CTC employee. Received a payment from CTC through the law firm Borsen Law LCC for \$256,085. Per our discussion with Peter Santos the payment was for an agreement between CTC and Brenda Guffey. An additional payment of \$194,222 was identified as related to this settlement to Siro Smith Dickson listed on **Schedule I**.
- i) **Matt Westrich** – CTC accountant responsible for recording cash collections.
- j) **Igor Kapelnikov** – CTC information technology leader for CTC companies and brother of Pavel Kapelnikov.
- k) **Pavel Kapelnikov** – we believe he is the co-owner of Chelsea the premium finance company<sup>10</sup> controlled by Thomas Mulligan. Pavel Kapelnikov co-owns Global Consultants LLC with Dmitry Suprunov and Anna Suprunov. Pavel Kapelnikov is also the co-owner of Global Capital Group with Dmitry Suprunov. See key companies listed below in **Section 7.2**.
- l) **Dmitry Suprunov** – co-owns Global Consultants LLC (GCL) with Pavel Kapelnikov and Anna Suprunov. Co-owner of Global Capital Group (GCG) with Pavel Kapelnikov. GCL and GCG provided \$3.35 million in mortgages to ‘19 Bridge Avenue LLC’ (a company owned by Thomas Mulligan) for property at 19 Bridge Street, Red Bank NJ. The property was acquired in 2009 for \$430,000 by ‘19 Bridge Avenue LLC’. Spirit was incorporated on January 5, 2012 around the time financing for 19 Bridge Avenue LLC provided loans for 8.8 times the value paid in 2009.
- m) **Anna Suprunov** co-owns Global Consultants LLC with Pavel Kapelnikov and Dmitry Suprunov.
- n) **Nicholas Teetelli** – former Spirit board member and Treasurer (Spirit Annual Statement December 2015) and owner of Maple Technologies (per Maple Technologies website) the software provider for the Aspire policy administration system used by Spirit before QuickBase was installed. Aspire system has three (3) individual contracts for only one system used by CTC. CTC, Spirit and County Hall each were charged fees to use the Aspire system.

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<sup>10</sup> See Definitions section

## 7.2. KEY COMPANIES

### 7.2.1. COMPANIES OWNED OR CONTROLLED BY THOMAS MULLIGAN:

- a) **CTC Transportation Insurance Services of Missouri LLC (CTC MO)** - company provides program administration services for Spirit. Limited records were available as most transactions for the program administration services provided were recorded by CTC CA.
- b) **CTC Transportation Insurance Services of Hawaii LLC (CTC HI)** - company provides program administration services for County Hall. Limited records were available as most transactions for the program administration services provided were recorded by CTC CA.
- c) **CTC Transportation Insurance Services LLC (CTC CA)** – company provides program administration and brokers services to insurance carriers. Company maintained the most complete financial records for all CTC entities including CTC MO and CTC HI.
- d) **Criterion Claim Solutions of Omaha, Inc. (CCS or Criterion)** – company provides claims administration services for Spirit and County Hall.
- e) **Chelsea Financial Group, Inc. (Chelsea)** – provided premium administration services. CTC management<sup>11</sup> referred to the company as a premium finance company, but Chelsea did not provide premium financing services for Spirit. Chelsea did provide invoicing and payment services for Spirit through a third-party Input One. FTI identified financing agreements for Spirit policyholders that were maintained in the Aspire system. Interest rates for the sample reviewed charged Spirit policyholders between 8% and approximately 19%. Spirit did not benefit from the financing as policies were paid by Chelsea to Spirit on an installment basis.
- f) **Chelsea Holding Company LLC** – holding company that owns the Chelsea company noted above.
- g) **IV St Joseph IV LLC** – company owns CTC CA
- h) **Lexicon Insurance Management LLC** – company provides administration services to captive insurance companies and risk retention groups. Co-owner is Dan George.
- i) **New Tech Capital LLC** – company that received Spirit funds with support for an investment with Iterative Capital, L.P.
- j) **Fourgorean Capital LLC** – company that provided a \$3 million Letter of Credit for Spirit.

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<sup>11</sup> See Definitions section

- k) **Quote My Rig LLC (f/k/a Navesink Insurance Agency Inc.)** – sub-producer of insurance business that used CTC to issue insurance policies through multiple insurance carriers including Spirit.
- l) **One W. Main LLC** – company that owns property located in Freehold New Jersey. Property was acquired from Chelsea Holding Company LLC.
- m) **19 Bridge Avenue LLC** - company that owns property used by CTC for operations in Red Bank, New Jersey.
- n) **Whitehall, Swan & Adams Freight Forwarding, LLC** – company was the founding transportation company for Spirit.

#### 7.2.2. COMPANIES OWNED OR CONTROLLED BY PAVEL KAPELNIKOV:

- a) **Chelsea Financial Group LLC** – see above Section 7.2.1.
- b) **Global Capital Group LLC** – company owned by Pavel Kapelnikov and Dmitry Suprunov. Global Capital Group LLC has extended three mortgages totaling \$2.4 million to 19 Bridge Avenue, LLC, of which Thomas Mulligan is the sole member. It has also extended a \$200,000 mortgage to Mulligan directly. No releases have been filed for these mortgages.
- c) **Global Forwarding Enterprises, LLC** – company received payments from CTC CA. Per Hollie Whittaker and Matt Simon, CTC CA payments were for software development.
- d) **Kapa Management Consulting Inc** – company received monthly payments from CTC CA for a loan. The loan was not located in CTC CA records.
- e) **Kapa Ventures Inc** - company received payments from CTC CA. Per Hollie Whittaker and Matt Simon, CTC CA payment support is not available.

#### 7.2.3. SPIRIT ORGANIZATIONAL CHART

See **Appendix A** for the Spirit and County Hall Organizational chart as shown in the September 30, 2018 Spirit quarterly statutory statement.

### 8. CONTROL ISSUES – FINANCIAL OPERATIONS

The following are financial control issues identified by FTI:

- a) Payments to Spirit were not recorded based upon cash received from policyholders. Per Hollie Whittaker, the application of premium on Spirits books was completed on a “first-in first-out”<sup>12</sup> basis in the QuickBase system, which was the direction received from Dan George. Dan George on December 13, 2019 said he did not give that direction but would have told CTC to record cash in accordance with the PAA.
- b) Interest was paid for debts **not** recorded in CTC records.

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<sup>12</sup> See definitions section

- c) Payments were made to employees from the operating account, not through payroll.
- d) Payments were made for credit card expenses without support or utilizing an IRS approved employee expense process.
- e) Payments were made to vendors without contracts or invoices.
- f) Payments were made on a cash basis and occasionally using accruals (that is CTC did not use an Accounts Payable process.)
- g) Payments were made to related parties<sup>13</sup> without agreements or invoices.
- h) Payments were made to management without expense reports, invoices or contracts.
- i) Payments to individuals and entities were made without Tax form 1099 being issued or recorded (No 1099's were provided to FTI). Hollie Whittaker believes 1099's were prepared "3 or 4 years ago."
- j) Cash Transactions for CTC HI were recorded in the CTC CA General Ledger before management stopped this process in 2017. This resulted in an incomplete record of transactions in the CTC CA General Ledger for business related to County Hall.
- k) Cash collected by CTC for multiple insurance carriers was comingled in the General Trust Account<sup>14</sup> and regular reconciliations were not completed (QuickBooks account number 100204).
- l) Cash moved to the CTC CA Return Premium bank account (QuickBooks account number 100205) was also comingled with direct premiums due insurance carriers and return premiums due brokers and financing companies. The premiums due carriers could have been paid directly from the General Trust Account<sup>15</sup> or the respective Trust Accounts for some of the individual carriers (i.e. Spirit, County Hall, AmTrust, Lloyds).
- m) Bank reconciliations were not provided for any period. Management said cash reconciliations were not completed.
- n) Payroll expenses and accrual entries were not updated on a regular basis.
- o) Subledger and General Ledger accounts were not reconciled.
- p) Payment registers from the EPIC and Nexsure systems were provided to FTI with payee information. The payee information in these payment registers could have been changed after checks were issued.
- q) Details on payment transactions appeared to have been changed in QuickBooks:
  - i. Cash Disbursements were identified where payment details and the bank account listed did not agree to the vendor payments. See example in **Schedule I**.
  - ii. Cash disbursements moved from the General Trust Account<sup>16</sup> to other accounts and were miscoded as payments to Return Premium account (this obscured cash movements to the operating cash account and other bank accounts in the General Ledger.) We identified 82 records that were changed which totaled \$22,225,767. These discrepancies were communicated to CTC management<sup>17</sup> on October 29, 2019 and a new General Ledger report was provided to FTI on October 30, 2019 that appears to correct these entries.
- r) The CTC policy listing provided in respect to Spirit business contained 63 policies with negative premium totaling (\$141,308).

<sup>13</sup> See Definitions section

<sup>14</sup> See Definitions section

<sup>15</sup> See Definitions section

<sup>16</sup> See Definitions section

<sup>17</sup> See Definitions section

- s) Claims were paid without premium recorded for the insured and, in some circumstances, negative premium being recorded. The total incurred loss for these 40 claims was \$849,240.

## 9. BALANCES DUE SPIRIT

Based on our investigation of CTC and related entities we identified the following balances due Spirit:

### 9.1. WRITTEN PREMIUM RECONCILIATION

The amounts in the following table were taken from CTC's QuickBase system for the US Risks and a spreadsheet provided by CTC for the Cross-Border Risks. QuickBase contained the premium details on a policy by policy basis and the Cross-Border Risks spreadsheet is a summary of total premium, fees and taxes. Payments from CTC CA to Spirit were maintained in this system for the US Risks, while the payments for the Cross-Border Risks were not maintained. Instead, CTC provided a schedule created from the bank statements to show the total amount deposited into the Spirit bank account. This amount was compared to the payments per QuickBase and the difference was purported to be for the Cross-Border Risks. FTI traced the payments on this schedule to the bank statements and agreed the amounts with minor differences. The next procedure carried out was a comparison of the amounts deposited into the Spirit account for the period December 31, 2016 and prior to the amounts recorded in QuickBase to determine if the amount purported for Cross-Border Risks is reasonable. Based on our analysis the amount purported to be for Cross-Border Risks is reasonable. FTI used the amount deposited into the Spirit account of \$288,682,607 instead of the amount per QuickBase of \$286,976,222.

**Table 2**

	<b>US Risks</b>	<b>Cross Border Risks</b>	<b>Total</b>
Written Premium	\$ 282,592,526	\$ 1,825,091	\$ 284,417,617
Capital Contribution	\$ 5,717,330		\$ 5,717,330
Association Fee	\$ 43,688,716	\$ 479,773	\$ 44,168,489
State Tax	\$ 9,126,651	\$ 43,922	\$ 9,170,573
County Tax	\$ 506,571		\$ 506,571
FHCP Assessment	\$ 20,333		\$ 20,333
Vehicle/Risk Mgmt Fee	\$ 8,833,580		\$ 8,833,580
<b>Gross Billed</b>	<b>\$ 350,485,706</b>	<b>\$ 2,348,786</b>	<b>\$ 352,834,492</b>
Retail Agent Commissions	\$ (32,225,055)	\$ -	\$ (32,225,055)
Agents Finders Fee	\$ (1,269,816)	\$ -	\$ (1,269,816)
<b>Net Billed and collected by CTC</b>	<b>\$ 316,990,836</b>	<b>\$ 2,348,786</b>	<b>\$ 319,339,622</b>
Total Paid to Spirit by CTC			\$ 288,500,472
<b>Amount owed to Spirit</b>			<b>\$ 30,839,150</b>

The amount shown as total paid to Spirit by CTC was derived from multiple sources as there was not one source that showed the total paid. The amount paid per QuickBase showed \$286,976,222; however, CTC informed FTI that the payments for the Cross-Border Risks were not included. CTC then provided a spreadsheet that included all premium payments to Spirit that was created based upon the Spirit bank statements which totaled \$288,682,607. FTI traced each of the items on this spreadsheet to the Spirit bank statements and noted that, in some instances, deposits that were returned for "not sufficient funds" were not consistently offset

against the total deposit. As such, FTI accounted for all of these transactions and adjusted the total paid down by \$182,135. As a result, the total paid to Spirit by CTC amounted to \$288,500,472.

In reviewing the bank statements and comparing the amounts per the spreadsheet provided by CTC to the bank statements, we noted several payments deposited that were from Chelsea that were not considered premium. FTI inquired about these payments and was told that there were loan repayments from Chelsea to Spirit. This item will be further discussed in **Section 12.1** below.

The above demonstrates that CTC owes at least \$30,839,150 to Spirit for the business produced on their behalf.

## 9.2. COMMISSIONS ANALYSIS

The following table shows a calculation of the amount of commissions paid to CTC compared with the amount that was due based upon the calculations per the Agreement. The amount of commissions paid to CTC was derived from the commission's statements obtained from CTC along with the Spirit Commerce Bank statements.

The table below demonstrates that CTC owes at least \$3,077,911 to Spirit for commissions overpaid to CTC.

**Table 3**

	<b>US Policies</b>	<b>Cross Border Risks</b>	<b>Total</b>
Gross Written Premium	\$ 282,592,526	\$ 1,825,091	\$ 284,417,617
Commission rate	20%	20%	
<b>Gross Commissions</b>	<b>\$ 56,518,505</b>	<b>\$ 365,018</b>	<b>\$ 56,883,523</b>
Less: Retail Agents Commissions and Agents Finders Fee	\$ (33,494,871)	N/A	
<b>Net Commissions due CTC</b>	<b>\$ 23,023,634</b>	<b>\$ 365,018</b>	<b>\$ 23,388,652</b>
Amount of Commissions paid to CTC	\$ 26,466,563	\$ -	\$ 26,466,563
<b>Amount of Commissions Overpayment due back to Spirit</b>	<b>\$ 3,442,929</b>	<b>\$ (365,018)</b>	<b>\$ 3,077,911</b>

## 9.3. CLAIMS HANDLING FEE ANALYSIS

The following table shows a calculation of the amount of Claims Handling Fees paid to Criterion compared with the amount that was due based upon the calculations per the Agreement. The amount of Claims Handling Fees paid to CTC were derived from the claims handling fees statements obtained from CTC along with the payment details listed in the Spirit Commerce Bank statements.

The table below demonstrates that Criterion owes at least \$101,566 to Spirit for overpaid claim fees.

**Table 4**

	June 30, 2014 and Prior	July 1, 2014 and later	Cross Border Risks	Total
Written Premium	\$ 47,778,391	\$ 234,814,135	\$ 1,825,091	\$ 284,417,617
Commission Rate	3.5%	3%	3.5%	
<b>Claims Handling Fees</b>	<b>\$ 1,672,244</b>	<b>\$ 7,044,424</b>	<b>\$ 63,878</b>	<b>\$ 8,780,546</b>
Total Claims Handling Fees Paid by Spirit				\$ 8,882,112
<b>Total Overpayment of Claims Fees by Spirit</b>				<b>\$ 101,566</b>

#### **9.4. OTHER INFORMATION RELATING TO AMOUNT OWED TO SPIRIT**

The former auditor of Spirit was Shores, Tagman, Butler & Company, P.A. ("STBC") The resignation letter dated May 23, 2018 stated the following:

*BAD DEBTS - In reviewing the receivables as presently recorded, we find that the collection history and the relationship between accounts receivable and unearned premiums is substantially worse than in the prior year. For example, the status of year end receivables three months post year end has gotten substantially worse. The policies with receivables in excess of the unearned premiums are as follows:*

*3/31/18 \$14.4 million*

*3/31/17 \$ 3.3 million*

*We do not presently possess enough information to estimate the entire amount of bad debt reserve that is needed. However, based on the information that we do have, we believe that the bad debt reserve needs to be increased by a minimum of \$1 million. It is our belief that the actual reserve needs to be substantially higher. We have asked on a number of occasions to have the bad debt reserve calculated by management. To date, we have not received a response to this inquiry.*

*BAD DEBTS/CTC CONTRACT - In the contract with CTC, specifically Section 7C, the contract indicates the following:*

*"the Program Administrator shall be responsible for collecting and paying to the Company all premiums due on the business written pursuant to this agreement. Failure to collect shall not operate as a defense against full payment by the Program Administrator to the Company for all amounts due and owed the Company for all liability assumed by the Company."*

*We interpret this as meaning that should an account or accounts not pay all the premiums due, it is the responsibility of the Program Administrator to pay those to the Company. In fact, this does not appear to be happening. What appears to be happening is that any insured that is not paying has*

*its premium endorsed downward to the amount that was actually paid. Those premiums so endorsed have not been reflected on the financial statements of the Company. While this seems to be more conservative, this does not appear to be in compliance with the terms of the contract. We are concerned whether or not there is a receivable from the Program Administrator to the Company and whether or not this receivable is collectible.*

*From the limited information that we have, we believe that the bordereauxs have these endorsements labeled FPA. The cumulative sum total of the endorsements labeled FPA exceed \$5 million since inception through December 31, 2017. The ultimate effect of this on the financial statements, if any, is unknown.*

*Further, review of documents reflecting activity subsequent to year end reveals that through March 31, 2018, the Company took additional write-downs (similar to what is described above) for premiums earned, vehicle fees and capital previously recorded through December 31, 2017 totaling approximately \$1 million. This has the effect of reducing surplus, as reported, approximately \$1 million.*

Based on the findings of STBC the summary in **Section 9.9., Table 9** includes adjustments for uncollected funds which reduced Spirit premiums (see **Section 9.6.2** for further analysis of the FPA transactions). The QuickBase report provided to FTI indicated written premium was collected and no outstanding receivables were due CTC. This is not consistent with STBC's findings above. The detail provided by CTC for return premium did not contain details by carrier. If the detail for return premiums was available, the balance due Spirit may change.

FTI discussed the FPA endorsements with Dan George on December 13, 2019, Mr. George said the endorsements reduced premium for uncollected balances. Mr. George said that CTC, Risk Services (former manager for Spirit), and Criterion agreed verbally with the write off of uncollectible balances. The FPA transactions wrote off premium of \$5,067,679 not collected by CTC. Based on the wording of the PAA Spirit is due net of commissions \$4,054,143 from CTC.

#### **9.5. COMPARISON OF WRITTEN PREMIUM PER CTC'S QUICKBASE TO THE SPIRIT ANNUAL STATEMENTS**

The following table shows the comparison of the written premium per CTC's QuickBase compared to the written premium per the Spirit Annual Statements. Note that the amounts per the annual statements are on a calendar year basis, whereas the amount per QuickBase are on an underwriting year basis.

The table below shows that after factoring in the Cross-Border revenue the difference between Spirit and CTC records is approximately 1.4%. Based on the small difference FTI determined the CTC records were reasonable for the testing performed. Also see the testing of the CTC QuickBase system to the Aspire policy system at **Section 9.6**.

**Table 5**

Written Premium	Underwriting Years							Total
	2012	2013	2014	2015	2016	2017	2018**	
<b>CTC Production</b>	\$ 4,487,238	\$ 20,319,327	\$ 41,362,175	\$ 47,403,465	\$ 66,009,392	\$ 69,269,154	\$ 33,741,775	\$ 282,592,526
<b>Net premiums Written per Spirit Annual Statement</b>	\$ 5,907,140	\$ 21,648,614	\$ 47,069,172	\$ 45,330,223	\$ 63,674,969	\$ 66,485,319	\$ 38,239,279	\$ 288,354,716
<b>Difference</b>	\$ (1,419,902)	\$ (1,329,287)	\$ (5,706,997)	\$ 2,073,242	\$ 2,334,423	\$ 2,783,835	\$ (4,497,504)	\$ (5,762,190)

Note - this analysis does not include the Cross Border Risk Premium of approximately \$1.825M

\*\* in 2018 the last policy written was effective June 30, 2018. The CTC production is through September 2019 and the Spirit statement is as of 3q2018

## 9.6. ASPIRE SYSTEM AND QUICKBASE POLICY COMPARISON

FTI was provided with a download of Spirit policy data from the Aspire system (“Aspire Policy Listing”). Maple Technologies, who is the owner of the Aspire system provided the data. Maple Technology is the provider of the policy system and data depository used by CTC before CTC started using QuickBase. After QuickBase was implemented, CTC continued to use Aspire for recording policy data and storing policy correspondence. See testing at **Section 9.8** for the listing of endorsements entered in QuickBase not recorded in Aspire. This Aspire data is purported to include all transactions for Spirit business from its inception in 2012 through June 12, 2019 when the last Spirit policy was cancelled, per Nick Teetelli, the owner of Maple Technology and former Treasurer for Spirit. The policy listing includes the program name, policy number, insured name, policy effective date, policy expiration date, transaction type, transaction date, transaction effective date, gross written premium, capital contribution, association fee, vehicle fee, state tax, county tax, FHCF, policy fee and risk management fee. FTI compared the amounts recorded in the Aspire Policy Listing to the amounts recorded in the QuickBase policy listing received from CTC as of July 2019 to determine if the CTC provided QuickBase system is reasonable for determining balances due Spirit. The following shows the results of this comparison:

**Table 6**

Truck America Program	Premium	Capital Contribution	Association Fee	State Tax	County Tax	FHCF	Policy Fee	Risk Mgt Fee & Vehicle Fee	Total
Aspire Policy Listing	\$ 318,858,310.80	\$ 3,677,301.00	\$ 22,884,788.63	\$ 9,173,613.71	\$ 506,797.01	\$ 21,377.99	\$ -	\$ 563,358.75	\$ 355,685,547.89
QuickBase Policy Listing	\$ 282,592,526.19	\$ 5,717,330.00	\$ 43,688,715.78	\$ 9,126,650.83	\$ 506,571.00	\$ 20,333.00	\$ -	\$ 8,833,580.00	\$ 350,485,706.80
Difference	\$ 36,265,784.61	\$ (2,040,029.00)	\$ (20,803,927.15)	\$ 46,962.88	\$ 226.01	\$ 1,044.99	\$ -	\$ (8,270,221.25)	\$ 5,199,841.09

The following table shows an analysis of the policy differences noted above:

**Table 7**

	Premium Δ	Capital Contribution Δ	Association Fee Δ	Vehicle and Risk Mgmt Fee Δ	State Tax Δ	County Tax Δ	FHCF Δ	Net Δ	FPA Transactions
Full Offset (Premium, Cap Cont, Assoc Fee Vehicle & Risk Mgmt Fee, State Tax)	\$ 28,109,798	\$ 6,725	\$ (20,239,959)	\$ (7,875,717)	\$ (847)	\$ -	\$ -	\$ 0	\$ (847)
FPA Transactions	\$ 6,047,004	\$ 22,063	\$ (526,218)	\$ (380,939)	\$ 6,483	\$ 227	\$ (2)	\$ 5,168,619	\$ (5,066,832)
State Tax Differences (other entries offset)	\$ 1,988,293	\$ (1,988,293)	\$ -	\$ -	\$ 37,603	\$ -	\$ -	\$ 37,603	
State Tax and FHCF Differences (other entries offset)	\$ 80,524	\$ (80,524)	\$ -	\$ -	\$ 4,026	\$ -	\$ 1,047	\$ 5,073	
Unexplained Differences	\$ 40,165	\$ -	\$ (37,751)	\$ (13,566)	\$ (302)	\$ -	\$ -	\$ (11,454)	
	\$ 36,265,785	\$ (2,040,029)	\$ (20,803,927)	\$ (8,270,222)	\$ 46,963	\$ 227	\$ 1,045	\$ 5,199,841	\$ (5,067,679)

Δ - indicates differences between Aspire and Quickbase

#### 9.6.1. POLICIES WHERE PREMIUM ADJUSTMENTS ARE FULLY OFFSET WITH OTHER AMOUNTS SHOWN IN QUICKBASE

FTI identified policies with \$28,109,798 in premium adjustments in QuickBase that reduced premium. The adjustments offset Capital Contribution, Association Fee, Vehicle and Risk Management Fee, and/or State Tax. The net adjustment of the entries in QuickBase was zero for amounts due from policyholders. Based upon FTI's review, these transactions were created in QuickBase and were not entered into Aspire. This was a change from the normal process<sup>18</sup> as QuickBase was generally populated from entries made in the Aspire system. Matt Simon said he believed these entries were made in QuickBase to help improve Spirit surplus. FTI obtained copies of approvals from the reinsurer and the Nevada Division of Insurance (NDOI) for adjustments to premiums incepting January 1, 2017 and forward. FTI has not been provided with NDOI documentation to support the 2013 to 2016 reallocations. Reinsurance contract addendums for 2015 and 2016 were provided that support the change. The changes to the reinsurance contracts should have been provided to the NDOI for approval. These changes to premium do not impact the balances due Spirit.

See the schedule of differences at **Exhibit 7**.

<sup>18</sup> Matt Simon explained that the normal process was for a transaction is to be entered into Aspire and then there would be a daily upload into QuickBase for transactions entered that day. Separately, there would be a manual entry into Nexsure or Epic Premier which would create the invoice that was issued to the retail agents.

#### **9.6.2. POLICIES WITH AN FPA TRANSACTION IN QUICKBASE**

FTI identified \$5,067,679 in premium recorded in QuickBase that were classified with a Transaction Type "FPA". The FPA endorsements were not recorded in the Aspire system. Based upon discussions with Matt Simon, FTI learned the FPA transactions were Final Premium Audits. FTI was provided with a letter sent to Spirit and CTC management (Brenda Guffey, Thomas Mulligan and Daniel George) from Spirit's external auditors dated May 23, 2018. This letter laid out that these FPA endorsements were CTC's write-off of uncollected balances from insureds the letter further notes that the PAA indicates CTC is responsible to pay Spirit for policyholder premiums whether collected or not by CTC.

FTI noted that Section 7.C of both PAAs that CTC shall be responsible for collecting and paying Spirit all premiums due on the business written pursuant to the Agreement. Failure to collect shall not operate as a defense against full payment by the CTC to the Spirit of all amounts due and owing to Spirit for all liability assumed by the Spirit. The Agreements further indicated that interest on amounts owing will accrue at a rate of 1.5% per month.

Per discussion with Dan George on December 13, 2018, he stated that the reinsurers, CTC, Risk Services, and Criterion were notified of the collection issue related to the outsourced billing and collection service AIS. Dan George said each group was aware of the collection issue and gave verbal approval for the amounts written off. The amount due Spirit for uncollected policy premium identified as FPA endorsements net of CTC commissions is \$4,054,143.

#### **9.6.3. POLICIES WHERE PREMIUM ADJUSTMENTS OFFSET CAPITAL CONTRIBUTIONS AND THE NET DIFFERENCE IS A CHANGE IN STATE TAXES**

FTI identified \$1,988,293 in premium changes in QuickBase that offset Capital Contributions. The adjustments in QuickBase resulted in a net change in State Taxes that were reduced by \$37,603. The adjustments identified in QuickBase were not identified in the Aspire system.

#### **9.6.4. POLICIES WHERE PREMIUM ADJUSTMENTS OFFSET CAPITAL CONTRIBUTIONS AND THE DIFFERENCE RESULTS IN STATE TAX AND FHCF CHANGES**

FTI identified \$80,524 in premium changes in QuickBase that offset Capital Contributions. The adjustments in QuickBase resulted in a net change to State Taxes and FHCF that were reduced by \$5,073. The adjustments identified in QuickBase were not identified in the Aspire system.

#### 9.6.5. POLICIES WHERE PREMIUM ADJUSTMENTS DO NOT OFFSET CHANGES TO ASSOCIATION FEE/VEHICLE RISK MGMT FEE/STATE TAX

FTI identified \$40,165 in premium changes where the corresponding changes to Association Fee/Vehicle Risk Mgmt Fee/State Tax amounted to \$51,619. The net difference between QuickBase and Aspire is \$11,454.

#### 9.6.6. CROSS-BORDER POLICY DIFFERENCES

The Aspire Policy Listing included the Cross-Border Risks policies. This policy listing was compared to the Cross-Border Risk policy listing provided by CTC. The following compares these two policy listings:

**Table 8**

Cross Border Risk Program	Premium	Capital Contribution	Association Fee	Vehicle Fee	State Tax	County Tax	FHCF	Policy Fee	Risk Mgt Fee	Total
Aspire Policy Listing	\$ 649,450	\$ -	\$ 4,763	\$ -	\$ 410	\$ -	\$ -	\$ 575	\$ -	\$ 655,199
Cross Border Risk - CTC Spreadsheet	\$ 1,824,499	\$ -	\$ 439,630	\$ -	\$ 28,231	\$ -	\$ -	\$ -	\$ -	\$ 2,292,360
Difference	\$ (1,175,049)	\$ -	\$ (434,867)	\$ -	\$ (27,821)	\$ -	\$ -	\$ 575	\$ -	\$ (1,637,161)

The Cross-Border Risk policy listing received from CTC did not contain the same fields as the Aspire Policy Listing. The amounts per the CTC policy listing showed “Capital Contribution” that was compared to “Association Fee” and “Tax” that was compared to the State Tax amount per the Aspire Policy Listing.

Matt Simon stated that not all of the Cross-Border Risks were included in the Aspire system.

#### 9.7. QUICKBASE POLICY CANCELLATIONS AND REINSTATEMENTS - LATE ENTRIES

FTI analyzed QuickBase for Cancellation Endorsements without Reinstatement Endorsements for premium adjustments that were effective over 180 days before the date bound. FTI identified 600 endorsements that reduced premium by \$5,443,229. 468 of these endorsements were bound more than 180 days after the expiration date of the policy and the net reduction to premium was \$2,986,901. Matt Simon indicated that there was a delay in processing the cancellation in the system do to workflow issues. FTI compared these policies to the loss run and identified one claims with a paid loss of approximately \$10,000 where the loss date was after the cancellation date. Approximately \$2.5M in premium related to policies effective in 2012 and 2013.

If the adjustments reducing premium noted above were entered for non-payment, Spirit may have provided insurance coverage and not received premium payments.

#### 9.8. QUICKBASE ENTRIES WITH TRANSACTION TYPES NOT IN ASPIRE

FTI identified several Transaction Type endorsements recorded in QuickBase that were not located in the Aspire system. The following are the Transaction Types identified in QuickBase that are not in Aspire:

- a) Endorsement/Change - TY18
- b) Endorsement/Change - TY19
- c) Endorsement/Change-CAP TY1
- d) Endorsement/Change-VIF TY2
- e) Endorsements - FPA

The differences noted above for Endorsement/Change codes TY18, TY19, CAP TY1 and VIF TY2 resulted in reclassification of premium that did not change amounts due Spirit.

The FPA endorsements did result in a change between Aspire and QuickBase that represent amounts due Spirit for balances not collected by CTC.

#### 9.9. BALANCES DUE SPIRIT FROM CTC

Based on the work performed above, the total amount due Spirit from CTC is at least \$38,072,770:

**Table 9**

	<b>Total</b>	<b>Report Reference</b>
Written Premium Reconciliation	\$ 30,839,150	Table 2
Commissions overpaid to CTC	\$ 3,077,911	Table 3
Claim Handling fees overpaid	\$ 101,566	Table 4
FPA Endorsements	\$ 4,054,143	Section 9.6.2
<b>Total due Spirit</b>	<b>\$ 38,072,770</b>	

Additional amounts due Spirit may include the following:

- a) Late trailing cancellations processed after the policy end date reduced premium by \$2,986,901. This potential adjustment and other premium adjustments may impact commissions and fees payable to Spirit service providers.
- b) Interest on late payment of premium per the PAA Section 7 – Not calculated.

Potential offsets noted by CTC:

- a) Per CTC's response to the FTI interim report from an email dated November 9, 2019 from Matt Simon– "State Tax, County Tax and FHCP Assessment are listed as part of the receivable total (due Spirit). Spirit paid the required premium taxes which results in an additional \$9,653,555 reduction in the total amount due." FTI is unaware of why tax payments paid by Spirit would be due back to CTC.
- b) Per CTC's response to the FTI interim report, in an email dated November 9, 2019 from Matt Simon, CTC is claiming additional commissions of approximately \$4.5 million are due CTC based on a commission rate of 23.5%. This claim is not consistent with the PAA addendums which reduce commissions to 20%, retroactively to inception.
- c) Profit Share – CTC (Matt Simon) sent schedules and reinsurance commutation agreements to FTI on December 16, 2019. The schedule claims a profit share amount of \$3,979,603 is due CTC. The calculation provided by CTC does not take into account the following provisions in the PAA for profit sharing:
  - i. The impact of loss development since the commutations were completed
  - ii. The impact of any profit share payment on Spirit's Risk Based Capital (RBC calculation.)
  - iii. The timing and approvals needed may also impact any potential payment.
  - iv. The portion of the commutation related to profit sharing compared to commutation of the risks.

The filed 2017 amended annual statement for Spirit listed total adjusted capital of \$703,088 and authorized control level risk-based capital of \$7,725,402. The RBC calculation at these capital levels is well below the RBC level of 225% required for a profit share payment to CTC per the PAA. In addition, the Spirit US GAAP audited financial statements for the year ended December 31, 2017 increased loss reserves and reported a total stockholders' deficit of \$43,180,801. The adjustments noted in the audited financial statements occurred after the amended annual statement was filed. The changes reported in the 2017 audited financial statements result in a further reduction in the RBC calculation. Based on the financial results noted above, profit share payments would not be due CTC.

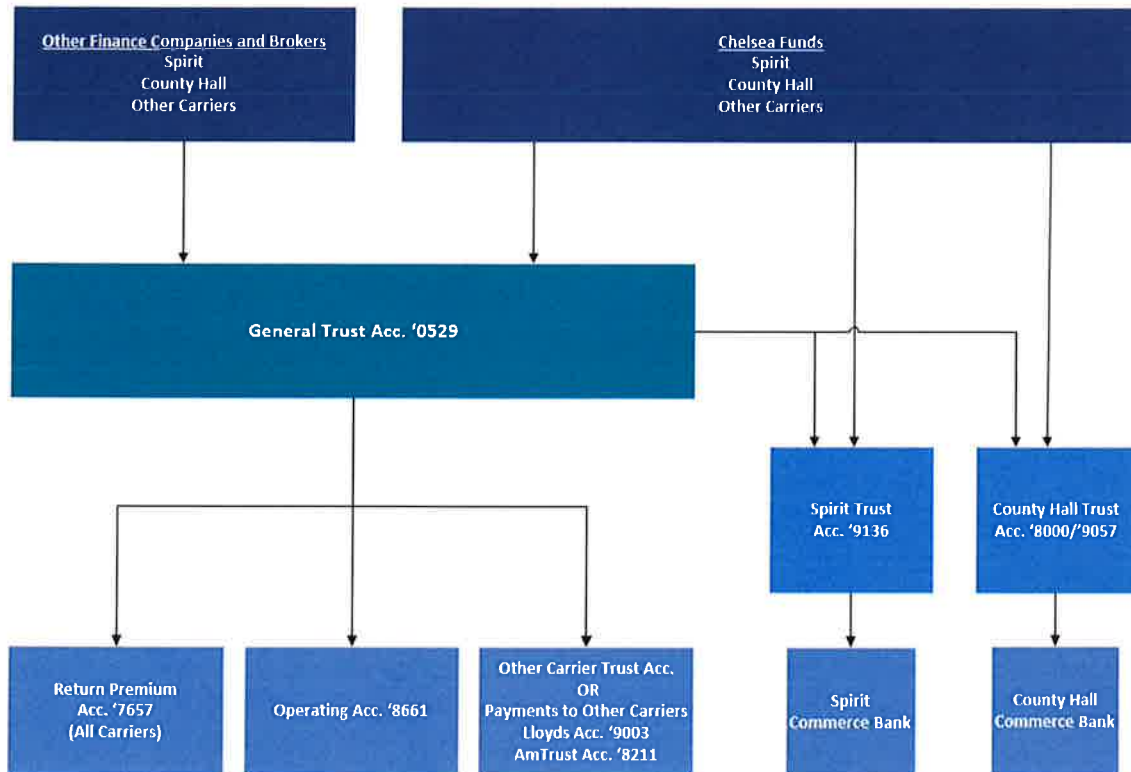
## 10. FINDINGS - COMINGLED FUNDS

### 10.1.FLOW OF FUNDS

Insurance Trust Funds were commingled with other insurance carriers. Comingled funds were put into the CTC CA general ledger account 100204 – Chase\_CTC2\_Trust\_0529. The corresponding bank account was Chase – JP Morgan Chase Bank, N.A. account number 000000739620529 (See **Exhibit 2** for a listing of bank accounts along the full bank account numbers). This account is

referred to as the General Trust Account<sup>19</sup> (“GTA”). **Chart 10.2** which follows shows the cash flows for insurance carrier premium funds received into and out of the GTA per our conversation with Hollie Whitaker and Matt Westrich on October 4, 2019:

### 10.2.CHART – FLOW OF FUNDS AT CTC AS EXPLAINED

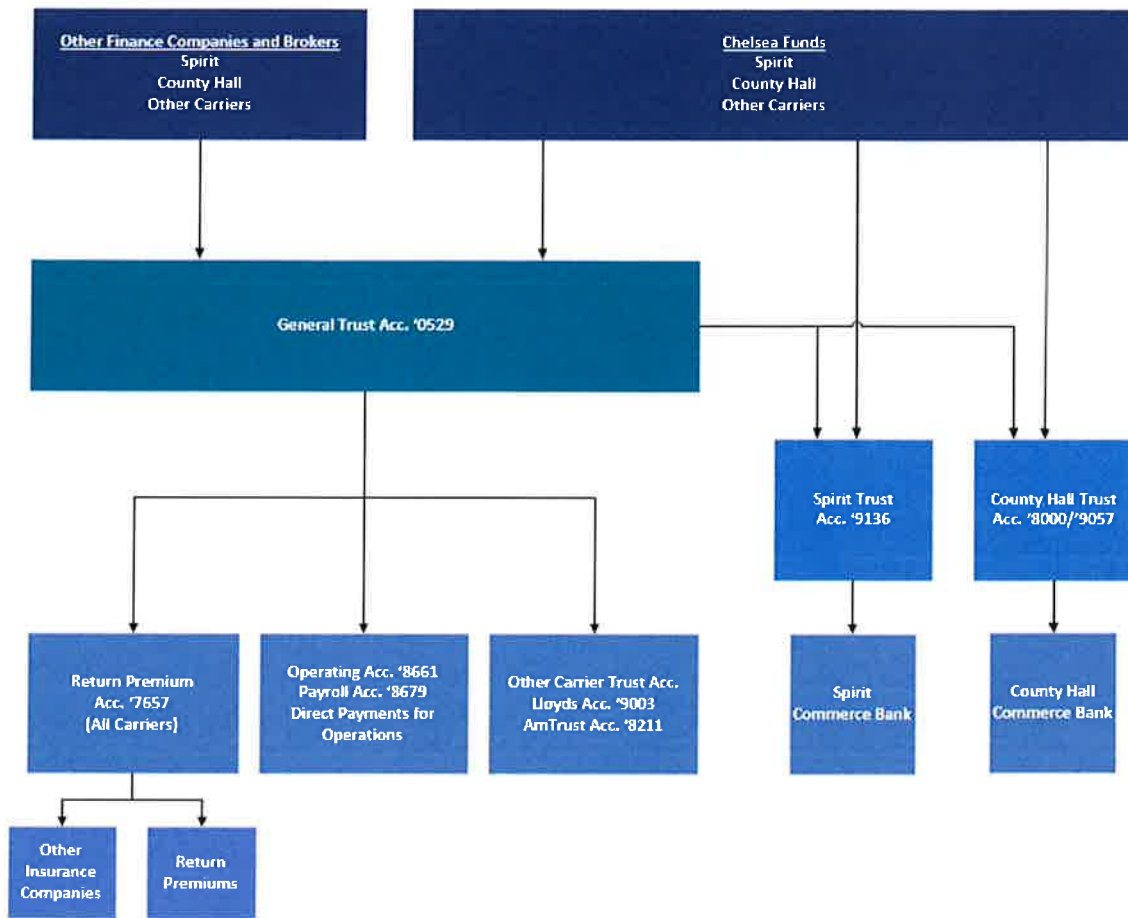


### 10.3.CHART – FLOW OF FUNDS AT CTC UPDATED FOR ACTUAL FLOWS

Based on our analysis of the General Trust Account<sup>20</sup> the following is a diagram that shows the actual flow of funds at CTC:

<sup>19</sup> See Definitions section

<sup>20</sup> See Definitions section



A process difference identified is that the return premium account includes both other insurance carrier premium funds and return premiums due back to insureds. The return premium account is another account CTC maintained that commingled insurance carrier funds.

FTI requested a summary of return premium paid by insurance carrier. CTC does not have the systems in place to report on return premium payments by insurance carrier. The process for return premiums includes multiple steps:

- a) Calculating gross premiums due back to the insureds
- b) Calculating the sub-producers' portion of amounts due back to insureds
- c) Comparing amounts due back to an insured against payments received

Based on the significant underpayment to Spirit noted in **Section 9** above, the risk exists that payments were sent back to sub-producers and or financing companies improperly. FTI selected three payments to Chelsea for return premiums and reviewed the supporting schedules. Each payment included the calculations noted above.

The return premiums sent to Chelsea and other sub-producers is still a risk as the detail is not available by insurance carrier and the detail should be provided by Chelsea or CTC for return premium by insurance carrier.

An additional risk is that the return premiums paid to financing companies were commingled with other insurance carrier premiums. CTC funded operations at Chelsea, the processing of return premiums gave CTC an opportunity to conceal additional payments to Chelsea.

After information for return premiums by insurance carrier is provided, additional testing should be completed.

To evaluate cashflows in and out of the various accounts we used the following information:

- CTC general ledger activity for the years 2016 through 2018
- CTC bank account statements for the years 2016 through 2018
- Subsidiary ledgers for cash collections for the years 2016 through 2018

#### 10.4. GENERAL TRUST ACCOUNT ACTIVITY 2016 TO 2018

Below is a summary of the CTC CA General Ledger activity for account number 100204 - General Trust Account<sup>21</sup> for the years 2016 through 2018:

**Table 10**

	2016	2017	2018	Total
100101 · Chase Operating 8661	\$ (7,983,355)	\$ (8,770,565)	\$ (12,429,439)	\$ (29,183,359)
100102 · Chase Special (Payroll) 8679	\$ (2,283,000)	\$ (3,011,532)	\$ (3,443,400)	\$ (8,737,932)
100103 · Chase - ILSA 6555	\$ (413,080)	\$ (307,594)	\$ (462,339)	\$ (1,183,014)
100105 · Chase CTC HI CK 9057	\$ -	\$ -	\$ (16,325,559)	\$ (16,325,559)
100105 · Transfer to/from CTC Hawaii	\$ -	\$ (7,511,601)	\$ -	\$ (7,511,601)
100106 · Transfer to/from Criterion	\$ -	\$ (404,000)	\$ -	\$ (404,000)
100201 · Chase CTC1 Trust 8687	\$ (882)	\$ 15,183	\$ 115,335	\$ 129,635
100206 · Chase CTC2 Return Premium 7657	\$ (10,781,565)	\$ (20,548,236)	\$ (21,825,069)	\$ (53,154,870)
100302 · Chase AmTrust/Wesco 8211	\$ (1,887,857)	\$ (1,949,377)	\$ (8,647,574)	\$ (12,484,808)
100402 · Chase SCARRG CTC2 9136	\$ (30,947,246)	\$ (40,349,243)	\$ (18,252,872)	\$ (89,549,361)
100501 · Chase Lloyds Acct 9003	\$ (1,355,928)	\$ (1,893,014)	\$ (3,694,237)	\$ (6,943,180)
110001 · Commissions Receivable - 1	\$ 305,837	\$ 1,224,131	\$ -	\$ 1,529,968
12100 · Premium Receivable	\$ 56,515,571	\$ 88,931,582	\$ 84,366,968	\$ 229,814,122
132228 · Receivable - Criterion Claims	\$ (173,724)	\$ -	\$ -	\$ (173,724)
132229 · Receivable - CTC of HI	\$ -	\$ (3,908,930)	\$ -	\$ (3,908,930)
200000 · Carrier Payable	\$ (2,016,200)	\$ (171,549)	\$ 1,769,919	\$ (417,830)
30200 · Dividends Paid	\$ -	\$ -	\$ (200,000)	\$ (200,000)
600012 · Travel and Entertainment	\$ -	\$ (5,000)	\$ (37,200)	\$ (42,200)
600015 · Bank Service Charges	\$ (460)	\$ -	\$ -	\$ (460)
6000156 · Global Capital - Management Fee	\$ (21,318)	\$ -	\$ -	\$ (21,318)
6000157 · Legal	\$ (31,300)	\$ (7,500)	\$ -	\$ (38,800)
66900 · Reconciliation Discrepancies	\$ 3,868,293	\$ -	\$ -	\$ 3,868,293
80000 · Ask My Accountant	\$ -	\$ (1,218,091)	\$ -	\$ (1,218,091)
99990 · Management Fee Criterion Claim	\$ -	\$ -	\$ (201,000)	\$ (201,000)
-SPLIT-	\$ (2,450,000)	\$ -	\$ -	\$ (2,450,000)
Net Total	\$ 343,786	\$ 114,664	\$ 733,532	\$ 1,191,982

<sup>21</sup> See Definitions section

This table summarizes the net cash activity in the General Trust Account<sup>22</sup> based on the data provided in the “Split”<sup>23</sup> data field description in the CTC General Ledger for each entry. Positive amounts represent cash flows into the GTA and negative amounts represent cash moved out of the GTA.

Based on the summary above CTC moved cash into an operations account (CTC general ledger account 100101) and a payroll account (CTC general ledger 100102) from funds received for insurance carrier premiums.

Per our interviews with CTC management,<sup>24</sup> CTC allocated the carrier premiums moved from the GTA to CTC operations to the Spirit account. This is consistent with the reconciliation completed in **Section 9.1** above that shows CTC collected funds but did not remit payment to Spirit. What follows is a summary of the funds FTI identified as moved to CTC operations or used for CTC operations:

#### 10.5. FUNDS MOVED TO CTC OPERATIONS OR USED FOR CTC OPERATIONS

**Table 11**

	<b>Total</b>
<b>100101 · Chase Operating_ 8661</b>	\$ (29,183,359)
<b>100102 · Chase Special (Payroll)_ 8679</b>	\$ (8,737,932)
<b>110001 · Commissions Receivable - 1</b>	\$ 1,529,968
<b>600012 · Travel and Entertainment</b>	\$ (42,200)
<b>6000156 · Global Capital - Management Fee</b>	\$ (21,318)
<b>6000157 · Legal</b>	\$ (38,800)
<b>80000 · Ask My Accountant</b>	\$ (1,218,091)
<b>99990 · Management Fee Criterion Claim</b>	\$ (201,000)
<b>-SPLIT-</b>	\$ (2,450,000)
<b>Total Funds Used For CTC Operations</b>	<b>\$ (40,362,732)</b>

Commissions identified by CTC are included in the above table to reduce the amount diverted by CTC, as these may represent fees due CTC. Disbursements for “Legal, Ask My Accountant, Management Fee Criterion Claim and Split” are CTC payments not related to insurance carrier premiums.

Our analysis showed the carrier funds moved to operations were allocated to Spirit. The funds diverted to CTC operations came from the GTA where multiple carrier premium funds were commingled. The allocation to Spirit by CTC management<sup>25</sup> (per discussions with Matt Simon and Hollie Whittaker) was arbitrary. Based on our interviews, Matt Simon and Hollie Whittaker are unaware of who at CTC decided to allocate the diverted funds to Spirit. During multiple

<sup>22</sup> See Definitions section

<sup>23</sup> Split is one of the data fields in CTC’s QuickBooks system used to identify transactions.

<sup>24</sup> See Definitions section

<sup>25</sup> CTC Management here includes each person involved in management at CTC. See the Key persons section.

discussions with CTC management cash movements not supported by contracts or invoices were approved by Thomas Mulligan.

#### 10.6.DIVERTED COMMINGLED FUNDS 2016 TO 2018 ALTERNATIVE ALLOCATION

FTI developed an alternative allocation based on accumulated total funds received into the GTA for the period 2016 through 2018. This pro-rata allocation used the ratio of accumulated total funds received by carrier as of the day each amount was moved to CTC operations. Below is an alternative summary allocating carrier premiums to County Hall and the other insurance carriers<sup>26</sup> whose funds were commingled with Spirit premiums in the GTA.

##### 10.6.1. TOTAL FUNDS USED FOR CTC OPERATIONS NET OF COMMISSIONS

**Table 12**

	<b>Total</b>
<b>Total Funds Used For CTC Operations</b>	\$ (41,892,700)
<b>110001 - Commissions Receivable - 1</b>	\$ 1,529,968
<b>Net Total</b>	<b>\$ (40,362,732)</b>

If funds moved to operations did not include the commission offset the amount allocated to each group would be higher.

##### 10.6.2. ALTERNATIVE ALLOCATION

**Table 13**

	<b>Total</b>
<b>Spirit</b>	\$ (25,248,295)
<b>County Hall</b>	\$ (2,654,265)
<b>Other Insurance Companies</b>	\$ (12,460,173)
<b>Total</b>	<b>\$ (40,362,732)</b>

See Exhibit 4 for detailed analysis to support Table 13.

#### 10.7.REASONABLENESS OF DATA USED FOR THE GTA ANALYSIS

Below is a comparison of 2017 and 2018 bank deposit and payments to the CTC CA General Ledger activity for the General Trust Account. The net activity for the bank and GL are the same for both years. The 2018 detail for deposits and payment were individually compared and agreed without exception.

##### 10.7.1. RECONCILIATION OF GENERAL LEDGER ACCOUNT 100204 - CHASE CTC2 TRUST 0529 AND CHASE BANK ACCOUNT 000000739620529

<sup>26</sup> See definitions section

**Table 14**

	<b>2017</b>	<b>2018</b>
<b>Cash Receipts per bank</b>	\$ 94,799,128	\$ 92,224,012
<b>Cash Receipts per General Ledger</b>	\$ 90,155,713	\$ 84,366,968
<b>Difference</b>	\$ 4,643,414	\$ 7,857,044
<b>Cash payments per bank</b>	\$ 94,684,464	\$ 91,490,480
<b>Cash payments per General Ledger</b>	\$ 90,041,049	\$ 83,633,436
<b>Difference</b>	\$ 4,643,415	\$ 7,857,044
<b>Net inflow or (outflow) - bank</b>	\$ 114,664	\$ 733,532
<b>Net inflow or (outflow) - General Ledger</b>	\$ 114,664	\$ 733,532

Based on the above reconciliation and testing of 2018 data, the information provided appears reasonable for the analysis completed. The gross deposit and payment differences are based on how entries are coded. As an example, intracompany transfers are coded as deposits for both the debit and credit entry in the General Ledger. That is the General Ledger has a “negative deposit” recorded. The bank statement records one deposit and one payment.

## **11. COUNTY HALL – CTC CASH RECEIPTS AND PAYMENTS**

FTI analyzed CTC cash receipts for County Hall policies. We evaluated cash receipts per the CTC Cash Applied reports from the EPIC and Nexsure systems (these reports are the sub-ledgers provided by CTC for insurance carrier premium deposits.)

FTI analyzed CTC payments to County Hall for policy premiums. FTI evaluated cash payments per the General Ledger and Cash payments per Chase Bank account (Chase Account \*9057.)

### **11.1 RECONCILIATION OF CASH APPLIED REPORTS AND BANK DEPOSITS**

We compared the cash receipts per the CTC Cash Applied reports and deposits per the CTC Chase bank account (\*9057.) Below are the differences identified:

**Table 15**

	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>Total</b>
<b>Cash Applied Reports</b>	\$ 1,143,929	\$ 19,467,761	\$ 41,258,312	\$ 61,870,002
<b>JPMC Bank Records</b>	\$ 1,215,457	\$ 21,094,670	\$ 38,098,702	\$ 60,408,829
<b>Total Difference</b>	\$ (71,528)	\$ (1,626,909)	\$ 3,159,610	\$ 1,461,172

The difference noted above could be timing differences, payments in transit, or cash applied report differences. Note that in 2016 and 2017 more deposits were made to the Bank than recorded in the Cash Applied Reports.

## 11.2 CASH PAYMENTS TO COUNTY HALL PER THE CTC COUNTY HALL BANK ACCOUNT

FTI's initial understanding (based on interviews with CTC management<sup>27</sup>) was that all outflows from the County Hall Trust account were for the benefit of the County Hall and paid to the carrier's Commerce Bank account. Below are the results of the analysis of the bank account data for 2016 through 2018. This is a discrepancy from the process flow described to FTI for the flow of funds into and out of the CTC cash accounts and documented in the Chart at **Section 11.3** above.

## 11.3 SUMMARY OF OUTFLOWS FROM THE COUNTY HALL BANK ACCOUNT

**Table 16**

	2016	2017	2018	Total
Chelsea Financial Group	\$ (17,802)	\$ (294,638)	\$ (370,270)	\$ (682,711)
County Hall - Commerce Bank	\$ -	\$ (1,753,200)	\$ (636,406)	\$ (2,389,606)
County Hall Account '8000	\$ (1,146,500)	\$ (979,578)	\$ (2,500)	\$ (2,128,578)
Deposited Item Returned	\$ -	\$ (47,273)	\$ (51,477)	\$ (98,750)
First Insurance Funding - Lake Forest	\$ -	\$ -	\$ (46,304)	\$ (46,304)
General Trust Account '0529	\$ -	\$ (418,134)	\$ (1,488,719)	\$ (1,906,853)
Northern Investors Company - Opus Bank	\$ -	\$ (7,006)	\$ -	\$ (7,006)
Strand Insurance	\$ -	\$ -	\$ (26,336)	\$ (26,336)
Unidentified Outflow	\$ -	\$ -	\$ (3,344)	\$ (3,344)
Unidentified Outgoing Checks	\$ -	\$ (16,708,833)	\$ (36,226,456)	\$ (52,935,289)
US Premium Finance - Ameris Bank	\$ -	\$ -	\$ (8,143)	\$ (8,143)
<b>Total</b>	<b>\$ (1,164,302)</b>	<b>\$ (20,208,661)</b>	<b>\$ (38,859,955)</b>	<b>\$ (60,232,919)</b>

An analysis of the County Hall cash balance yielded the following cumulative balances using the CTC sub-ledger Cash Applied reports and the total outflows per the bank records (outgoing checks were assumed to have been paid to County Hall.)

## 11.4 ANALYSIS OF COUNTY HALL CASH BALANCE BY QUARTER

**Table 17**

<sup>27</sup> See Definitions section

	Cash Receipts	Cash Payments	Net
3/31/2016	\$ -	\$ -	\$ -
6/30/2016	\$ -	\$ -	\$ -
9/30/2016	\$ -	\$ -	\$ -
12/31/2016	\$ 1,143,929	\$ (1,164,302)	\$ (20,374)
3/31/2017	\$ 2,740,204	\$ (2,837,726)	\$ (97,521)
6/30/2017	\$ 1,652,431	\$ (1,957,218)	\$ (304,786)
9/30/2017	\$ 9,497,017	\$ (8,276,073)	\$ 1,220,945
12/31/2017	\$ 5,578,108	\$ (7,137,645)	\$ (1,559,537)
3/31/2018	\$ 4,931,812	\$ (6,087,263)	\$ (1,155,450)
6/30/2018	\$ 3,011,985	\$ (3,156,894)	\$ (144,909)
9/30/2018	\$ 15,237,133	\$ (14,138,733)	\$ 1,098,400
12/31/2018	\$ 18,077,382	\$ (15,477,066)	\$ 2,600,316
Total	\$ 61,870,001	\$ (60,232,919)	\$ 1,637,083

County Hall does not appear to be the recipient of all outflows from the County Hall Trust account. Cash payments to County Hall per the CTC bank records are below. See **Exhibit 5** for the details to support **Table 17**.

#### 11.5 SUMMARY OF OUTFLOWS FROM THE COUNTY HALL BANK ACCOUNT FOR THE BENEFIT OF COUNTY HALL

**Table 18**

	Total
County Hall - Commerce Bank	\$ (2,389,606)
County Hall Account '8000	\$ (2,128,578)
Unidentified Outgoing Checks	\$ (52,935,289)
Total	\$ (57,453,474)

#### 11.6 ANALYSIS OF COUNTY HALL CASH BALANCE BY QUARTER ADJUSTED FOR ACTUAL OUTFLOWS FOR THE BENEFIT OF COUNTY HALL

The analysis that follows shows the Cash Applied reported "Cash Receipts" are higher than the cash payments per the bank records identified above (**Table 18**) and are used for the payments to County Hall.

**Table 19**

	Cash Receipts	Cash Payments	Cummulative Net
3/31/2016	\$ -	\$ -	\$ -
6/30/2016	\$ -	\$ -	\$ -
9/30/2016	\$ -	\$ -	\$ -
12/31/2016	\$ 1,143,929	\$ (1,146,500)	\$ (2,571)
3/31/2017	\$ 2,740,204	\$ (2,726,773)	\$ 10,860
6/30/2017	\$ 1,652,431	\$ (1,842,764)	\$ (179,473)
9/30/2017	\$ 9,497,017	\$ (8,175,591)	\$ 1,141,954
12/31/2017	\$ 5,578,108	\$ (6,696,484)	\$ 23,579
3/31/2018	\$ 4,931,812	\$ (5,595,289)	\$ (639,898)
6/30/2018	\$ 3,011,985	\$ (2,763,514)	\$ (391,427)
9/30/2018	\$ 15,237,133	\$ (13,039,558)	\$ 1,806,148
12/31/2018	\$ 18,077,382	\$ (15,467,002)	\$ 4,416,527
<b>Total</b>	<b>\$ 61,870,001</b>	<b>\$ (57,453,474)</b>	<b>\$ 4,416,527</b>

In summary we identified payments to County Hall during the following quarters when more cumulative cash was sent to County Hall than collected by CTC:

- Fourth Quarter 2016
- Second Quarter 2017
- First Quarter 2018
- Second Quarter 2018

See **Exhibit 6** for the details to support **Table 19**.

During 2018 the CTC general ledger Activity for account 100105, which was used for County Hall policy collections and payments showed cumulative payments to County Hall, exceeded cumulative receipts for County Hall policies.

For 2017 and 2018 when payments exceeded the policy premium collections for County Hall, funds may have been provided through transfers from operations or the GTA. The CTC general ledgers are maintained on a cash basis so the additional payments to County Hall indicate deposits are missing in the CTC general ledger. The bank accounts were not overdrawn for the periods noted above.

Details of return premium activity by carrier were not provided by CTC. Return premium detail activity may change this analysis.

## 12. TRANSACTIONS PER SPIRIT BANK STATEMENT

### 12.1. CHELSEA LOAN

As part of the testing to determine the amount of premium that had been remitted to Spirit from CTC, FTI identified nine payments from Chelsea to Spirit that were not considered premium. Matt Simon said these payments were the repayment of a loan between Spirit and Chelsea that was used to fund insured's loans. Since the Spirit premium that was processed through Chelsea

was typically paid on installments, this loan would have been for another carrier(s) premium financing. FTI obtained a copy of the promissory note for \$3,500,000 that was executed February 28, 2017 by Pavel Kapelnikov as President of Chelsea Financial Group. The terms stated interest shall be payable each month to Spirit at an annual rate of 3.99% on the unpaid principal balance with the promissory note maturing on February 27, 2018. FTI traced the repayments from Chelsea to Spirit to confirm that the loan was repaid with interest with the final payment being made on September 28, 2017. FTI requested support to show that the loan received approval from the Nevada Division of Insurance, and we have not received any documentation to support approval for the related party loan. FTI noted that the loan was recorded on Spirit's 2017 quarterly statutory statements.

#### 12.2. NEW TECH CAPITAL INVESTMENT

FTI noted a payment of \$500,000 on January 8, 2018 to New Tech Capital LLC from the Spirit Premium Account bank statement. FTI obtained the wire transfer support which shows that New Tech Capital LLC has the same address, 19 North Bridge Avenue, Red Bank New Jersey, as CTC's New Jersey office. FTI obtained correspondence and an investment placement memorandum that showed New Tech Capital LLC, which appears to have been formed by Thomas Mulligan, invested in Iterative Capital LP, which invests in cryptocurrencies, network tokens, as well as in the mining operations and equipment relating to the generation thereof.

FTI did not obtain support for why New Tech Capital LLC was formed for Spirit to make this investment.

#### 13. CASH DISBURSEMENTS

FTI obtained the cash disbursements details from CTC for the period January 2016 – May 2019. FTI analyzed disbursements paid from the CTC Bank Accounts to determine if any disbursements were made using the Spirit premium funds. For the period January 2016 through May 2019 CTC disbursed \$650,971,816<sup>28</sup>. This total included premium payments to the various carriers that CTC was writing business on behalf (i.e. Spirit, County Hall, Am Trust, Lloyds and others), transfers to other CTC bank accounts, general disbursements and payroll. Due to transfers between CTC accounts, the aggregate disbursements exceeded total premium collected by CTC. FTI's analysis included summarizing the data as follows:

- by payee
- by bank account where disbursement occurred
- by year

From this analysis a summary was created by payee and bank account. It was noted there were a significant number of disbursements where the payee was "blank" on the cash disbursement details (this will be discussed in more detail later in this Section). See results in **Schedule I**.

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<sup>28</sup> This amount is based upon the general ledgers provided by CTC and includes disbursements and transfers between CTC bank accounts; therefore, not all items shown as disbursements went to a third-party.

Additionally, it was noted there were transactions that indicated “MJS”<sup>29</sup> as the payee. Based on discussions with CTC Management<sup>30</sup>, FTI was told that Matt Simon processed these transactions and in the memo field it typically showed who was the actual payee, but this information was not consistently indicated. Through later discussions Matt Simon told us that he did not process these transactions and did not have access to the general ledger at the time of these entries. FTI is unable to determine if Matt Simon processed these transactions or not.

### 13.1. GENERAL TRUST ACCOUNT FUNDS TRANSFERRED TO CTC OPERATIONS

FTI identified \$30,130,518 in net transfers to/from the CTC General Trust Account<sup>31</sup> to the CTC Operating Account. These transfers included commissions that were due CTC for the other insurance carriers; however, the transferred amounts also included insurance companies’ trust funds used for CTC operations<sup>32</sup>. Below is a summary of the net transfers by year. Additionally, FTI identified \$8,903,932 of transfers from the CTC General Trust account<sup>33</sup> to the CTC Payroll account.

**Table 20**

	Bank Transfer				
	2016	2017	2018	2019	TOTAL
Transfers from Trust to Operating	\$ 7,983,355	\$ 8,770,565	\$ 12,429,439	\$ 947,159	\$ 30,130,519
Transfers from Trust to Payroll	\$ 2,283,000	\$ 3,011,532	\$ 3,443,400	\$ 166,000	\$ 8,903,932
Total Transfers from Trust for CTC Operations	\$ 10,266,355	\$ 11,782,097	\$ 15,872,839	\$ 1,113,159	\$ 39,034,450

FTI identified \$32,672,295 of payments to related parties<sup>34</sup> and unusual transactions for the period January 2016 – May 2019. **Schedule I** shows totals paid and the explanation provided by Matt Simon and Hollie Whittaker for each payment. Very few invoices or contracts were provided for these payments. We were also told that 1099 tax forms were not prepared for these payments.

See **Schedule I** that follows the report for “Payments to Related Parties<sup>35</sup> and Unusual Transactions.”

<sup>29</sup> Based upon discussions with CTC Management (Matt Simon and Hollie Whittaker), “MJS” are the initials of “Matt J. Simon” an executive at CTC.

<sup>30</sup> See Definitions section

<sup>31</sup> See Definitions section

<sup>32</sup> The CTC process for commission payments for Spirit and County Hall policies did not have commissions flow through the General Trust Account. Spirit and County Hall were paid premiums gross of commissions. The Insurance companies then wired commissions directly into the respective bank account at CTC, not into the General Trust.

<sup>33</sup> See Definitions section

<sup>34</sup> See Definitions section

<sup>35</sup> See Definitions section

### 13.2. DISBURSEMENT OF GENERAL TRUST FUNDS TO THOMAS MULLIGAN

FTI identified \$1,175,000 in Spirit premium funds deposited in the CTC-CA General Premium Trust Account Chase (\*0529) on January 31, 2017. On this same day these funds were transferred to a CTC-MO Chase account (\*7938). The Chase (\*7938) account appears to be used to receive commissions from Spirit (Commerce Account \*1914) and then the commission amounts were transferred to CTC-CA Operating Account Chase (\*8661). However, on May 9, 2017, a transfer occurred in the amount of \$314,040 to Thomas Mulligan from Chase account (\*7938). Then on June 29, 2017 an additional wire transfer of \$350,000 was made to One W. Main LLC (a Thomas Mulligan owned entity). These two payments are examples of Spirit premiums received by CTC that appear to be misappropriated and sent to Thomas Mulligan or a Thomas Mulligan controlled entity. The following table show the flow of funds moving between the various accounts noted:

**Table 21**

Date	CTC-CA General Trust Account Chase *0529		CTC-MO Chase Account *7938		CTC-CA Operating Account Chase *8661		Spirit Commerce Premium Account *1914		Description
	Deposits	Withdrawals	Deposits	Withdrawals	Deposits	Withdrawals	Deposits	Withdrawals	
1/31/2017	\$ 1,175,000								Deposit into General Trust Account of Spirit premium
1/31/2017		\$ (1,175,000)	\$ 1,175,000						Transfer from General Trust Account to CTC-MO account
5/9/2017				\$ (314,040)					Payment to Tom Mulligan from CTC-MO Chase account using Spirit Premium funds
5/19/2017			\$ 614,202					\$ (614,202)	Appears to be a commissions payment from Spirit to CTC-MO
5/19/2017				\$ (614,202)	\$ 614,202				Transfer of funds from CTC-MO to CTC-CA operating Account
6/9/2017			\$ 684,838					\$ (684,838)	Appears to be a commissions payment from Spirit to CTC-MO
6/12/2017				\$ (684,838)	\$ 684,838				Transfer of funds from CTC-MO to CTC-CA operating Account
6/29/2017				\$ (350,000)					Wire Transfer to One W. Main LLC

### 13.3. ADDITIONAL ADJUSTMENTS IDENTIFIED IN THE UPDATED 2018 GENERAL LEDGER

CTC provided an updated QuickBooks General Ledger for 2018 on October 30, 2019. The new report shows significant intercompany balances being written off. And balances due from related parties<sup>36</sup> reclassified to dividends paid. Below is a summary:

- a) CTC wrote off balances of \$4,451,121 due CTC from Chelsea.
- b) CTC wrote off balances of \$450,943 due CTC from Criterion.
- c) CTC wrote off balances of \$25,000 due CTC from County Hall.
- d) CTC recorded "Dividends Paid" of \$792,794 to Thomas Mulligan, owner of CTC, for amounts that were originally shown as a disbursement.

On December 10, 2019 John Maloney the CTC tax accountant said that he did not make these adjustments. He did use the updated General Ledger to prepare the CTC 2018 tax returns. He said the intercompany balances due CTC at December 31, 2017 were written off based on his knowledge of the other entities. The Chelsea balance written off was part of the intercompany balance at December 31, 2018. The "Dividends Paid" reduced equity in the company.

Matt Simon said "CTC hired Julia Popova an external CPA to help clean up the 2018 General Ledger." Julia Popova was the accountant for Chelsea before working with CTC. Matt Simon said he approved the entries above.

### 14. FEDERAL TAX RETURNS – CTC CA

CTC CA showed the following tax losses (cash basis losses) for the tax years 2013 to 2018. The note shows the amount due from related parties<sup>37</sup> for 2017:

**Table 22**

<b>Tax Year</b>	<b>Tax losses - Cash Basis</b>	<b>Cash Used by and losses by CTC CA</b>
2013	\$ 1,349,401	
2014	\$ 732,103	
2015	\$ 4,696,385	
2016	\$ 3,357,663	
2017	\$ 8,325,295	
2018	\$ 10,221,107	
	<b>Total</b>	<b>\$ 28,681,954</b>
	<b>Excess cash flows out of CTC CA</b>	<b>\$28,681,954</b>

\* Note: an intercompany receivable of \$9,915,772 shown in the 2017 tax return was decreased to zero in the 2018 tax return

<sup>36</sup> See Definitions section

<sup>37</sup> See Definitions section

Per discussions with CTC Management<sup>38</sup> and external professionals (Dan George and John Maloney) the funding of these cash losses and intercompany funding by CTC CA to related entities was accomplished by moving insurance carrier trust funds into CTC operations. John Maloney stated he resigned from providing services to CTC CA after seeing a significant increase in spending in 2018 of insurance carrier trust funds. However, the 2018 CTC CA tax return listed John Maloney as the preparer.

## 15. INSURANCE COVERAGES

CTC provided FTI with a copy of their insurance policies reflecting the coverage maintained. The policies provided covered CTC CA Errors and Omissions, CTC HI Errors and Omissions, CTC MO Errors and Omissions, CTC CA Fidelity, CTC CA General Liability, CTC CA Auto Liability, CTC CA Workers Compensation and CTC CA Employment Practices Liability. The following tables shows the limits for the E&O and the Fidelity coverages:

**Table 23**

CTC CA, CTC MO and CTC HI							
Key provisions of E&O coverage							
Key provisions of Crime coverage (CTC CA with CTC HI and CTC MO as additional named insureds)							
Coverage	Covered Entity	Coverage Period Start Date	Coverage Period End Date	Insurance Carrier	Policy number	Attachment Point	Coverage Max
Retroactive Date: CTC CA 12/24/2008							
E&O	CTC CA	3/20/2019	3/20/2020	QBE Insurance Corporation	TPC01029-03	\$25,000 per claim and \$50,000 aggregate	\$5,000,000
E&O 1st Excess	CTC CA	3/20/2019	3/20/2020	Capitol Specialty Insurance Corporation	IA20171163-03	\$5,000,000	\$5,000,000
E&O 2nd Excess	CTC CA	3/20/2019	3/20/2020	Argonaut Insurance Company	MLX 7602758-2	\$10,000,000	\$5,000,000
E&O 3rd Excess	CTC CA	3/20/2019	3/20/2020	Axis Surplus Insurance Company	ENN601153	\$15,000,000	\$5,000,000
E&O 4th Excess	CTC CA	3/20/2019	3/20/2020	Maxum Indemnity Company	PFX-6031573-03	\$20,000,000	\$5,000,000

<sup>38</sup> See Definitions section

**Table 24**

Retroactive Date: CTC HI 10/5/2016							
E&O	CTC HI	3/20/2019	3/20/2020	QBE Insurance Corporation	TPC01522-01	\$25,000 per claim and \$50,000 aggregate	\$5,000,000
E&O 1st Excess	CTC HI	3/20/2019	3/20/2020	Capitol Specialty Insurance Corporation	IA20181183-02	\$5,000,000	\$5,000,000
E&O 2nd Excess	CTC HI	3/20/2019	3/20/2020	Argonaut Insurance Company	MLX 4208912-1	\$10,000,000	\$5,000,000
E&O 3rd Excess	CTC HI	3/20/2019	3/20/2020	Axis Surplus Insurance Company	ENN601152	\$15,000,000	\$5,000,000
E&O 4th Excess	CTC HI	3/20/2019	3/20/2020	Maxum Indemnity Company	PFX-6032653-02	\$20,000,000	\$5,000,000

**Table 25**

Retroactive Date: CTC MO 3/20/2017							
E&O	CTC MO	3/20/2019	3/20/2020	QBE Insurance Corporation	TPC01521-01	\$25,000 per claim and \$50,000 aggregate	\$5,000,000
E&O 1st Excess	CTC MO	3/20/2019	3/20/2020	Capitol Specialty Insurance Corporation	IA20181184-02	\$5,000,000	\$5,000,000
E&O 2nd Excess	CTC MO	3/20/2019	3/20/2020	Argonaut Insurance Company	MLX 4208911-1	\$10,000,000	\$5,000,000
E&O 3rd Excess	CTC MO	3/20/2019	3/20/2020	Axis Surplus Insurance Company	ENN601154	\$15,000,000	\$5,000,000
E&O 4th Excess	CTC MO	3/20/2019	3/20/2020	Maxum Indemnity Company	PFX-6032654-02	\$20,000,000	\$5,000,000

**Table 26**

CTC CA Crime policy with CTC HI and CTC MO as additional names insureds. Claims made policy.							
Employee Theft	CTC CA	1/30/2019	1/30/2020	Travelers Casualty and Surety Company of America	106451019	\$25,000	\$1,000,000
ERISA Fidelity	CTC CA	1/30/2019	1/30/2020	Travelers Casualty and Surety Company of America	106451019	\$0	\$500,000
Funds Transfer Fraud	CTC CA	1/30/2019	1/30/2020	Travelers Casualty and Surety Company of America	106451019	\$25,000	\$1,000,000

## 16. CONCLUSIONS

### 1) Financial Controls and Operations:

- a) CTC had a contractual obligation to safeguard Spirit assets as their program administrator. CTC lacked adequate controls to safeguard Spirit's assets and lacked controls around financial reporting.
- b) Spirit, County Hall and other insurance carrier premium was commingled by CTC. CTC judgmentally elected to pay the other carriers from the commingled funds<sup>39</sup> and not pay Spirit.
- c) CTC paid County Hall more money than CTC collected for County Hall policies during several quarters in 2017 and 2018.
- d) CTC adopted a process of applying cash to the oldest policies (FIFO) in QuickBase which corrupted the accounts receivable balances for Spirit business.
- e) Three executives involved with CTC and related entities (through common ownership) have additional company affiliations which received payments not documented by CTC.
- f) CTC's policy listing for Spirit contained 63 policies with negative premium totaling (\$141,308).
- g) CTC's claims listing for Spirit contained 40 claims in a total incurred of \$849,240 with zero or negative premium on the policy listing.

### 2) Quantification of money due Spirit from CTC for amounts collected by CTC, corrections for commissions, claim fees and amounts not collected by CTC.

- a) CTC allowed Spirit assets to be used to fund CTC operations. This was shown in the Tax Returns for CTC CA for the years 2013 through 2018 which required over \$28 million in funding. Matt Simon and Hollie Whittaker agreed CTC operations were funded from Spirit premium dollars not commissions earned, owner contributed capital, other income or investment income.
- b) Based on testing and reconciliation work done in **Section 9**, CTC owes Spirit at least \$34,018,627 for policy premiums collected by CTC and commissions and claim fees overpaid to CTC and Criterion, respectively.
- c) CTC owes Spirit premium for policies cancelled and coded as FPA endorsements in QuickBase. These transactions reduced Spirit premium by \$5,067,679, for premiums not collected by CTC. The amount due Spirit net of CTC commissions is \$4,054,143.
- d) CTC may owe Spirit premium for cancellation endorsements bound 180 days or more after the effective date. These endorsements reduced premium by \$5,443,229. Included in this amount are endorsements bound after the policy expiration date which reduced premium by \$2,986,901. FPA endorsements are not included in these amounts.

### 3) Uses of money collected by CTC and not remitted to Spirit:

- a) CTC operational cash disbursements included at least \$32,672,295 paid to related parties<sup>40</sup> or for unusual transactions.
- b) CTC CA recorded intercompany receivables on the 2017 tax return of \$9,915,772.

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<sup>39</sup> See Definitions section

<sup>40</sup> See Definitions section

- c) CTC provided a loan to Criterion of \$2,773,877.
- d) CTC wired two payments totaling \$664,040 to Thomas Mulligan and a Thomas Mulligan controlled entity that represented Spirit funds received by CTC.
- e) CTC recorded a receivable due from Thomas Mulligan of \$706,184.
- f) Based upon an updated QuickBooks General Ledger for 2018 received on October 30, 2019, when compared to the prior 2018 General Ledgers received, it is evident that significant intercompany balances were adjusted and are now reflected as being written off. In addition, balances due from related parties<sup>41</sup> were reclassified to dividends paid.
  - i. CTC wrote off balances of \$4,451,121 due CTC from Chelsea
  - ii. CTC wrote off balances of \$450,943 due CTC from Criterion
  - iii. CTC wrote off balances of \$25,000 due CTC from County Hall
  - iv. CTC recorded "Dividends Paid" of \$792,794 to Thomas Mulligan, owner of CTC
- g) CTC through their control of Spirit, had Spirit loan Chelsea \$3,500,000 in 2017 to fund insureds' loans.
- h) CTC through their control of Spirit had Spirit send \$500,000 to New Tech Capital, LLC, which is owned by Thomas Mulligan, which then invested in Iterative Capital LP.

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<sup>41</sup> See Definitions section

## SCHEDULES

### I. PAYMENTS TO RELATED PARTIES AND UNUSUAL TRANSACTIONS

(See Exhibit 3 for additional details)

Disbursements	Description (Based upon Discussion with Hollie Whittaker and Matt Simon)	Total Expended
<b>The following disbursements were identified based upon the name in the General Ledger detail</b>		
Chase Bank	Payments made to Credit Cards used by Tom Mulligan. Detail credit card statements were requested but not made available.	(2,674,097.58)
Kapa Management Consulting Inc.	Monthly payments for Loan – Note not all payments indicated as Kapa Management were paid to Kapa management (additional analysis needed to determine actual payments to Kapa)	(2,391,378.98)
ICAP Management Solutions LLC	Payments to Dan George – not all payments to ICAP went to ICAP. Certain payments went to KAPA management that were identified as payments to ICAP in CTC records. Dan George confirmed that he received \$912,604 in payments from CTC.	(1,521,256.64)
Fourgorean	Payments to one of Tom Mulligan's Companies	(1,218,091.14)
Six Eleven LLC	Payments to one of Tom Mulligan's Company – potentially loan repayment but no agreement provided	(872,159.44)
THOMAS A MULLIGAN	Payments to Tom Mulligan. FTI requested support. No contract or other support was provided to FTI.	(829,446.90)
Global Forwarding	Software development – company owed by Tom Mulligan and Pavel Kapelnikov	(719,810.28)
BANK OF AMERICA	Payments made for Credit Cards used by Tom Mulligan. Detail credit card statements were requested but not made available.	(363,384.46)
YANINA G KAPELNIKOV	Payments for Management Fees. FTI requested contract and invoices but no support was provided.	(172,686.32)
Global Capital Group	Global Capital lent CTC money and these were the repayments. No loan documents provided.	(3,010,034.75)
LETE CONSULTING INC NEW YORK,	\$750,000 loan to CTC and these are the repayments. FTI provided with copy of loan agreement and FTI reviewed bank statements and verified original funds were received by CTC	(22,500.00)
Cash	General Ledger showed as "Cash"	(86,635.79)
Chelsea Financial Group	Payments to related company (per Matt Simon this represents return premium for various carriers of approximately \$5.8 million; however, no support is available by carrier. Other amounts are for carrier payables of \$0.3 million, employee	(6,588,231.91)

	car allowance of \$0.2 million and expenses of \$0.2 million)	
Chelsea Premium Finance	Payments to related company (per Matt Simon this represents return premium for various carriers; however, no support is available by carrier.)	(194,767.04)
Global Consulting	Payments to related company (more research is needed to determine if appropriate)	(13,999.20)
Kapa Ventures	Payments to related company (more research is needed to determine if appropriate)	(35,889.62)
Criterion Claim Solutions	Payments to related company (more research is needed to determine if appropriate)	(90,355.65)
Maple Technologies	Payments to related company (these are payments related to the Aspire system. Maple Technologies is owned by Nicolas Teetelli, who was a former Board Member of Spirit and Treasurer.)	(2,903,701.71)
One West Main Street LLC	Payments to related company (more research is needed to determine if appropriate)	(6,000.00)
Quote My Rig LLC	Payments to related company (more research is needed to determine if appropriate)	(304,578.03)
TNC Builders	Payments to related company (more research is needed to determine if appropriate)	(3,040.00)
Borson Law LLC	Settlement with a CTC employee who was also the Spirit President	(256,085.80)
Siro Smith Dickson	Settlement with a CTC employee who was also the Spirit President.	(194,222.50)
<b>Subtotal</b>		<b>(24,472,353.74)</b>
The following disbursements were shown with the name "Blank" but were identified based upon information contained in the Memo Field)		
LUTE TITLE AGE OF NJ ESCROW MORG	Unknown entity and relationship	(578,584.18)
MER NYC/026009593 A/C: KAPA MANA	Kapa Management	(425,040.00)
A: SILVERGATE LAJOLLA/322286803	Unknown entity and relationship	(400,000.00)
C: IT VAULT LLC FREEHOLD, NJ 077	Unknown entity and relationship	(330,000.00)
MOBILE INC BROOKLYN, NY 11235222	Carrus Mobile - Payment to purchase cameras for trucks - FTI reviewed purchase order. Tom Mulligan and Pavel Kapelnikov approved. Inquired but, unknown if cameras were received. Corresponding payment shown below under "MJS" detail as well. FTI was provided with invoices with a different company name that list out the cameras but the total invoiced does not agree to the amount paid to Carrus Mobile.	(200,000.00)

EVEN LLC FARMINGDALE, NJ 0772709	Assumed to be Six Eleven – Tom Mulligan’s Company	(72,000.00)
C: LETE CONSULTING INC NEW YORK,	\$750,000 loan to CTC and these are the repayments. FTI provided with copy of loan agreement and FTI reviewed bank statements and verified original funds were received by CTC	(16,869.00)
THOMAS A MULLIGAN FARMINGDALE	Payments to Tom Mulligan	(820,960.60)
A: BANK OF NEW JERSEY/021214189	Unknown entity and relationship	(490,205.13)
A: BK AMER NYC/026009593 A/C: PE	Kapa Management	(54,192.34)
10-4 PREFERRED RISK MANAGERS	Sister company to CTC that was sent money for operating expenses. Money is due back to CTC per schedule provided	(74,700.00)
Maple Technologies	Payments to related company (these are payments related to the Aspire system. Maple Technologies is owned by Nicolas Teetelli, who was a former Board Member of Spirit and Treasurer.)	(43,874.44)
<b>Sub-Total</b>		<b>(3,506,425.69)</b>
The following entries shows “MJS” in the name field and further description in the Memo field		
YANINA G KAPELNIKOV IGOR KAPE	These were expense report reimbursements to Igor Kapelnikov, Hollie Whittaker indicated that it sometimes covered software. The CTC process was that Igor Kapelnikov sent an e-mail to Hollie Whittaker who received verbal approval from Tom Mulligan for expense reports over \$10,000	(354,333.58)
IRONJAB LLC RED BANK, NJ 0770	Payment to one of Igor Kapelnikov’s companies - Approval process similar to expense process noted above	(15,334.42)
SIX ELEVEN LLC FARMINGDALE, N	Payments to one of Tom Mulligan's Companies - potentially loan repayment but no agreement provided	(337,913.00)
THOMAS A MULLIGAN FARMINGDALE	Payments to Tom Mulligan	(233,094.17)
FOURGOREAN CAPITAL LLC FARMIN	Payments to one of Tom Mulligan's Company	(214,040.00)
CARRUS MOBILE INC BROOKLYN, N	Payment to purchase cameras for trucks - FTI reviewed purchase order. Tom Mulligan and Pavel Kapelnikov approved. Inquired but, unknown if cameras were received.	(100,000.00)

	Corresponding payment shown above under "Blank" detail as well. FTI was provided with invoices with a different company name that list out the cameras but the total invoiced does not agree to the amount paid to Carrus Mobile.	
10-4 PREFERRED RISK MANAGERS	Sister company to CTC that was sent money for operating expenses. Money is due back to CTC per schedule provided	(79,700.00)
ABSOLUTE TITLE AGE OF NJ ESCR	Hollie Whittaker was unsure what this payment was for	(44,322.72)
195 GLUTEN FREE LLC RED BANK,	Payments to one of Tom Mulligan's Companies	(44,266.65)
LETE CONSULTING INC STATEN IS	\$750,000 loan to CTC and these are the repayments. FTI provided with copy of loan agreement and FTI reviewed bank statements and verified original funds were received by CTC	(431,806.50)
MAZARS USA LLP WOODBURY NY 11	invoice indicates for financial statement services to Spirit but paid by CTC. Also noted \$52,206 payment from Spirit Operating account to Mazars. The Engagement Letter provided called for a \$50,000 retainer and fees not to exceed \$100,000.	(45,000.00)
IT Vault	Unknown entity and relationship. Note: see companies affiliated with Thomas Mulligan.	(7,655.69)
Blitz 61 West Main Street LLC	Payments to related company (more research is needed to determine if appropriate)	(12,172.18)
<b>Sub Total</b>		<b>(1,919,638.91)</b>
Criterion Claims Solutions	Funds given to Criterion as a loan used for operating expenses (supporting schedule obtained).	(2,773,877.00)
Chelsea Financial	CTC payments repaying a loan from Chelsea were agreed to a schedule provided by Hollie Whittaker. FTI obtained the loan agreement dated June 18, 2018 for \$900,000 but couldn't locate the receipt of funds in CTC's bank statements. FTI did see the receipt of \$950,000 from Chelsea in August 2018 Spirit premium account.	Unknown
<b>Subtotal</b>		<b>(2,773,877.00)</b>
<b>Grand Total</b>		<b>(32,672,295.34)</b>

## II. DEFINITIONS

1. **“First In First Out” or FIFO basis (Section 8)** – CTC adopted a process to apply cash receipts to the oldest accounts receivable. This process resulted in cash being collected from one customer and then applying the cash to another customer. The process used by CTC corrupts the accounts receivable records as customers who have paid may show an open amount due while customers who have not paid will show no balance due. Most companies use a specific identification where collections are applied to the specific client and specific invoice issued. The process used by CTC would cause CTC to lose the records of accounts that are late paying invoices. See **Section 9.5** on the finding of Larry Shore the former auditor of Spirit.
2. **Premium Finance Company (Section 5)** – a company that provides lending of funds to a person or company to cover the cost of an insurance premium. The premium finance company then pays the insurance premium and bills the individual or company, usually in monthly installments, for the cost of the loan.
3. **Voucher System (Section 5)** is the process put in place by Chelsea Financial to pay Spirit for premiums over a specified period of time. Spirit did not have premiums financed as the premium processed by Chelsea were not paid when the policy was issued.
4. **Cross-Border Risks (Section 9.1)** are a group of policies issued by Spirit for risks that covered commercial risks for companies providing transportation services in both Mexico and the United States.
5. **Related parties** - represent the key people and entities listed in **Section 6**.
6. **Commingled Funds** – collected premium payments for multiple insurance carriers from sub-producers and related parties like Chelsea Finance. The collected premiums were deposited in one bank account CTC CA’s Chase account 000000739620529 and the Return Premium account CTC CA’s Chase account 000000739617657.
7. **General Trust Account** bank account used to collect premium payments for multiple insurance carriers from sub-producers and related parties like Chelsea Finance. CTC CA’s Chase account 000000739620529
8. **CTC Management** – Matt Simon and Hollie Whittaker
9. **Other Insurance Companies** - Ace Property & Casualty Insurance, American International Group, Inc, AmTrust North America, Inc., Aon Limited NST RE Benfield, Bell and Clements Limited, Besso Limited, Fireman's Fund Insurance Company, Freberg Environmental Insurance, GEP II, LLC, Lexington Insurance Company C/O AIG, OneBeacon Insurance Group, Pacific Gateway Insurance Agency, Prime Insurance Company, The Hanover Insurance Company, Tyser & Co Ltd., Adriatic Insurance Company, Everest Indemnity Insurance Co C/O Mt McKinley Man, Harman Kemp North America Ltd, Seneca Insurance Company, National General Insurance Co, Pennsylvania Manufacturers Association.

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## EXHIBIT 3

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BRIAN SANDOVAL  
*Governor*

STATE OF NEVADA

BRUCE H. BRESLOW  
*Director*

AMY L. PARKS  
*Acting Commissioner*



DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

1818 East College Pkwy., Suite 103  
Carson City, Nevada 89706  
(775) 687-0700 • Fax (775) 687-0787  
Website: doi.nv.gov  
E-mail: insinfo@doi.nv.gov

July 11, 2015

Teresa Matthews, Director of Captive Accounting  
Risk Services-Nevada, Inc.  
1605 Main Street, Suite 800  
Sarasota, FL 34236  
Email: tmatthews@pboa.com

Subject: Spirit Commercial Auto Risk Retention Group, Inc.  
Co ID 117423 NAIC # 14207  
Disallowance of CTC Transportation Insurance Services, Inc. Disclaimer of Affiliation

Ms. Matthews:

This is to advise that, on June 30, 2015, the Commissioner disallowed the Disclaimer of Affiliation filed by CTC Transportation Insurance Services, Inc. ("CTC") on behalf of Spirit Commercial Auto Risk Retention Group, Inc. ("SCARRG"). Please therefore arrange to file 2014 Forms B, C and F for SCARRG with the Nevada Division of Insurance within by July 31, 2015.

There were multiple reasons for this disallowance:

- The SCARRG Board has 66.7% of its Directors connected unambiguously to CTC, therefore it is presumed that CTC has control of SCARRG as defined in NRS 692C.050.
- SCARRG seems to have no separate existence apart from CTC. If CTC were to cease operations, there is no contingency plan for SCARRG to continue operations.

APP0605

You submitted the Disclaimer of Affiliation for CTC, on behalf of SCARRG. Since you are the statutory contact for SCARRG, this letter to you is sufficient notification to SCARRG. Since you also provided the Disclaimer of Affiliation for CTC, please transmit this disallowance notification to appropriate parties at CTC as appropriate.

Since you, CTC and SCARRG did not have the opportunity to review the above before now (i.e. you were only told that the examination revealed a link between CTC and SCARRG), pursuant to NRS 692C.050(3) the Division will allow an opportunity to be heard if CTC and/or SCARRG so request. Please contact me with any such request, and we will provide an appropriate extension of time on the filings to accommodate the opportunity to be heard.

If you have any questions, please let me know at (775) 687-0743 or [oakel@doi.nv.gov](mailto:oakel@doi.nv.gov).

A handwritten signature in dark ink, appearing to read 'O. Akel', with a long horizontal line extending to the right.

Omar D. Akel, CFE  
Chief Insurance Examiner  
Corporate & Financial Affairs  
Nevada Division of Insurance

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## EXHIBIT 4

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**FORM B**  
**INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION**  
**STATEMENT**

Filed with the Insurance Commissioner of the State of Nevada

By and on behalf of:

**Spirit Commercial Auto Risk Retention Group, Inc.**

**(Registrant)**

For the Year Ended December 31, 2015

**Date: June 29, 2016**

Individual to Whom Notices and Correspondence

Concerning This Statement Should Be Addressed To:

Teresa Matthews  
Account Manager  
Risk Services-Nevada, Inc.  
1605 Main Street, Suite 800  
Sarasota, FL 34236  
Phone: 941-373-1162  
E-mail: [tmatthews@riskservcos.com](mailto:tmatthews@riskservcos.com)

#### ITEM 1: IDENTITY AND CONTROL OF REGISTRANT

This submission is made at the request of the Nevada Division of Insurance which contends that there is a "link" between CTC Transportation Insurance Services, Inc. ("CTC") and Spirit Commercial Auto Insurance Risk Retention Group, Inc. ("SCARRG") that requires SCARRG to file for registration pursuant to Chapter 692C, Nevada Revised Statutes. Subsequent to the Division's request, the agreement between SCARRG and CTC was assigned to a new entity, CTC Transportation Insurance Services of Missouri, LLC ("CTC-MO").

SCARRG, with principal offices located at 9550 S. Eastern Avenue, Suite 253, Las Vegas, Nevada, 89123, is a Nevada domiciled captive insurance company organized pursuant to Chapter 694C, Nevada Revised Statutes, and operating as a risk retention group pursuant to the federal Liability Risk Retention Act and Chapter 695E, Nevada Revised Statutes. It was granted a Certificate of Authority by the Nevada Division of Insurance on February 24, 2012. SCARRG is authorized to issue 750,000 of common stock, par value of \$1.00 each. All authorized shares of SCARRG have been issued to and are wholly owned by Spirit Commercial Auto Association (the "Association"), a Nevada domestic non-profit, non-stock corporation organized February 12, 2012 pursuant to Chapter 82, Nevada Revised Statutes.

In accordance with the federal Liability Risk Retention Act and Section 695E.110, Nevada Revised Statutes, SCARRG is solely owned by the Association, all members of the Association are insureds of SCARRG and all insureds of SCARRG are members of the Association.

CTC-MO is contracted by SCARRG to serve as SCARRG's program administrator, providing marketing, underwriting and policy issuance services to SCARRG's insurance program. CTC-MO and CTC has served in this capacity since SCARRG's inception and was integrally involved in SCARRG's initial formation and organization. Brenda Guffey, Director of Operations of CTC-MO, serves as a director and President of the Association and also serves as a director and President of SCARRG. Daniel George, an independent consultant of CTC, is Treasurer of SCARRG.

#### ITEM 2: ORGANIZATIONAL CHART

*Please see attached hereto Exhibit 1 -- Organizational Chart*

#### ITEM 3: THE ULTIMATE CONTROLLING PERSON(S)

(a) Name:

*CTC Transportation Insurance Services of Missouri, LLC.*

(b) Home office/principal office address:

*611 W. Fort Scott Street, Butler, MO 64730*

(c) Principal executive office address:

*Same as (b) above.*

(d) Organizational structure:

*Limited Liability Corporation.*

(e) Principal business:

*General agent/producer specializing in transportation insurance.*

(f) Name and address of any person(s) who holds or owns ten percent or more of any class of voting security, the class of the security, the number of shares held of record or known to be beneficially owned, and the percentage of the class held or owned:

*Thomas Mulligan  
CTC Transportation Services of Missouri LLC  
329 Adelpia Road  
Farmingdale, NJ 07727  
100% Ownership*

(g) Pending court proceedings involving a reorganization or liquidation:

*N/A*

#### ITEM 4: BIOGRAPHICAL INFORMATION

<u>Name/Address/Occupation</u>	<u>Offices/Positions Held</u>	<u>Prior Convictions*</u>
Thomas Mulligan CTC Transportation Insurance Services of Missouri LLC 325 Adelpia Road Farmingdale, NJ 07727 Occupation: Insurance Executive	Chief Executive Officer	None

\*Last 10 years (other than minor traffic violations)

#### ITEM 5: TRANSACTIONS AND AGREEMENTS

Following is a description of agreements and transactions currently outstanding or which have occurred during the last calendar year between Registrant and its affiliates:

(a) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the Registrant or of the Registrant by its affiliates:

*CTC Transportation Insurance Services, through its ultimate controlling person, loaned the Association \$1,002,000 which was contributed by the Association in the form of cash as the initial contributed capital and surplus of SCARRG.*

*As part of SCARRG's corrective action plan for 2015, CTC Transportation Insurance Services, through its ultimate controlling person, loaned the Association \$3,000,000 which the Association contributed in the form of cash as additional paid in capital and surplus to the Company. The Company then provided a \$3,000,000 Letter of Credit to the Commissioner of the Nevada Department of Insurance which is supported by the \$3,000,000 of cash.*

- (b) Purchases, sales, or exchanges of assets:

N/A.

- (c) Transactions not in the ordinary course of business:

N/A.

- (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual or contingent exposure of the Registrant's assets to liability, other than insurance contracts entered into in the ordinary course of Registrant's business:

N/A.

- (e) All management agreements, service contracts, and cost-sharing arrangements:

*Registrant is party to a Program Administrator Agreement with CTC pursuant to which CTC provides certain marketing, underwriting and policy issuance services to Registrant with respect to its insurance program. The agreement, originally dated November 3, 2011 and subsequently amended by Addendums A through E, was effective commencing on February 24, 2012, the date SCARRG was issued a Certificate of Authority by the Commissioner of Insurance of the State of Nevada and later assigned to CTC-MO. Under the terms of the Agreement, as amended, current compensation payable to CTC is 23.5% of base premium of all policies written under the Agreement, plus primary layer profit commission bonus calculated on scheduled losses on business produced as set forth in Addendum B to the Agreement, and excess layer profit commission bonus of 17.5% on all profit sharing reinsurance premium returns to SCARRG as set forth in Addendums C and D to the Agreement. The initial term of the agreement was five years and the agreement is subsequently automatically renewable for successive 5 year terms unless otherwise terminated by either party in accordance with the terms of the Agreement. This Agreement as amended and assigned to CTC-MO is on file with and has been approved by the Nevada Division of Insurance.*

- (f) Reinsurance agreements:

N/A.

- (g) Dividends and other distributions to shareholders:

N/A.

- (h) Consolidated tax allocation agreements:

N/A.

- (i) Any pledge of the Registrant's stock or of the stock of any subsidiary or controlling affiliate for a loan made to any member of the insurance holding company system:

N/A.

#### ITEM 6: LITIGATION OR ADMINISTRATIVE PROCEEDINGS

Following is a brief description of any litigation or administrative proceedings of the following types, either pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject, giving the names of the parties and the court or agency in which such litigation or proceeding is or was pending:

- (1) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party to the litigation or proceeding:

N/A.

- (2) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate controlling person, including but not limited to bankruptcy, receivership, other or other corporate reorganizations:

N/A.

#### ITEM 7: STATEMENTS REGARDING PLAN OR SERIES OF TRANSACTIONS AND OVERSIGHT OF CORPORATE GOVERNANCE AND INTERNAL CONTROLS

*Transactions entered into since the inception of Registrant in the holding company system are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.*

*The Registrant's board of directors oversees corporate governance and internal controls. Registrant's officers and/or senior management have approved, implemented, and continue to maintain and monitor the corporate governance and internal controls of Registrant.*

#### ITEM 8: FINANCIAL STATEMENTS AND EXHIBITS

The following exhibits are attached to this registration statement:

*Exhibit 1: Organizational Chart*

*As CTC is newly formed the most recent financial statements available will be*

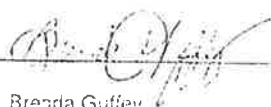
#### ITEM 9: FORM C REQUIRED

*Form C, Summary of Registration Statement, has been prepared and is filed with this form.*

ITEM 10. SIGNATURE AND CERTIFICATION

Pursuant to the requirements of Chapter 692C, of the Nevada Revised Statutes, Section 270, and the Nevada Administrative Code, Section 030, the Registrant has caused this annual registration statement to be duly signed on its behalf in the City of Las Vegas and the State of Nevada on this 22nd day of January, 2016.

Spirit Commercial Auto Risk Retention Group, Inc.


By:   
Brenda Guffey  
President

Attest.

By: \_\_\_\_\_  
Daniel George  
Treasurer

CERTIFICATION

The undersigned deposes and says that he has duly executed the attached annual registration statement for the year ending December 31, 2015, for and on behalf of Spirit Commercial Auto Risk Retention Group, Inc.; that she is the President of such Company and that she is authorized to execute and file such instrument. Deponent further says that she is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of her knowledge information and believe.

By:   
Brenda Guffey  
President

**ITEM 10: SIGNATURE AND CERTIFICATION**

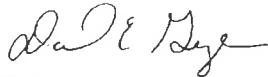
Pursuant to the requirements of Chapter 692C, of the Nevada Revised Statutes, Section 270, and the Nevada Administrative Code, Section 030, the Registrant has caused this annual registration statement to be duly signed on its behalf in the City of Las Vegas, and the State of Nevada, on this 24th day of June, 2016.

**Spirit Commercial Auto Risk Retention Group, Inc.**

By: \_\_\_\_\_

Brenda Guffey  
President

Attest:



By: \_\_\_\_\_

Daniel George  
Treasurer

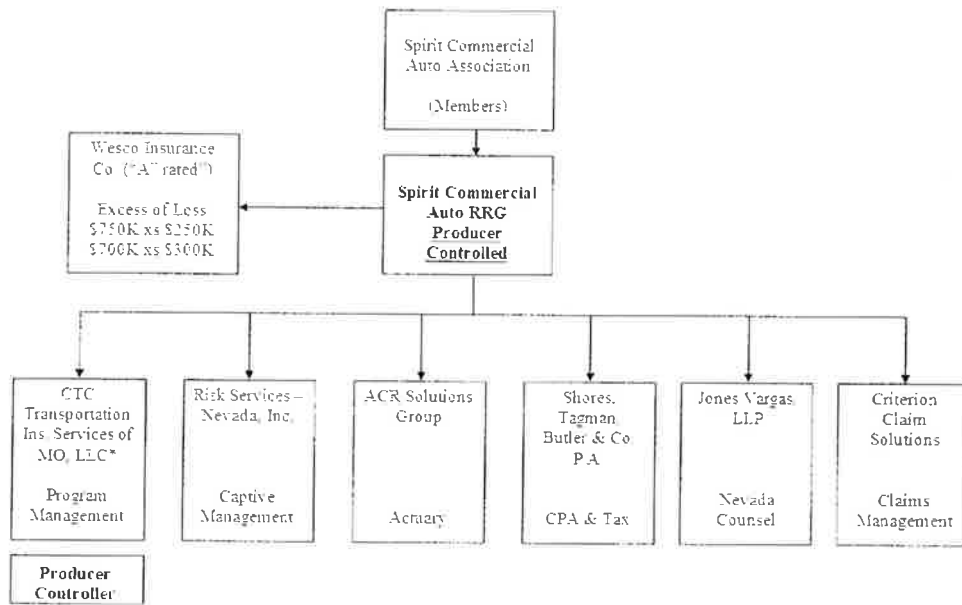
**CERTIFICATION**

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By: \_\_\_\_\_

Brenda Guffey  
President

**EXHIBIT 1**  
**ORGANIZATIONAL CHART**



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## EXHIBIT 5

---

**FORM B**  
**INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION**  
**STATEMENT**

Filed with the Insurance Commissioner of the State of Nevada

By and on behalf of:

**Spirit Commercial Auto Risk Retention Group, Inc.**

**(Registrant)**

For the Year Ended December 31, 2016

**Date: June 29, 2017**

Individual to Whom Notices and Correspondence  
Concerning This Statement Should Be Addressed To:

Teresa Matthews  
Account Manager  
Risk Services-Nevada, Inc.  
1605 Main Street, Suite 800  
Sarasota, FL 34236  
Phone: 941-373-1162  
E-mail: [tmatthews@riskservices.com](mailto:tmatthews@riskservices.com)

ITEM 1: IDENTITY AND CONTROL OF REGISTRANT

This submission is made at the request of the Nevada Division of Insurance which contends that there is a "link" between CTC Transportation Insurance Services, Inc. ("CTC") and Spirit Commercial Auto Insurance Risk Retention Group, Inc. ("SCARRG") that requires SCARRG to file for registration pursuant to Chapter 692C, Nevada Revised Statutes. Subsequent to the Division's request, the agreement between SCARRG and CTC was assigned to a new entity, CTC Transportation Insurance Services of Missouri, LLC ("CTC-MO").

SCARRG, with principal offices located at 9550 S. Eastern Avenue, Suite 253, Las Vegas, Nevada, 89123, is a Nevada domiciled captive insurance company organized pursuant to Chapter 694C, Nevada Revised Statutes, and operating as a risk retention group pursuant to the federal Liability Risk Retention Act and Chapter 695E, Nevada Revised Statutes. It was granted a Certificate of Authority by the Nevada Division of Insurance on February 24, 2012. SCARRG is authorized to issue 750,000 of common stock, par value of \$1.00 each. All authorized shares of SCARRG have been issued to and are wholly owned by Spirit Commercial Auto Association (the "Association"), a Nevada domestic non-profit, non-stock corporation organized February 12, 2012 pursuant to Chapter 82, Nevada Revised Statutes.

In accordance with the federal Liability Risk Retention Act and Section 695E.110, Nevada Revised Statutes, SCARRG is solely owned by the Association, all members of the Association are insureds of SCARRG and all insureds of SCARRG are members of the Association.

CTC-MO is contracted by SCARRG to serve as SCARRG's program administrator, providing marketing, underwriting and policy issuance services to SCARRG's insurance program. CTC-MO and CTC has previously served as program administrator since SCARRG's inception and was integrally involved in SCARRG's initial formation and organization. Brenda Guffey, Director of Operations of CTC-MO, serves as a director and President of the Association and also serves as a director and President of SCARRG. Daniel George, an independent consultant of CTC, is Treasurer of SCARRG.

ITEM 2: ORGANIZATIONAL CHART

*Please see attached hereto Exhibit 1 – Organizational Chart*

ITEM 3: THE ULTIMATE CONTROLLING PERSON(S)

(a) Name:

*CTC Transportation Insurance Services of Missouri, LLC.*

(b) Home office/principal office address:

*611 W. Fort Scott Street, Butler, MO 64730*

(c) Principal executive office address:

*Same as (b) above.*

(d) Organizational structure:

*Limited Liability Corporation.*

(e) Principal business:

*General agent/producer specializing in transportation insurance.*

(f) Name and address of any person(s) who holds or owns ten percent or more of any class of voting security, the class of the security, the number of shares held of record or known to be beneficially owned, and the percentage of the class held or owned:

*Thomas Mulligan  
CTC Transportation Services of Missouri LLC  
329 Adelpia Road  
Farmingdale, NJ 07727  
100% Ownership*

(g) Pending court proceedings involving a reorganization or liquidation:

*N/A*

#### ITEM 4: BIOGRAPHICAL INFORMATION

<u>Name/Address/Occupation</u>	<u>Offices/Positions Held</u>	<u>Prior Convictions*</u>
Thomas Mulligan CTC Transportation Insurance Services of Missouri LLC 325 Adelpia Road Farmingdale, NJ 07727 Occupation: Insurance Executive	Chief Executive Officer	None

\*Last 10 years (other than minor traffic violations)

#### ITEM 5: TRANSACTIONS AND AGREEMENTS

Following is a description of agreements and transactions currently outstanding or which have occurred during the last calendar year between Registrant and its affiliates:

(a) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the Registrant or of the Registrant by its affiliates:

*CTC Transportation Insurance Services, through its ultimate controlling person, loaned the Association \$1,002,000 which was contributed by the Association in the form of cash as the initial contributed capital and surplus of SCARRG.*

*As part of SCARRG's corrective action plan for 2015, CTC Transportation Insurance Services, through its ultimate controlling person, loaned the Association \$3,000,000 which the Association contributed in the form of cash as additional paid in capital and surplus to the Company. The Company then provided a \$3,000,000 Letter of Credit to the Commissioner of the Nevada Department of Insurance which is supported by the \$3,000,000 of cash.*

- (b) Purchases, sales, or exchanges of assets:

N/A.

- (c) Transactions not in the ordinary course of business:

N/A.

- (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual or contingent exposure of the Registrant's assets to liability, other than insurance contracts entered into in the ordinary course of Registrant's business:

N/A.

- (e) All management agreements, service contracts, and cost-sharing arrangements:

*Registrant was originally a party to a Program Administrator Agreement with CTC pursuant to which CTC provides certain marketing, underwriting and policy issuance services to Registrant with respect to its insurance program. The agreement, originally dated November 3, 2011 and subsequently amended by Addendums A through E, was effective commencing on February 24, 2012, the date SCARRG was issued a Certificate of Authority by the Commissioner of Insurance of the State of Nevada and was later assigned to CTC-MO. Under the terms of the Agreement, as amended, compensation is 23.5% of base premium of all policies written under the Agreement, plus a primary layer profit commission bonus calculated on scheduled losses on business produced as set forth in Addendum B to the Agreement, and excess layer profit commission bonus of 17.5% on all profit sharing reinsurance premium returns to SCARRG as set forth in Addendums C and D to the Agreement. The initial term of the agreement was five years and the agreement is subsequently automatically renewable for successive 5 year terms unless otherwise terminated by either party in accordance with the terms of the Agreement. This Agreement as amended and was assigned to CTC-MO in 2016 reporting year and is on file with and has been approved by the Nevada Division of Insurance. Effective September 30, 2016 the CTC-MO agreement was further amended to change compensation to 20% of written premium retroactively from July 1, 2014 and going forward.*

- (f) Reinsurance agreements:

N/A.

- (g) Dividends and other distributions to shareholders:

N/A.

- (h) Consolidated tax allocation agreements:

N/A.

- (i) Any pledge of the Registrant's stock or of the stock of any subsidiary or controlling affiliate for a loan made to any member of the insurance holding company system:

N/A.

#### ITEM 6: LITIGATION OR ADMINISTRATIVE PROCEEDINGS

Following is a brief description of any litigation or administrative proceedings of the following types, either pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject, giving the names of the parties and the court or agency in which such litigation or proceeding is or was pending:

- (1) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party to the litigation or proceeding:

N/A.

- (2) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate controlling person, including but not limited to bankruptcy, receivership, other or other corporate reorganizations:

N/A.

#### ITEM 7 STATEMENTS REGARDING PLAN OR SERIES OF TRANSACTIONS AND OVERSIGHT OF CORPORATE GOVERNANCE AND INTERNAL CONTROLS

*Transactions entered into since the inception of Registrant in the holding company system are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.*

*The Registrant's board of directors oversees corporate governance and internal controls. Registrant's officers and/or senior management have approved, implemented, and continue to maintain and monitor the corporate governance and internal controls of Registrant.*

#### ITEM 8: FINANCIAL STATEMENTS AND EXHIBITS

The following exhibits are attached to this registration statement:

*Exhibit 1: Organizational Chart*

*Exhibit 2: Audited Financials of CTC-MO as of December 31, 2016. – The Audit is ongoing and the statements are expected to be released by July 31, 2017 at which time will be filed to the Nevada Division of Insurance.*


**ITEM 9: FORM C REQUIRED**


*Form C, Summary of Registration Statement, has been prepared and is filed with this form.*

**ITEM 10: SIGNATURE AND CERTIFICATION**

*Pursuant to the requirements of Chapter 692C, of the Nevada Revised Statutes, Section 270, and the Nevada Administrative Code, Section 030, the Registrant has caused this annual registration statement to be duly signed on its behalf in the City of Butler, and the State of Missouri, on this 28 day of June, 2017.*


**Spirit Commercial Auto Risk Retention Group, Inc.**

By:   
Brenda Guffey  
President

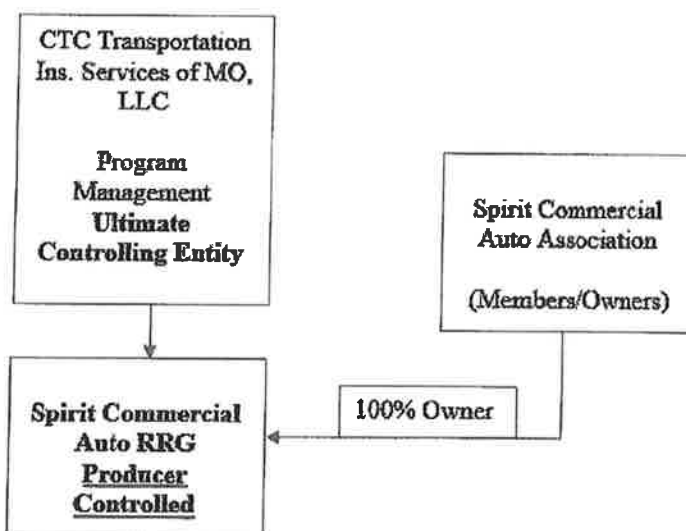
Attest:   
By: \_\_\_\_\_  
Daniel George  
Treasurer

**CERTIFICATION**

*The undersigned deposes and says that he has duly executed the attached annual registration statement for the year ending December 31, 2016, for and on behalf of Spirit Commercial Auto Risk Retention Group, Inc.; that she is the President of such Company and that she is authorized to execute and file such instrument. Deponent further says that she is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of her knowledge information and believe.*

By:   
Brenda Guffey  
President

**EXHIBIT 1**  
**ORGANIZATIONAL CHART**



**EXHIBIT 2**  
**AUDITED FINANCIAL STATEMENTS**

The Audited Statements will be provided by July 31, 2017

**FORM C**  
**INSURANCE HOLDING COMPANY SYSTEM**  
**SUMMARY STATEMENT**

Filed with the Insurance Commissioner of the State of Nevada

By and on behalf of:

**Spirit Commercial Auto Risk Retention Group, Inc.**

**(Registrant)**

For the Year Ended December 31, 2016

**Date: June 30, 2017**

Individual to Whom Notices and Correspondence

Concerning This Statement Should Be Addressed To:

Teresa Matthews  
Account Manager  
Risk Services-Nevada, Inc.  
1605 Main Street, Suite 800  
Sarasota, FL 34236  
Phone: 941-373-1162  
E-mail: [tmatthews@riskservcos.com](mailto:tmatthews@riskservcos.com)

## SUMMARY

Description of all changes in the current annual registration statement, Form B:

*Item 1 – The second sentence of the fourth paragraph was amended from "CTC-MO and CTC has served in this capacity since SCARRG's inception and was integrally involved in SCARRG's initial formation and organization." to "CTC-MO and CTC has previously served as program administrator since SCARRG's inception and was integrally involved in SCARRG's initial formation and organization."*

*Item 5(e)- There were minor changes made to provide further clarify in this section and also addition of the CTC-MO addendum which reduced compensation from 23.5% of written premium to 20% of written premium. The revised paragraph follows with the changes underlined for ease of review.*

*Registrant was originally a party to a Program Administrator Agreement with CTC pursuant to which CTC provides certain marketing, underwriting and policy issuance services to Registrant with respect to its insurance program. The agreement, originally dated November 3, 2011 and subsequently amended by Addendums A through E, was effective commencing on February 24, 2012, the date SCARRG was issued a Certificate of Authority by the Commissioner of Insurance of the State of Nevada and was later assigned to CTC-MO. Under the terms of the Agreement, as amended, compensation is 23.5% of base premium of all policies written under the Agreement, plus a primary layer profit commission bonus calculated on scheduled losses on business produced as set forth in Addendum B to the Agreement, and excess layer profit commission bonus of 17.5% on all profit sharing reinsurance premium returns to SCARRG as set forth in Addendums C and D to the Agreement. The initial term of the agreement was five years and the agreement is subsequently automatically renewable for successive 5 year terms unless otherwise terminated by either party in accordance with the terms of the Agreement. This Agreement as amended and was assigned to CTC-MO in 2016 reporting year and is on file with and has been approved by the Nevada Division of Insurance. Effective September 30, 2016 the CTC-MO agreement was further amended to change compensation to 20% of written premium retroactively from July 1, 2014 and going forward.*

*Item 8 – Exhibit 2 was added which is the Audited Financials of CTC-MO as of December 31, 2016. However the Audited Financials have yet to be released and is expected to be filed to the Nevada Division of Insurance by July 31, 2017.*


### SIGNATURE AND CERTIFICATION

Pursuant to the requirements of Chapter 692C, of the Nevada Revised Statutes, Section 290, and the Nevada Administrative Code, Section 030, the Registrant has caused this annual registration statement to be duly signed on its behalf in the city of Butler, and the State of Missouri, on this 28 day of June, 2017.

**Spirit Commercial Auto Risk Retention Group, Inc.**

By: Brenda Guffey  
Brenda Guffey  
President

**Attest:**

By:   
Daniel George  
Treasurer

## CERTIFICATION

*The undersigned deposes and says that he has duly executed the attached annual registration statement for the year ending December 31, 2016, for and on behalf of Spirit Commercial Auto Risk Retention Group, Inc.; that she is the President of such Company and that she is authorized to execute and file such instrument. Deponent further says that she is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of her knowledge information and believe.*

By: Brenda Guffey  
Brenda Guffey  
President

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## EXHIBIT 6

---

**FORM F**  
**INSURANCE HOLDING COMPANY SYSTEM**  
**ENTERPRISE RISK REPORT**

**Filed with the Insurance Commissioner of the State of Nevada**

**By:**

**CTC Transportation Insurance Services of Missouri, LLC**  
**611 W. Fort Scott Street**  
**Butler, MO 64730**

**On behalf of:**

**Spirit Commercial Auto Risk Retention Group, Inc.**  
**(Registrant)**

**for the Year Ended December 31, 2016**

**Date: June 30, 2017**

**Individual to Whom Notices and Correspondence**  
**Concerning This Statement Should Be Addressed To:**

**CTC Transportation Insurance Services of Missouri, LLC**  
**Ms. Brenda Guffey**  
**611 W. Fort Scott Street**  
**Butler, MO 64730**

### **ITEM 1: ENTERPRISE RISK**

On behalf of the Registrant, the undersigned, to the best of its knowledge and belief, hereby submits as follows regarding the areas that could produce enterprise risk as defined in Chapter 692C of Nevada Revised Statutes, Section 055, and not otherwise disclosed in the Insurance Holding Company System Annual Registration Statement filed on behalf of the Registrant:

- Any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system.

N/A.

- Acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the insurance holding company system.

N/A.

- Any changes of shareholders of the insurance holding company system exceeding ten percent (10%) or more of voting securities.

N/A.

- Developments in various investigations, regulatory activities or litigation that may have a significant bearing or impact on the insurance holding company system.

N/A.

- Business plan of the insurance holding company system and summarized strategies for next 12 months.

*Spirit Commercial Auto Risk Retention Group, Inc. (SCARRG) is a risk retention group licensed as a captive insurer in Nevada on February 24, 2012 to insure the Commercial Auto Liability and Commercial General Liability risks of the members of the Spirit Commercial Auto Association ("Association"), a Nevada association. The membership of the Association is comprised of small trucking companies. The Association provides loss control and risk management services to its members, as well as other group purchasing power benefits not typically available to small trucking companies.*

*SCARRG is wholly owned by the Association and as such insures all members of the Association in compliance with the LRRRA. The initial contributed capital and surplus of the Company was \$1,002,000, provided by the Association in the form of cash. Additionally, the Association provides contributed capital of a minimum of \$500 per vehicle as vehicles enroll/renew annually.*

*Potential members of the Association must meet the underwriting requirements of SCARRG in order to gain membership in the Association.*

#### **Goals**

*To provide a stable liability insurance solution for its members.*

*It is anticipated that SCARRG will continue in the states in which it is registered and have very similar experience in the future.*

- Identification of material concerns of the insurance holding company system raised by supervisory college, if any, in the last year.

*N/A.*

- Identification of insurance holding company system capital resources and material distribution patterns.

*Insureds of SCARRG are members of the Association which provides contributed capital of a minimum of \$500 per vehicle as vehicles enroll/renew annually for each insureds policy.*

- Identification of any negative movement, or discussion with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook).

*N/A.*

- Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon.

*N/A.*

- Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

*N/A.*

## **ITEM 2: OBLIGATION TO REPORT**


*The undersigned hereby affirms that, to the best of its knowledge and believe, it has not identified any enterprise risk subject to disclosure pursuant to Item 1.*

**ITEM 3: SIGNATURE AND CERTIFICATION**

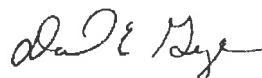
**SIGNATURE**

Pursuant to the requirements of Chapter 692C, of the Nevada Revised Statutes, Section 290, CTC Transportation Insurance Services of Missouri, LLC. has caused this enterprise risk report to be duly signed on its behalf in the City of Butler and the State of Missouri, on this 28 day of June, 2017.

**CTC Transportation Insurance Services of Missouri, LLC**


By:   
Tom Mulligan  
Owner/Operator

**Attest:**

  
Daniel George  
Treasurer  
Spirit Commercial Auto Risk Retention Group, Inc.

**CERTIFICATION**

The undersigned deposes and says that she has duly executed the attached enterprise risk report for the year ending December 31, 2016, for and on behalf of Spirit Commercial Auto Risk Retention Group, Inc.; that she is the President of such company and that she is authorized to execute and file such instrument. Deponent further says that she is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of her knowledge, information and belief.

By:   
Brenda Guffey  
President  
Spirit Commercial Auto Risk Retention Group, Inc.

**CHANGE NO. 1**  
**FORM B**  
**INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION**  
**STATEMENT**

Filed with the Insurance Commissioner of the State of Nevada

By and on behalf of:

**Spirit Commercial Auto Risk Retention Group, Inc.**  
**(Registrant)**

For the Year Ended December 31, 2016

**Date: August 31, 2017**

Individual to Whom Notices and Correspondence  
Concerning This Statement Should Be Addressed To:

Elliott M. Kroll, Esq.  
Arent Fox LLP  
1675 Broadway  
New York, NY 10019  
Phone: (212) 484-3987  
E-mail: [elliott.kroll@arentfox.com](mailto:elliott.kroll@arentfox.com)

#### ITEM 1: IDENTITY AND CONTROL OF REGISTRANT

This submission is made to amend Registrant's June 29, 2017, Form B Registration Statement.

In accordance with the federal Liability Risk Retention Act and Section 695E.110, Nevada Revised Statutes, Registrant is solely owned by the members of its commercial auto association (the "Association"), all members of the Association are insureds of Registrant and all insureds of Registrant are members of the Association.

Registrant, with principal offices located at 9550 S. Eastern Avenue, Suite 253, Las Vegas, Nevada, 89123, is a Nevada domiciled captive insurance company organized pursuant to Chapter 694C, Nevada Revised Statutes, and operating as a risk retention group pursuant to the federal Liability Risk Retention Act and Chapter 695E, Nevada Revised Statutes. It was granted a Certificate of Authority by the Nevada Division of Insurance on February 24, 2012. Registrant is authorized to issue 750,000 of common stock, par value of \$1.00 per share. All authorized shares of Registrant have been issued to and are wholly owned by Spirit Commercial Auto Association (the "Association"), a Nevada domestic non-profit, non-stock corporation organized February 12, 2012 pursuant to Chapter 82, Nevada Revised Statutes.

As indicated by Exhibit "A," Thomas Mulligan ("Mr. Mulligan") is Registrant's ultimate controlling person.

Mr. Mulligan is the owner of 100% of the membership interests in CTC Transportation Ins. Services of MO, LLC ("CTC-MO"), which directly manages Registrant's commercial auto insurance program. CTC-MO has contracted with Registrant to serve as Registrant's program administrator, providing marketing, underwriting and policy issuance services to Registrant's insurance program. CTC Transportation Insurance Services, Inc. ("CTC") previously served as program administrator for Registrant and was integrally involved in Registrant's initial formation and organization. At the request of the Division, CTC assigned its rights and obligations under its program management agreement to CTC-MO.

Brenda Guffey, Director of Operations of CTC-MO, serves as a director and President of the Association and also serves as a director and President of Registrant. Daniel George, an independent consultant of CTC, is Treasurer of Registrant.

#### ITEM 2: ORGANIZATIONAL CHART

Please see attached hereto Exhibit A — Organizational Chart

#### ITEM 3: THE ULTIMATE CONTROLLING PERSON(S)

(a) Name:

Thomas Mulligan

- (b) Home office/principal office address:
- CTC Transportation Insurance Services LLC  
325 Adelpia Road  
Farmingdale, NJ 07727
- (c) Principal executive office address:
- Same as (b)
- (d) Organizational structure:
- Individual
- (e) Principal business:
- General agent/producer specializing in transportation insurance.
- (f) Name and address of any person(s) who holds or owns ten percent or more of any class of voting security, the class of the security, the number of shares held of record or known to be beneficially owned, and the percentage of the class held or owned:
- Thomas Mulligan  
325 Adelpia Road  
Farmingdale, NJ 07727  
100% ownership of CTC Transportation Services of Missouri LLC
- (g) Pending court proceedings involving a reorganization or liquidation:
- None.

#### ITEM 4: BIOGRAPHICAL INFORMATION

<u>Name/Address/Occupation</u>	<u>Offices/Positions Held</u>	<u>Prior Convictions*</u>
Thomas Mulligan CTC Transportation Insurance Services LLC 325 Adelpia Road Farmingdale, NJ 07727 Occupation: Insurance Executive	Chief Executive Officer	None

\*Last 10 years (other than minor traffic violations)

For Mr. Mulligan's complete biographical information, please see his NAIC biographical attached as Exhibit "B."

#### ITEM 5: TRANSACTIONS AND AGREEMENTS

Following is a description of agreements and transactions currently outstanding or which have occurred during the last calendar year between Registrant and its affiliates:

- (a) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the Registrant or of the Registrant by its affiliates:

CTC, through its ultimate controlling person, loaned the Association \$1,002,000 which was contributed by the Association in the form of cash as the initial contributed capital and surplus of Registrant.

As part of Registrant's corrective action plan for 2015, CTC, through its ultimate controlling person, loaned the Association \$3,000,000 which the Association contributed in the form of cash as additional paid in capital and surplus to the Company. The Company then provided a \$3,000,000 Letter of Credit to the Commissioner of the Nevada Department of Insurance which is supported by the \$3,000,000 of cash.

- (b) Purchases, sales, or exchanges of assets:

None.

- (c) Transactions not in the ordinary course of business:

None.

- (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual or contingent exposure of the Registrant's assets to liability, other than insurance contracts entered into in the ordinary course of Registrant's business:

None.

- (e) All management agreements, service contracts, and cost-sharing arrangements:

Registrant was originally a party to a program administration agreement with CTC pursuant to which CTC provided certain marketing, underwriting and policy issuance services to Registrant with respect to its insurance program (the "Agreement"). The Agreement, originally dated November 3, 2011 and subsequently amended by Addendums A through E, was effective commencing on February 24, 2012, the date Registrant was issued a Certificate of Authority by the Commissioner of Insurance of the State of Nevada. Under the terms of the Agreement, as amended, compensation is 23.5% of base premium of all policies written under the Agreement, plus a primary layer profit commission bonus calculated on scheduled losses on business produced as set forth in Addendum B to the Agreement, and excess layer profit commission bonus of 17.5% on all profit sharing reinsurance premium returns to Registrant as set forth in Addendums C and D to the Agreement. The initial term of the agreement was five years and the agreement is subsequently automatically renewable for successive 5 year terms unless otherwise terminated by either party in accordance with the terms of the Agreement. This Agreement as amended and was assigned to CTC-MO in 2016 reporting year and is on file with and has been

approved by the Nevada Division of Insurance. Effective September 30, 2016 the CTC-MO agreement was further amended to change compensation to 20% of written premium. The amendment is retroactive from July 1, 2014 onward.

In the last calendar year, Mr. Mulligan purchased a controlling interest in Criterion Claims Solutions of Omaha, Inc., which had a pre-existing claims administration agreement with Spirit. Effective September 30, 2016, the claims administration agreement was amended to lower Criterion's compensation from 3.5% to 3.0% of total written premium. The amendment is retroactive from June 30, 2014 onward. Within seven (7) business days of the date of this Form B Registration Statement, Registrant will file a Form D outlining this purchase.

(f) Reinsurance agreements:

Reinsurance agreements in effect at the beginning of the last calendar year remain in effect.

(g) Dividends and other distributions to shareholders:

None.

(h) Consolidated tax allocation agreements:

None.

(i) Any pledge of the Registrant's stock or of the stock of any subsidiary or controlling affiliate for a loan made to any member of the insurance holding company system:

None.

**ITEM 6: LITIGATION OR ADMINISTRATIVE PROCEEDINGS**

Following is a brief description of any litigation or administrative proceedings of the following types, either pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject, giving the names of the parties and the court or agency in which such litigation or proceeding is or was pending:

(1) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party to the litigation or proceeding:

None.

(2) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate controlling person, including but not limited to bankruptcy, receivership, other or other corporate reorganizations:

None.

ITEM 7: STATEMENTS REGARDING PLAN OR SERIES OF TRANSACTIONS AND  
OVERSIGHT OF CORPORATE GOVERNANCE AND INTERNAL CONTROLS

Transactions entered into since the inception of Registrant in the holding company system are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

The Registrant's board of directors oversees corporate governance and internal controls. Registrant's officers and/or senior management have approved, implemented, and continue to maintain and monitor the corporate governance and internal controls of Registrant.

ITEM 8: FINANCIAL STATEMENTS AND EXHIBITS

The following exhibits are attached to this Registration Statement:

Exhibit A: Organizational Chart

Exhibit B: NAIC Biographical Affidavit for Mr. Mulligan

Exhibit C: Mr. Mulligan's Personal Financial Information


ITEM 9: FORM C REQUIRED

Form C, Summary of Registration Statement, has been prepared and is filed with this form.

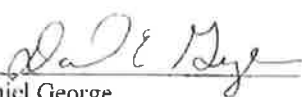
ITEM 10: SIGNATURE AND CERTIFICATION

Pursuant to the requirements of Chapter 692C, of the Nevada Revised Statutes, Section 270, and the Nevada Administrative Code, Section 030, the Registrant has caused this annual Registration Statement to be duly signed on its behalf in the City of Butler, and the State of Missouri, on this 31<sup>st</sup> day of August, 2017

**Spirit Commercial Auto Risk Retention Group,  
Inc.**

By:   
Brenda Guffey  
President


Attest:

By:   
Daniel George  
Treasurer

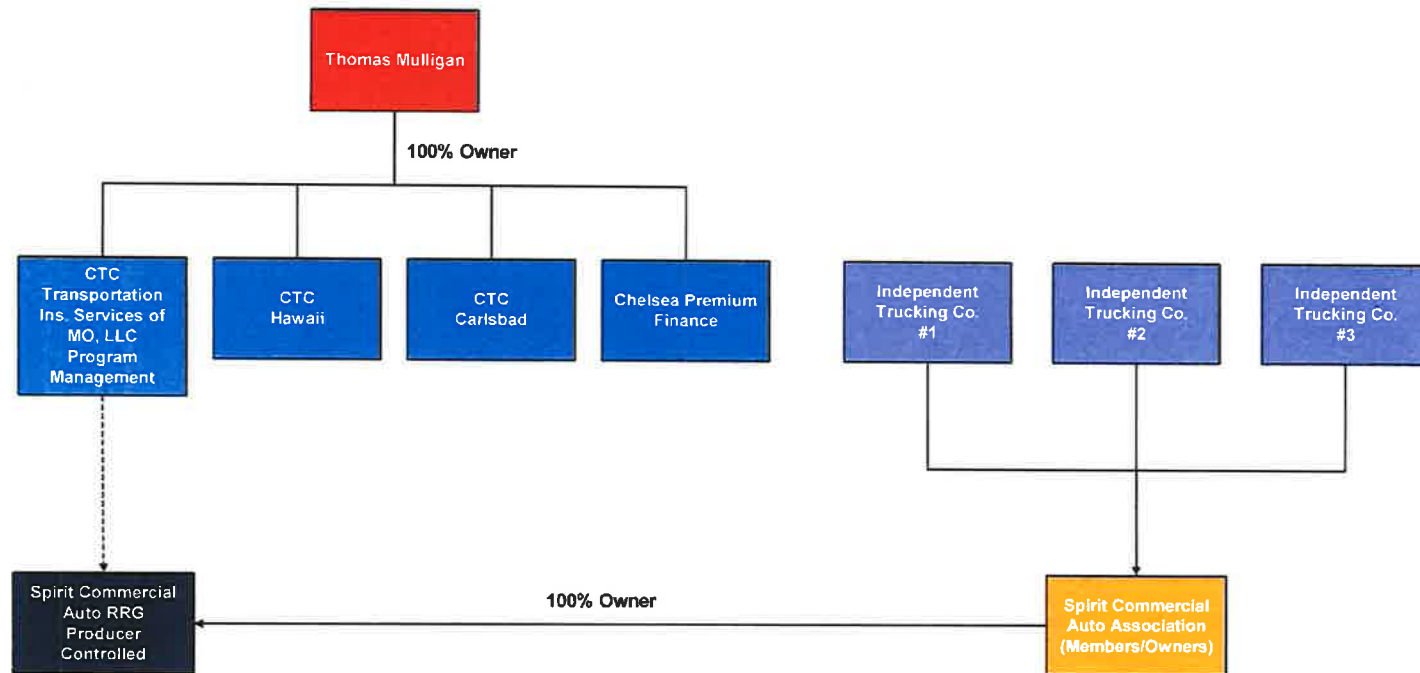
### CERTIFICATION

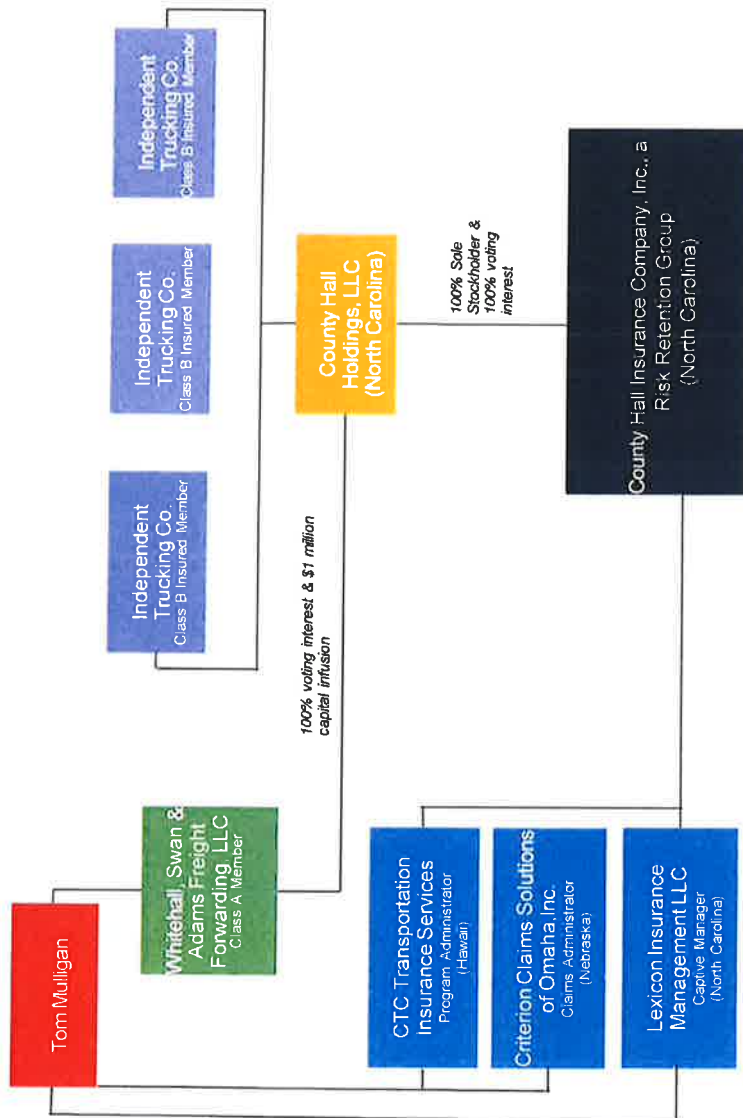
The undersigned deposes and says that she has duly executed the attached annual Registration Statement for the year ending December 31, 2016, for and on behalf of Spirit Commercial Auto Risk Retention Group, Inc.; that she is the President of such Company and that she is authorized to execute and file such instrument. Deponent further says that she is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of her knowledge information and belief.

By: /s/

  
Brenda Guffey  
President

**EXHIBIT A  
ORGANIZATIONAL CHARTS**





**EXHIBIT B**  
**Biographical Affidavit**

Applicant Company Name : Spirit Commercial Auto RRG NAIC No. \_\_\_\_\_  
FEIN: 45-4643855

### BIOGRAPHICAL AFFIDAVIT

To the extent permitted by law, this affidavit will be kept confidential by the state insurance regulatory authority.

(Print or Type)

Full name, address and telephone number of the present or proposed entity under which this biographical statement is being required (Do Not Use Group Names). \_\_\_\_\_

Thomas A. Mulligan

325 Adelpia Road

Farmingdale, NJ 07727 Phone: (760) 707-7620

In connection with the above-named entity, I herewith make representations and supply information about myself as hereinafter set forth. (Attach addendum or separate sheet if space hereon is insufficient to answer any question fully.) IF ANSWER IS "NO" OR "NONE," SO STATE.

1. Affiant's Full Name (Initials Not Acceptable): First: Thomas Middle: Aloysius Last: Mulligan

2. a. Are you a citizen of the United States?

Yes ☒ No ☐

b. Are you a citizen of any other country?

Yes ☐ No ☒

If yes, what country? \_\_\_\_\_

3. Affiant's occupation or profession: Insurance Services Provider

4. Affiant's business address: 19 N. Bridge Avenue, Red Bank, NJ 07701

Business telephone: (760) 707-7620

Business Email: tmulligan@pamsgroup.com

5. Education and training:

<u>College/University</u>	<u>City/State</u>	<u>Dates Attended (MM/YY)</u>	<u>Degree Obtained</u>
<u>Tennessee Wesley College</u>	<u>Athens, TN</u>	<u>08/84 - 05/86</u>	<u>BA Business Mgt</u>

<u>Graduate Studies</u>	<u>College/University</u>	<u>City/State</u>	<u>Dates Attended (MM/YY)</u>	<u>Degree Obtained</u>
-------------------------	---------------------------	-------------------	-------------------------------	------------------------

<u>Other Training: Name</u>	<u>City/State</u>	<u>Dates Attended (MM/YY)</u>	<u>Degree/Certification Obtained</u>
-----------------------------	-------------------	-------------------------------	--------------------------------------

Note: If affiant attended a foreign school, please provide full address and telephone number of the college/university. If applicable, provide the foreign student Identification Number in the space provided in the Biographical Affidavit Supplemental Information.

Applicant Company Name : Spirit Commercial Auto RRG NAIC No. \_\_\_\_\_  
FEIN: 45-4643855

6. List of memberships in professional societies and associations:

<u>Name of Society/Association</u>	<u>Contact Name</u>	<u>Address of Society/Association</u>	<u>Telephone Number of Society/Association</u>
--	---------------------	---	--

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

7. Present or proposed position with the Applicant Company: \_\_\_\_\_

8. List complete employment record for the past twenty (20) years, whether compensated or otherwise (up to and including present jobs, positions, partnerships, owner of an entity, administrator, manager, operator, directorates or officerships). Please list the most recent first. Attach additional pages if the space provided is insufficient. It is only necessary to provide telephone numbers and supervisory information for the past ten (10) years.

Beginning/Ending  
Dates (MM/YY): 01/91 - Present Employer's Name: Insurance Service Provider

Address: 19 North Bridge Avenue City: Red Bank State/Province: NJ

Country: USA Postal Code: 07701 Phone: \_\_\_\_\_ Offices/Positions Held: CEO

Type of Business: \_\_\_\_\_ Supervisor/Contact: \_\_\_\_\_

Beginning/Ending  
Dates (MM/YY): \_\_\_\_\_ - \_\_\_\_\_ Employer's Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Province: \_\_\_\_\_

Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_ Phone: \_\_\_\_\_ Offices/Positions Held: \_\_\_\_\_

Type of Business: \_\_\_\_\_ Supervisor/Contact: \_\_\_\_\_

Beginning/Ending  
Dates (MM/YY): \_\_\_\_\_ - \_\_\_\_\_ Employer's Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Province: \_\_\_\_\_

Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_ Phone: \_\_\_\_\_ Offices/Positions Held: \_\_\_\_\_

Type of Business: \_\_\_\_\_ Supervisor/Contact: \_\_\_\_\_

Beginning/Ending  
Dates (MM/YY): \_\_\_\_\_ - \_\_\_\_\_ Employer's Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Province: \_\_\_\_\_

Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_ Phone: \_\_\_\_\_ Offices/Positions Held: \_\_\_\_\_

Type of Business: \_\_\_\_\_ Supervisor/Contact: \_\_\_\_\_

Applicant Company Name : Spirit Commercial Auto RRG NAIC No. \_\_\_\_\_  
FEIN: 45-4643855

9. a. Have you ever been in a position which required a fidelity bond?

Yes ☒ No ☐

If any claims were made on the bond, give details: \_\_\_\_\_

- b. Have you ever been denied an individual or position schedule fidelity bond, or had a bond canceled or revoked?

Yes ☐ No ☒

If yes, give details: \_\_\_\_\_

10. List any professional, occupational and vocational licenses (including licenses to sell securities) issued by any public or governmental licensing agency or regulatory authority or licensing authority that you presently hold or have held in the past. For any non-insurance regulatory issuer, identify and provide the name, address and telephone number of the licensing authority or regulatory body having jurisdiction over the license (s) issued. If your professional license number is your Social Security Number (SSN) or embeds your SSN or any sequence of more than five numbers that are reasonably identifiable as your SSN, then write SSN for that portion of the professional license number that is represented by your SSN. (For example, "SSN", "12-SSN-345" or "1234-SSN" (last 6 digits)). Attach additional pages if the space provided is insufficient.

See Attached.

Organization/Issuer of License: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State/Province: \_\_\_\_\_ Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_

License Type: \_\_\_\_\_ License #: \_\_\_\_\_ Date Issued (MM/YY): \_\_\_\_\_

Date Expired (MM/YY): \_\_\_\_\_ Reason for Termination: \_\_\_\_\_

Non-Insurance Regulatory Phone Number (if known): \_\_\_\_\_

Organization/Issuer of License: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State/Province: \_\_\_\_\_ Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_

License Type: \_\_\_\_\_ License #: \_\_\_\_\_ Date Issued (MM/YY): \_\_\_\_\_

Date Expired (MM/YY): \_\_\_\_\_ Reason for Termination: \_\_\_\_\_

Non-Insurance Regulatory Phone Number (if known): \_\_\_\_\_

11. In responding to the following, if the record has been sealed or expunged, and the affiant has personally verified that the record was sealed or expunged, an affiant may respond "no" to the question. Have you ever:

- a. Been refused an occupational, professional, or vocational license or permit by any regulatory authority, or any public administrative, or governmental licensing agency?

Yes ☐ No ☒

- b. Had any occupational, professional, or vocational license or permit you hold or have held, been subject to any judicial, administrative, regulatory, or disciplinary action?

Applicant Company Name : Spirit Commercial Auto RRG NAIC No. \_\_\_\_\_  
FEIN: 45-4643855

Yes ☐ No ☒

- c. Been placed on probation or had a fine levied against you or your occupational, professional, or vocational license or permit in any judicial, administrative, regulatory, or disciplinary action?

Yes ☐ No ☒

- d. Been charged with, or indicted for, any criminal offense(s) other than civil traffic offenses?

Yes ☐ No ☒

- e. Pled guilty, or nolo contendere, or been convicted of, any criminal offense(s) other than civil traffic offenses?

Yes ☐ No ☒

- f. Had adjudication of guilt withheld, had a sentence imposed or suspended, had pronouncement of a sentence suspended, or been pardoned, fined, or placed on probation, for any criminal offense(s) other than civil traffic offenses?

Yes ☐ No ☒

- g. Been subject to a cease and desist letter or order, or enjoined, either temporarily or permanently, in any judicial, administrative, regulatory, or disciplinary action, from violating any federal, state law or law of another country regulating the business of insurance, securities or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities or banking?

Yes ☐ No ☒

- h. Been, within the last ten (10) years, a party to any civil action involving dishonesty, breach of trust, or a financial dispute?

Yes ☒ No ☐

- i. Had a finding made by the Comptroller of any state or the Federal Government that you have violated any provisions of small loan laws, banking or trust company laws, or credit union laws, or that you have violated any rule or regulation lawfully made by the Comptroller of any state or the Federal Government?

Yes ☐ No ☒

- j. Had a lien or foreclosure action filed against you or any entity while you were associated with that entity?

Yes ☐ No ☒

If the response to any question above is yes, please provide details including dates, locations, disposition, etc. Attach a copy of the complaint and filed adjudication or settlement as appropriate.

---

---

Applicant Company Name : Spirit Commercial Auto RRG

NAIC No. \_\_\_\_\_

FEIN: 45-4643855

- i. File Date: April 2, 2012  
Case #: C000058 12  
Plaintiff: Bowen, Miclette & Britt, LLC  
Defendant: CBIP Management, et al  
Including: Thomas Mulligan, as Defendant

Explanation: We purchased an Agency (Huckleberry Sibley Insurance Agency) in Florida's trucking book of Business. The deal was 50% down and 50% in one year. After nine months the Agency (Huckleberry Sibley filed for Bankruptcy). We felt we were defrauded. We ended up litigation with the buyers of their assets and settled the case amicably.

- ii. File Date: April 4, 2012  
Case #: 2012035002  
Creditor: Bowen, Miclette & Britt, LLC  
Debtor: CBIP Management, Inc., et al  
Including: Thomas Mulligan, as Defendant

Explanation: We purchased an Agency (Huckleberry Sibley Insurance Agency) in Florida's trucking book of Business. The deal was 50% down and 50% in one year. After nine months the Agency (Huckleberry Sibley filed for Bankruptcy). We felt we were defrauded. We ended up litigation with the buyers of their assets and settled the case amicably.

- iii. File Date: October 22, 2015  
Case #: L 003930 15  
Plaintiff: Bazelaix Calixte  
Defendant: Liba Castillo-Chico, et al  
Including: Thomas Mulligan, as Defendant

Explanation: Liba Castillo borrowed my car and got into a fender bender with it. The claimant litigated the dispute and my Insurance Carrier Liberty Mutual settled the claim.

- iv. File Date: June 27, 2007  
Case #: L 003099 07  
Plaintiff: Irwin C. Keightly  
Defendant: CBIP Management, Inc. et al  
Including: Thomas Mulligan, as Defendant

Explanation: This was an employee/employer dispute. Our employee Irwin Keightly resigned and then tried to litigate against us for back wages. We settled case for approximately \$25,000 (legal fees).

Applicant Company Name : Spirit Commercial Auto RRG

NAIC No.

FEIN: 45-4643855

12. List any entity subject to regulation by an insurance regulatory authority that you control directly or indirectly. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. Insurance Services Business.

If any of the stock is pledged or hypothecated in any way, give details. N/A

13. Do [Will] you or members of your immediate family individually or cumulatively subscribe to or own, beneficially or of record, 10% or more of the outstanding shares of stock of any entity subject to regulation by an insurance regulatory authority, or its affiliates? An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

Yes ☒ No ☐

If yes, please identify the company or companies in which the cumulative stock holdings represent 10% or more of the outstanding voting securities.

Insurance Services Business.

If any of the shares of stock are pledged or hypothecated in any way, give details.

N/A

14. Have you ever been adjudged a bankrupt?

Yes ☐ No ☒

If yes, provide details: N/A

15. To your knowledge has any company or entity for which you were an officer or director, trustee, investment committee member, key management employee or controlling stockholder, had any of the following events occur while you served in such capacity?

- a. Been refused a permit, license, or certificate of authority by any regulatory authority, or governmental-licensing agency?

Yes ☐ No ☒

- b. Had its permit, license, or certificate of authority suspended, revoked, canceled, non-renewed, or subjected to any judicial, administrative, regulatory, or disciplinary action (including rehabilitation, liquidation, receivership, conservatorship, federal bankruptcy proceeding, state insolvency, supervision or any other similar proceeding)?

Yes ☐ No ☒

- c. Been placed on probation or had a fine levied against it or against its permit, license, or certificate of authority in any civil, criminal, administrative, regulatory, or disciplinary action?

Applicant Company Name : \_\_\_\_\_

NAIC No. \_\_\_\_\_  
FEIN: \_\_\_\_\_

- c. Been placed on probation or had a fine levied against it or against its permit, license, or certificate of authority in any civil, criminal, administrative, regulatory, or disciplinary action?

Yes ☐ No ☒

If the answer to any of the above is yes, please indicate and give details. When responding to questions (b) and (c), affiant should also include any events within twelve (12) months after his or her departure from the entity. \_\_\_\_\_

Note: If an affiant has any doubt about the accuracy of an answer, the question should be answered in the positive and an explanation provided.

Dated and signed this 30 day of August, 20 17 at RED BANK. I hereby certify under penalty of perjury that I am acting on my own behalf and that the foregoing statements are true and correct to the best of my knowledge and belief.

[Signature]  
(Signature of Affiant)

State of: NEW JERSEY County of: OCEAN

The foregoing instrument was acknowledged before me this 30 day of August, 20 17 by \_\_\_\_\_, and:

who is personally known to me, or

who produced the following identification: DRIVERS LICENSE

[SEAL]

[Signature]  
Notary Public  
LINDA ANN STANISLAWSKI  
Printed Notary Name  
9/6/2022  
My Commission Expires

Applicant Company Name : Spirit Commercial Auto RRG NAIC No. \_\_\_\_\_  
FEIN: 45-4643855

**BIOGRAPHICAL AFFIDAVIT  
Supplemental Personal Information**

(Print or Type)

To the extent permitted by law, this affidavit will be kept confidential by the state insurance regulatory authority.

Full name, address, and telephone number of the present or proposed entity under which this biographical statement is being required (Do Not Use Group Names).

Thomas A. Mulligan  
325 Adelpia Road  
Farmingdale, NJ 07727 Phone: (760) 707-7620

1. Affiant's Full Name (Initials Not Acceptable): First: Thomas Middle: Aloysius Last: Mulligan  
IF ANSWER IS "NONE," SO STATE.
2. Have you ever used any other name, including first, middle or last name, nickname, maiden name or aliases?

Yes ☐ No ☒

If yes, give the reason if any, if none indicate such, and provide the full name(s) and date(s) used.

<u>Beginning/Ending</u> <u>Date(s) Used (MM/YY)</u>	<u>Name(s)</u> <u>Specify: First, Middle or Last Name</u>	<u>Reason (If none, indicate such)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Note: Dates provided in response to this question may be approximate. Parties using this form understand that there could be an overlap of dates when transitioning from one name to another.

3. Affiant's Social Security Number: 136-66-6220
4. Government Identification Number if not a U.S. Citizen: N/A
5. Foreign Student ID# (if applicable) : N/A
6. Date of Birth: (MM/DD/YY) : 11/14/62 Place of Birth, City: Red Bank  
State/Province: NJ Country: USA
7. Name of Affiant's Spouse (if applicable): \_\_\_\_\_

Applicant Company Name : \_\_\_\_\_

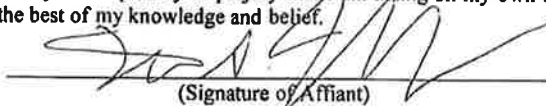
NAIC No. \_\_\_\_\_  
FEIN: \_\_\_\_\_

8. List your residences for the last ten (10) years starting with your current address, giving:

Beginning/Ending Dates (MM/YY)	Address	City	State/ Province	Country	Postal Code
10/98 – Present	325 Adelpia Road	Farmingdale	New Jersey	USA	07727

Note: Dates provided in response to this question may be approximate, except for current address. Parties using this form understand that there could be an overlap of dates when transitioning from one address to another.

Dated and signed this 30 day of AUGUST, 2017 at REB BANK. I hereby certify under penalty of perjury that I am acting on my own behalf and that the foregoing statements are true and correct to the best of my knowledge and belief.

  
(Signature of Affiant)

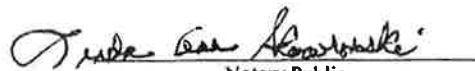
State of: NEW JERSEY County of: OCEAN

The foregoing instrument was acknowledged before me this 30 day of AUGUST, 2017 by \_\_\_\_\_, and:

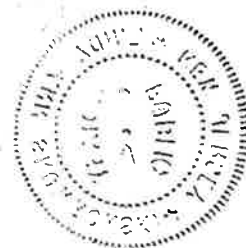
who is personally known to me, or

who produced the following identification: DRIVERS LICENSE

[SEAL]

  
Notary Public  
LINDA ANNA STRONIEWSKI  
Printed Notary Name  
9/6/2022  
My Commission Expires

with regard to the  
the meeting of the  
the day of the



## Tom Surplus Lines Licenses

STATE			License Number	Expiration Date	Copy of License
ALABAMA	Yes		427580	12/31/2016	Yes
ALASKA	yes		100111585	11/14/2016	Yes
ARIZONA	yes		855397	11/30/2017	Yes
ARKANSAS	yes		258389	12/31/2016	yes
CALIFORNIA	yes		OF73424	7/31/2017	Yes
COLORADO	yes		424482	11/30/2016	yes
CONNECTICUT	Yes		2278660	9/30/2016	yes
DELAWARE	yes	renewed 1/8/15	109032	2/28/2015	yes
DISTRICT OF CO.	yes		2858881	11/30/2017	Yes
GEORGIA	Yes		829988	11/30/2017	Yes
HAWAII	Yes		418930	11/18/2017	
IDAHO	yes		448563	11/30/2016	Yes
ILLINOIS	yes		1987027	6/14/2017	Yes
INDIANA	Yes		888887	11/30/2017	Yes
IOWA	yes		1987027	11/30/2016	Yes
KANSAS	yes	renewed 2/3/16	1987027	5/1/2016	
KENTUCKY	yes		781073	11/30/2016	
LOUISIANA	Yes	renewed 10/14/15	488281	11/30/2015	
MAINE	yes		AGN201412		
MARYLAND	yes		156598	11/30/2016	Yes
MASSACHUSETTS	yes	renewed 7/3/16	1986898	10/23/2015	
MICHIGAN	yes	renewed 2/2/16	606623	3/31/2016	
MINNESOTA	Yes		40349735	11/30/2017	
MISSISSIPPI	Yes		10152822	11/30/2016	Yes
MISSOURI	Matl		8328113	9/2/2016	
MONTANA	Yes		757819	11/30/2016	Yes
NEBRASKA	Yes		1987027	11/30/2016	Yes
Nevada	yes		888883	7/1/2019	Yes
NEW HAMPSHIRE	Yes		2159482	11/30/2017	Yes
NEW JERSEY	yes		9247153	11/30/2017	Yes
NEW MEXICO	yes	renewed 3/3/15	353038	4/30/2017	
NEW YORK					
NORTH CAROLINA	yes	Renewed 7/9/14	1987027	8/31/2015	yes
NORTH DAKOTA	Yes		1987027	4/30/2017	Yes
OHIO	yes		993853	1/31/2017	yes
OKLAHOMA	Yes		40055535	11/30/2017	Yes
OREGON	Yes		1987027	11/30/2016	Yes
PENNSYLVANIA	yes		308579	11/30/2017	
RHODE ISLAND	Yes		2188978	11/30/2017	yes
SOUTH CAROLINA	yes	renewed 5/21/14	317128	Perpetual	
SOUTH DAKOTA	yes		40332880	11/30/2017	Yes
TENNESSEE	yes		1021881	11/30/2017	Yes
TEXAS	yes		1853003	8/18/2017	yes
UTAH	yes		448236	11/30/2016	Yes
VERMONT	Yes		898792	3/31/2018	
VIRGINIA	Yes		529482	8/30/2017	Yes
WASHINGTON	Yes		807788	11/14/2017	
WEST VIRGINIA	Yes		1987027	5/31/2017	Yes
WISCONSIN	Yes		2431067	11/30/2016	
WYOMING	yes		244785	11/30/2017	Yes

**EXHIBIT C**  
**Mr. Mulligan's Personal Financial Information**

**John S. Maloney CPA, PC**  
**Certified Public Accountant**  
**271 Plymouth Avenue**  
**Brightwaters, NY 11718**  
**(631) 968 – 2405(H)**  
**(631) 617 – 3990(W)**  
[ismcpapc@optonline.net](mailto:ismcpapc@optonline.net)

August 29, 2017

Nevada Division of Insurance  
1818 College Parkway, Suite 103  
Carson City, NV 89706

Dear Nevada Division of Insurance,

Attached are the unaudited personal financials of Thomas A. Mulligan as of June 30, 2017.

Based upon my review, I am not aware of any material modifications that should be made to the accompanying statements in order for these to be made in conformity with generally accepted accounting principles.

Please call if there are any questions.

Sincerely,

John Maloney

APP0655

**Mr. Thomas Mulligan  
325 Adelpia Road  
Farmingdale, NJ 07727**

June 30, 2017

**Balance Sheet**

**ASSETS**

**Current Assets**

Checking and savings accounts	\$744,000	
Stocks/Bonds	9,800,000	
Total Current Assets		\$10,544,000

**Residences**

Personal residence - 325 Adelpia Road, Farmingdale, NJ (6 acre horse farm, 8 stall barn, 5 bedrooms)	\$1,200,000	
2 Bedroom Condo – 2509 Channelside Drive, Tampa, FL	480,000	
Total Residences		1,680,000

**Investment Properties**

611 West Fort Scott Street, Butler, MO (office building, 11,000 Square feet)		725,000
19 North Bridge Ave, Red Bank, NJ 07701		520,000
One West Main Street, Freehold, NJ (office building/bank)		840,000

**Other Assets**

Personal property	480,000	
County Hall Holdings, LLC- owner of County Hall Insurance Company, Inc.	1,000,000	
Spirit Commercial Auto Association – owner of Spirit Commercial Auto RRG	4,000,000	
Automobiles, net of loans (\$24,000)	126,000	
Total Other Assets		5,606,000

<b>TOTAL ASSETS</b>		<b>\$19,915,000</b>
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**LIABILITIES**

Mortgage	\$0	
Credit Cards	0	

<b>TOTAL LIABILITIES</b>		<b>\$0</b>
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<b>NET WORTH</b>		<b>\$19,915,000</b>
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<b>TOTAL LIABILITIES AND NET WORTH</b>		<b>\$19,915,000</b>
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**Mr. Thomas Mulligan  
325 Adelpia Road  
Farmingdale, NJ 07727**

**Summary of Income**

Rental Income	\$190,536 (annualized)
Income - CTC	284,000 (annualized)
Criterion	174,000 (annualized)

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## EXHIBIT 7

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**FORM B**  
**INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION**  
**STATEMENT**

Filed with the Insurance Commissioner of the State of Nevada

By and on behalf of:

**Spirit Commercial Auto Risk Retention Group, Inc.**

**(Registrant)**

For the Year Ended December 31, 2017

**Date: June 29, 2018**

Individual to Whom Notices and Correspondence

Concerning This Statement Should Be Addressed To:

Elliott M. Kroll, Esq.  
Arent Fox LLP  
1675 Broadway  
New York, NY 10019  
Phone: (212) 484-3987  
E-mail: [elliott.kroll@arentfox.com](mailto:elliott.kroll@arentfox.com)

#### ITEM 1: IDENTITY AND CONTROL OF REGISTRANT

In accordance with the federal Liability Risk Retention Act and Section 695E.110, Nevada Revised Statutes, Registrant is solely owned by the members of its commercial auto association (the "Association"), all members of the Association are insureds of Registrant and all insureds of Registrant are members of the Association.

Registrant, with principal offices located at 9550 S. Eastern Avenue, Suite 253, Las Vegas, Nevada, 89123, is a Nevada domiciled captive insurance company organized pursuant to Chapter 694C, Nevada Revised Statutes, and operating as a risk retention group pursuant to the federal Liability Risk Retention Act and Chapter 695E, Nevada Revised Statutes. It was granted a Certificate of Authority by the Nevada Division of Insurance on February 24, 2012. Registrant is authorized to issue 750,000 of common stock, par value of \$1.00 per share. All authorized shares of Registrant have been issued to and are wholly owned by Spirit Commercial Auto Association (the "Association"), a Nevada domestic non-profit, non-stock corporation organized February 12, 2012 pursuant to Chapter 82, Nevada Revised Statutes.

As indicated by Exhibit "A," Thomas Mulligan ("Mr. Mulligan") is Registrant's ultimate controlling person.

Mr. Mulligan is the owner of 100% of the membership interests in CTC Transportation Ins. Services of MO, LLC ("CTC-MO"), which directly manages Registrant's commercial auto insurance program. CTC-MO has contracted with Registrant to serve as Registrant's program administrator, providing marketing, underwriting and policy issuance services to Registrant's insurance program. CTC Transportation Insurance Services, Inc. ("CTC") previously served as program administrator for Registrant and was integrally involved in Registrant's initial formation and organization. At the request of the Division, CTC assigned its rights and obligations under its program management agreement to CTC-MO.

Matthew Simon, Chief Operating Officer of CTC-MO, serves as a director and President of the Association and also serves as a director and President of Registrant. Daniel George, an independent consultant of CTC, is Treasurer of Registrant. Mr. Simon's NAIC Biographical Affidavit is attached as Exhibit B.

#### ITEM 2: ORGANIZATIONAL CHART

Please see Exhibit A — Organizational Chart

#### ITEM 3: THE ULTIMATE CONTROLLING PERSON(S)

(a) Name:

Thomas Mulligan

(b) Home office/principal office address:

CTC Transportation Insurance Services LLC  
325 Adelphia Road

Farmingdale, NJ 07727

- (c) Principal executive office address:

Same as (b)

- (d) Organizational structure:

Individual

- (e) Principal business:

General agent/producer specializing in transportation insurance.

- (f) Name and address of any person(s) who holds or owns ten percent or more of any class of voting security, the class of the security, the number of shares held of record or known to be beneficially owned, and the percentage of the class held or owned:

Thomas Mulligan  
325 Adelpia Road  
Farmingdale, NJ 07727  
100% ownership of CTC Transportation Services of Missouri LLC

- (g) Pending court proceedings involving a reorganization or liquidation:

None.

#### ITEM 4: BIOGRAPHICAL INFORMATION

##### Name/Address/Occupation

Thomas Mulligan  
CTC Transportation Insurance Services LLC  
325 Adelpia Road  
Farmingdale, NJ 07727  
Occupation: Insurance Executive

##### Offices/Positions Held

Chief Executive Officer

##### Prior Convictions\*

None

\*Last 10 years (other than minor traffic violations)

#### ITEM 5: TRANSACTIONS AND AGREEMENTS

Following is a description of agreements and transactions currently outstanding or which have occurred during the last calendar year between Registrant and its affiliates:

- (a) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the Registrant or of the Registrant by its affiliates:

None.

- (b) Purchases, sales, or exchanges of assets:

None.

- (c) Transactions not in the ordinary course of business:

None.

- (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual or contingent exposure of the Registrant's assets to liability, other than insurance contracts entered into in the ordinary course of Registrant's business:

None.

- (e) All management agreements, service contracts, and cost-sharing arrangements:

None.

- (f) Reinsurance agreements:

Reinsurance agreements in effect at the beginning of the last calendar year remain in effect. Registrant's reinsurance agreement with Wesco Insurance Company was modified on two occasions, retroactive to January 1, 2017. Both modifications were disclosed to and approved by the Division.

- (g) Dividends and other distributions to shareholders:

None.

- (h) Consolidated tax allocation agreements:

None.

- (i) Any pledge of the Registrant's stock or of the stock of any subsidiary or controlling affiliate for a loan made to any member of the insurance holding company system:

None.

#### ITEM 6: LITIGATION OR ADMINISTRATIVE PROCEEDINGS

Following is a brief description of any litigation or administrative proceedings of the following types, either pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject, giving the names of the parties and the court or agency in which such litigation or proceeding is or was pending:

- (1) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party to the litigation or proceeding:

None.

- (2) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate controlling person, including but not limited to bankruptcy, receivership, other or other corporate reorganizations:

None.

ITEM 7: STATEMENTS REGARDING PLAN OR SERIES OF TRANSACTIONS AND  
OVERSIGHT OF CORPORATE GOVERNANCE AND INTERNAL CONTROLS

Transactions entered into since the inception of Registrant in the holding company system are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

The Registrant's board of directors oversees corporate governance and internal controls. Registrant's officers and/or senior management have approved, implemented, and continue to maintain and monitor the corporate governance and internal controls of Registrant.

ITEM 8: FINANCIAL STATEMENTS AND EXHIBITS

The following exhibits are attached to this Registration Statement:

Exhibit A: Organizational Chart

Exhibit B: NAIC Biographical Affidavit of Matthew Simon

Exhibit C: Registrant's 2017 Annual Financial Statement

ITEM 9: FORM C REQUIRED

Form C, Summary of Registration Statement, has been prepared and is filed with this Form B.

ITEM 10: SIGNATURE AND CERTIFICATION

Pursuant to the requirements of Chapter 692C, of the Nevada Revised Statutes, Section 270, and the Nevada Administrative Code, Section 030, the Registrant has caused this annual Registration Statement to be duly signed on its behalf in the City of Butler, and the State of Missouri, on this 29<sup>th</sup> day of June, 2017

**Spirit Commercial Auto Risk Retention Group,  
Inc.**

By: /s/ Matthew Simon  
Matthew Simon  
President

Attest:  
By: /s/ Daniel George  
Daniel George  
Treasurer

### CERTIFICATION

The undersigned deposes and says that he has duly executed the attached annual Registration Statement for the year ending December 31, 2017, for and on behalf of Spirit Commercial Auto Risk Retention Group, Inc.; that he is the President of such Company and that he is authorized to execute and file such instrument. Deponent further says that he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his knowledge information and belief.

By: /s/



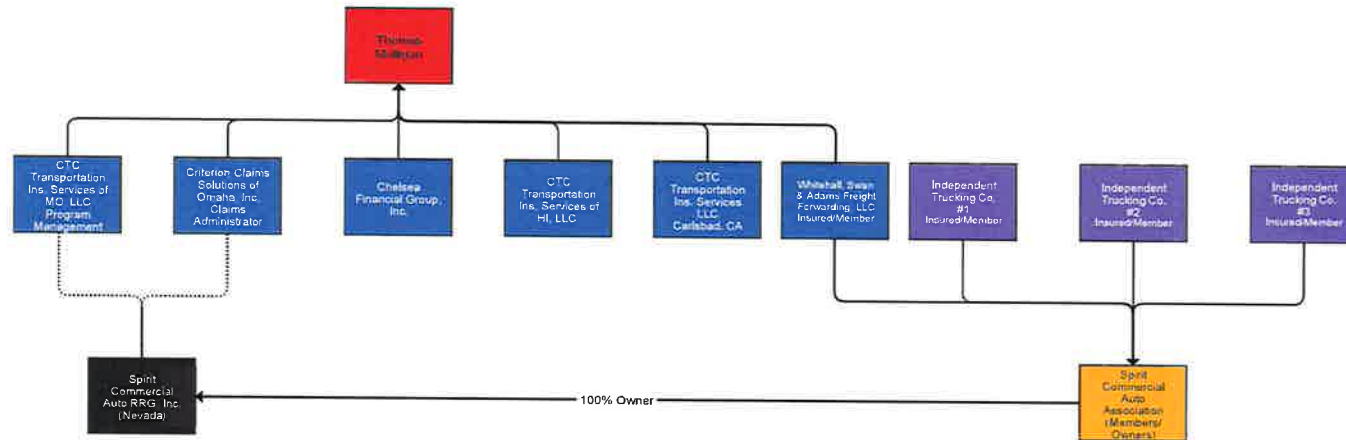
Matthew Simon  
President

**EXHIBIT A**  
**ORGANIZATIONAL CHARTS**

**EXHIBIT B**  
**NAIC BIOGRAPHICAL AFFIDAVIT OF MATTHEW SIMON**

**EXHIBIT C**  
**SPIRIT COMMERCIAL AUTO ASSOCIATION RISK RETENTION GROUP, INC. 2017**  
**FINANCIAL STATEMENT**

**Spirit Commercial Auto Risk Retention Group, Inc.  
Holding Company Group**



**County Hall Insurance Company, Inc.,  
A Risk Retention Group  
Holding Company Group**

