IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Sep 07 2021 05:14 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

STATE OF NEVADA, EX REL. COMMISSIONER OF INSURANCE, BARBARA D. RICHARDSON, IN HE OFFICIAL CAPACITY AS RECEIVER 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, 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

Supreme Court No.: 82701

District Court Case No.: A-20-809963-B

<u>APPENDIX VOLUME I OF I</u>

TO: REAL PARTY IN INTEREST BRENDA GUFFEY'S ANSWER TO PETITION FOR WRIT OF MANDAMUS

Docket 82701 Document 2021-25950

Corporation; CHELSEA FINANCIAL GROUP, INC., a New Jersey Corporation d/b/a 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 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,

<u>REAL PARTY IN INTEREST-BRENDA GUFFEY</u>
<u>APPENDIX</u>
<u>VOLUME I OF I</u>

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<u>APPENDIX VOLUME I:</u>

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that on this 7th day of September, 2021, I did cause a true and correct copy of the above and foregoing **REAL PARTY IN INTEREST BRENDA GUFFEY'S ANSWER TO PETITION FOR WRIT OF MANDAMUS** to be served via electronic filing on the following:

Mark E. Ferrario, Esq. Kara B. Hendricks, Esq. Tami D. Cowden, Esq. **GREENBERG TRAURIG, LLP** 10845 Griffith Peak Drive, Suite 600 Las Vegas, NV 89135 ferrariom@gtlaw.com hendricksk@gtlaw.com cowdent@gtlaw.com *Attorneys for Petitioner*	Sheri M. Thome, Esq. Rachel L. Wise, Esq. Wilson, Elser, Moskowitz, **Edelman & Dicker LLP** 6689 Las Vegas Blvd., Suite 200 Las Vegas, NV 89119 Sheri.thome@wilsonelser.com Rachel.wise@wilsonelser.com
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With a courtesy copy via email (pursuant to March 20, 2020 Order of the Chief Judge of the EDJC that courtesy copies be submitted via email):

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

Via email on **September 7, 2021** to Dept131c@clarkcountycourts.us

/s/ Rosemarie Frederick

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An Employee of
ALVERSON TAYLOR & SANDERS

EXHIBIT “A”

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Steven D. Grierson
CLERK OF THE COURT

CASE NO: A-20-809963-C
Department 8

COMPB

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

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

Case No.
Dept. No.

COMPLAINT

Exempt from Arbitration:
Amount in Excess of $50,000

Business Court Assignment Requested

Nevada Limited Liability Company; FOURGOREAN CAPITAL, LLC, a New Jersey Limited Liability Company; KAPA MANAGEMENT CONSULTING, INC. a New Jersey Corporation; KAPA VENTURES, INC., a New Jersey Corporation; GLOBAL FORWARDING ENTERPRISES LIMITED LIABILITY COMPANY, a New Jersey Limited Liability Company; GLOBAL CAPITAL GROUP, LLC, a New Jersey Limited Liability Company; GLOBAL CONSULTING; NEW TECH CAPITAL, LLC, a Delaware Limited Liability Company; LEXICON INSURANCE MANAGEMENT LLC, a North Carolina Limited Liability Company; ICAP MANAGEMENT SOLUTIONS, LLC, a Vermont Limited Liability Company; SIX ELEVEN LLC, a Missouri Limited Liability Company; 10-4 PREFERRED RISK MANAGERS INC., a Missouri Corporation; IRONJAB LLC, a New Jersey Limited Liability Company; YANINA G. KAPELNIKOV, an individual; IGOR KAPELNIKOV, an individual; QUOTE MY RIG LLC, a New Jersey Limited Liability Company; MATTHEW SIMON, an individual; DANIEL GEORGE, an individual; JOHN MALONEY, an individual; JAMES MARX, an individual; CARLOS TORRES, an individual; VIRGINIA TORRES, an individual; SCOTT McCRAE, an individual; BRENDA GUFFEY, an individual; 195 GLUTEN FREE LLC, a New Jersey Limited Liability Company, DOE INDIVIDUALS I-X; and ROE CORPORATE ENTITIES I-X,

Defendants.

COMES NOW Plaintiff, Barbara D. Richardson in her official capacity as the Permanent Receiver of Spirit Commercial Auto Risk Retention Group, Inc., (“Plaintiff’ or “Receiver”), alleges as follows against Defendants for the benefit of the Receiver and members, enrolled insureds, creditors, of Spirit Commercial Auto Risk Retention Group, Inc. (“Spirit”), by and through her attorneys, GREENBERG TRAURIG, LLP.

INTRODUCTION

1. This complaint arises out of a vast fraudulent enterprise orchestrated by Defendant Thomas Mulligan and others, by which the Defendants operated a multitude of interrelated companies in the insurance service industry for their own benefit and to the detriment of their customers and insureds, including Spirit.

2. Through a web of interrelated companies that wrote insurance policies, provided so-called financing for insureds wishing to purchase insurance, processed insurance premiums, and/or adjusted and paid insurance claims, and collected Spirit's assets (the "Mulligan Enterprise"), Mulligan and his confederates siphoned millions of dollars from Spirit.

3. While Mulligan was the primary architect of his Enterprise, Defendant Pavel Kapelnikov participated heavily in the design and implementation of the scheme and assisted with perpetuating the fraud through his ownership and control of Mulligan Enterprise entities, including a key Spirit services provider, which breached its obligations to Spirit. Mulligan and Pavel Kapelnikov used the many moving pieces of the Mulligan Enterprise to ensure that the entities they owned and controlled enjoyed preferential treatment as creditors by hiding the true and dismal financial condition of Spirit to prolong its operations while they continued to arrogate funds to themselves with a corresponding detriment to Spirit, its policy holders, and its other non-insider creditors.

4. As a result of this scheme, Spirit – an insurance company that insured trucking companies – became financially insolvent and was placed into permanent receivership and subsequently into liquidation, leaving hundreds of unpaid claims and a host of creditors. This complaint seeks to recover, on behalf of Spirit and those affected, the tens of millions of dollars that are owed to Spirit from its principal Mulligan and his cohorts and/or the companies over which he exercised interest and/or control, including companies that were contracted to provide services to Spirit that absconded with virtually all of Spirit's assets and third-party companies to which Spirit's funds were siphoned.

PARTIES AND JURISDICTION

The Plaintiff

5. Plaintiff Barbara D. Richardson is the court-appointed Permanent Receiver of Spirit and also serves

as the Insurance Commissioner for the State of Nevada, and brings this action on behalf of Spirit, Spirit's members, insured enrollees, and creditors.

6. Spirit was a Nevada corporation with its principal place of business in Las Vegas, Nevada. Spirit was an association captive insurance company organized under the laws of Nevada and the Liability Risk Retention Act of 1986.

7. Spirit received its Certificate of Authority on February 24, 2012 and operated under the authority of NRS Chapter 694C.

8. Spirit transacted commercial auto liability insurance business and specialized in serving commercial truck owners.

9. After finally being able to uncover Spirit's true financial condition and hopeless insolvency where it was unable to cure its financial deficiencies, Spirit was placed into receivership. The receivership order was entered in the Eighth Judicial District Court of Clark County, Nevada, Case No. A-19-787325 on February 27, 2019 (the "Receivership Order") and subsequently, on November 6, 2019, Spirit was placed into liquidation.

The Defendants

10. Thomas Mulligan ("Mulligan"), upon information and belief, spearheaded efforts to create the complex scheme of entities and individuals that comprise the Mulligan Enterprise and facilitated the fraudulent conveyance of funds away from Spirit and at relevant times was a manager, officer or director of Spirit; Criterion (CEO); CTC California (Chairman and CEO), CTC Hawaii, and CTC Missouri (CEO). Additionally, Mulligan served as an officer, manager, control party, or director of a multitude of other related companies including Chelsea Financial Group, Chelsea Premium Finance, Lexicon Insurance Management LLC, Whitehall, Swan & Adams Freight Forwarding, Six Eleven LLC, and Fourgorean Capital, LLC and was integrally involved in the operations of Criterion.

11. Defendant CTC Transportation Insurance Services, LLC is a California limited liability company ("CTC California"). CTC California served as Program Administrator for Spirit from 2011 to 2016, underwriting and issuing Spirit's insurance policies and is part of the Mulligan Enterprise. At

relevant times, Mulligan served as its Chairman and Chief Executive Officer.

12. Defendant CTC Transportation Insurance Services of Missouri, LLC is a Missouri limited liability company ("CTC Missouri"). CTC Missouri took over from CTC California as Program Administrator for Spirit, beginning on or about July 2016, and is affiliated with CTC California and is part of the Mulligan Enterprise. At relevant times, Mulligan served as its Chief Executive Officer.

13. Defendant CTC Transportation Insurance Services, LLC of Hawaii is a Hawaii limited liability company ("CTC Hawaii"). CTC Hawaii is affiliated with CTC California and CTC Missouri and is part of the Mulligan Enterprise. (CTC California, CTC Missouri and CTC Hawaii will be referred to collectively herein as "CTC" or the CTC Entities".)

14. Defendant Criterion Claims Solutions of Omaha, Inc. ("Criterion") was a Third-Party Administrator that provided claims administration services to Spirit and is affiliated with the CTC Entities and is part of the Mulligan Enterprise.

15. Defendant Chelsea Financial Group, Inc. is a California Corporation affiliated with Defendant Chelsea Financial Group, Inc., a foreign Corporation registered to do business in Missouri, affiliated with Defendant Chelsea Financial Group, Inc., a New Jersey Corporation, affiliated with Defendant Chelsea Financial Group, Inc., a Delaware Corporation. All of these entities have a unity of ownership, activities, purpose and finances such that it is impossible to distinguish between the same.

16. Defendant Chelsea Premium Finance Corporation is a foreign corporation registered to do business in Pennsylvania that is a part of the Mulligan Enterprise and did business with Spirit and Spirit insureds and may be a "d/b/a" for Chelsea Financial Group, Inc. Upon information and belief, Chelsea Premium Finance unlawfully and fraudulently received Spirit funds from CTC.

17. Due to the unity of ownership, activities, purpose and duties, between each Chelsea Financial Group Inc. (CA, MO, NJ and DE) and Chelsea Premium Finance the entities will be referred to herein as "Chelsea Financial".

18. Chelsea Financial was, at relevant times, a company specializing in financing insurance premiums

that is part of the Mulligan Enterprise and is owned and operated by Mulligan and Defendant Pavel Kapelnikov and is affiliated with the CTC Entities and Criterion and was utilized to collect premiums on Spirit's behalf from Spirit insureds and on behalf of other insurance companies, some of which were provided to CTC. Chelsea Financial failed, however, to pay all Spirit premium and financial funds owed to CTC and/or Spirit and it participated in an active scheme that led to misleading insurance regulators and insureds about Spirit's true financial condition and operations.

19. Defendant Chelsea Holding Company, LLC, is Nevada Corporation controlled by Mulligan and, on information and belief, acts as holding Company for all or some of the Chelsea Financial entities identified herein.

20. Defendant Chelsea Holdings, LLC, is Nevada Corporation controlled by Mulligan and, on information and belief, acts as a holding Company for all or some of the Chelsea Financial entities identified herein.

21. Due to the unity of ownership, activities, purpose and duties between Chelsea Holding Company, LLC, Chelsea Holdings, LLC, and the Chelsea Financial entities, references to "Chelsea Financial" shall also refer to Chelsea Holding Company, LLC, and Chelsea Holdings, LLC.

22. Defendant Six Eleven LLC was, at relevant times, an LLC organized by Mulligan and, on information and belief, used as a shell company to further Mulligan's and others' personal financial interest and to appropriate money owed to Spirit.

23. Defendant 10-4 Preferred Risk Managers Inc. was, at relevant times, a Missouri Corporation organized by Mulligan and, on information and belief, controlled and operated by Mulligan for his benefit. On information and belief, 10-4 Preferred is a "sister" company to CTC that provides similar services.

24. Defendant Ironjab, LLC, was, at relevant times, an LLC owned and/or controlled by Igor Kapelnikov.

25. Defendant Fourgorean Capital, LLC, was, at relevant times, an LLC organized by Mulligan and non-party Jose Mojica, and on information and belief, used as a shell company to further Mulligan's and others' personal financial interest and to siphon money from CTC that was owed to Spirit.

26. Defendant Kapa Management Consulting Inc. was, at relevant times, a corporation founded by Pavel Kapelnikov and, on information and belief, used as a shell company to further Pavel Kapelnikov's and others' personal financial interests and to siphon funds from CTC that was owed to Spirit.

27. Defendant Global Forwarding Enterprises Limited Liability Company was, at relevant times, a purported software development company owned by Mulligan and Pavel Kapelnikov and operated by Pavel Kapelnikov and his brother, Igor Kapelnikov, which was utilized to expropriate money from CTC that was owed to Spirit.

28. Defendant Global Capital Group LLC was, at relevant times, a shell company formed with the purpose of arrogating money from CTC that was owed to Spirit and purportedly lent CTC funds (without documentation), which were apparently utilized to make payments to Defendant Lexicon Insurance Management LLC.

29. Defendant New Tech Capital LLC, is a Delaware limited liability company that upon information and belief was formed by Mulligan as an investment vehicle by which Spirit funds were purportedly invested in companies such as Iterative Capital L.P. with no return or other consideration provided to Spirit.

30. Defendant Lexicon Insurance Management LLC ("Lexicon") is a North Carolina limited liability company that provides management services for insurance companies, which is owned and controlled by Mulligan and Defendant Daniel George and served as Spirit's Risk Retention Group Manager.

31. On information and belief, Defendant Global Consulting is a d/b/a for Defendant Global Forwarding Enterprises or Defendant Global Capital Group, that upon information and belief unlawfully and fraudulently received Spirit funds from CTC.

32. Defendant ICAP Management Solutions, LLC is a Vermont limited liability company that upon information and belief unlawfully and fraudulently received Spirit funds from CTC, which were funneled to Defendant Daniel George.

33. Defendant Yanina G. Kapelnikov ("Y. Kapelnikov"), is an individual that upon information and

belief unlawfully and fraudulently received Spirit funds from CTC at the direction of Mulligan and/or Pavel Kapelnikov.

34. Defendant Kapa Ventures, Inc. is a New Jersey Corporation that upon information and belief unlawfully and fraudulently received Spirit funds from CTC.

35. Defendant Quote My Rig LLC is a New Jersey limited liability company that upon information and belief unlawfully and fraudulently received Spirit funds from CTC. Mulligan owned and/or controlled Quote My Rig and used it as a subproducer for Spirit, from which Mulligan took commissions on Spirit policies.

36. Defendant Matthew Simon ("Simon") was, at relevant times, President of and a director of Spirit and Chief Operating Officer of CTC California. Simon has held many executive positions at CTC and its many related entities. Due to Simon's holding several executive management roles at CTC at relevant times, as well as his role as a director of Spirit, Simon was intimately involved in, actively participated in, and was knowledgeable of "both sides of the transaction" with respect to the relationship and financial interactions between CTC and Spirit. Mr. Simon also participated in the unauthorized writing of insurance business by CTC on behalf of Spirit in Mexico to cover Mexican insureds.

37. Defendant Daniel George ("George") was a director and officer of Spirit – holding the positions of Treasurer and Secretary at various relevant points in time, President of Lexicon Insurance Management LLC, and an Executive Vice President of CTC California, who also served as Spirit's Risk Retention Group Manager by and through Lexicon Management. Dan George presided over meetings of Spirit's Board of Directors as its Chair, despite on information and belief never holding the title of Chairman or President. George, upon information and belief, was also responsible for putting "processes" and internal controls in place at CTC, meant to ensure cash and funds received from third parties were properly accounted for, recorded, handled, and distributed when held in trust by CTC and owns 100% of Defendant ICAP Management Solutions. George actively participated in misrepresenting financials, financial transactions, whether insureds were having policies premium financed and resulting funds paid to Spirit for viable insurance, and failed to

report and disclose material and improper financial transactions that contributed to substantial losses for Spirit.

38. Defendant John Maloney ("Maloney") was an outside accountant for CTC and, upon information and belief, was responsible for, among other things, filing its 2015, 2016, 2017, and 2018 federal tax returns, in which CTC claimed significant losses. He stopped working for CTC in 2018 after CTC's expenses "went through the roof." Maloney was also a director of Spirit at relevant times.

39. Defendants James Marx ("Marx"), Carlos Torres ("C. Torres"), and Virginia Torres ("V. Torres") were, at relevant times, directors of Spirit with duties and obligations to the Company and its insureds.

40. Defendant Pavel Kapelnikov ("P. Kapelnikov") was, at relevant times, CFO, President, and/or Secretary of Chelsea Financial Group, President of Global Forwarding Enterprises, LLC and/or Global Forwarding Inc., and an officer and/or director at Kapa Management Consulting and Kapa Ventures and had an ownership interest in Chelsea Premium Finance. On information and belief, Pavel Kapelnikov was also an officer of Global Capital Group, LLC. On information and belief, Pavel Kapelnikov is also a managing member, owner, and control party of New Tech Capital, LLC.

41. On information and belief, Defendant Igor Kapelnikov ("I. Kapelnikov") was, at relevant times, Chief Technology Officer of CTC California, and CEO of Global Forwarding Enterprises and/or Global Forwarding Inc. and upon information and belief was paid Spirit funds by CTC for purported expense reimbursements for which documentation is lacking.

42. Defendant Scott McCrae ("McCrae") was an Executive Vice-President of CTC Transportation Services from August 2015 through January of 2019 and in January of 2019 became the became the President of CTC Transportation Services and upon information and belief likely had a leading role with other CTC entities. Mr. McCrae was also the President of Criterion. Due to McCrae holding several executive management roles with various entities inside the Mulligan Enterprise, McCrae was intimately involved in, participated in, and was knowledgeable of "both sides of the transaction" and interactions with respect to dealings that led to Spirit's demise as described herein. These same executive management roles in the various entities comprising the Mulligan Enterprise

created inherent conflicts of interest and inconsistent fiduciary duties among the entities he managed.

43. Defendant Brenda Guffey ("Guffey") was, at relevant times, the President of Spirit and a CTC Employee. Ms. Guffey was intimately involved in, actively participated in, and was knowledgeable of the management and affairs of Spirit, including its failure to collect premiums due to it, its unrealistic and material under-setting of claims reserves, payment of claims when Spirit did not receive premiums for the very policies on which such claims were paid, unauthorized writing of insurance business by Spirit in Mexico to cover Mexican insureds that led to large Spirit losses, and its and/or its agents' material misstatements to its policyholders, auditors, and the Nevada Division of Insurance.

44. Defendant 195 Gluten Free LLC, is a New Jersey limited liability company that upon information and belief is owned and controlled by Mulligan and unlawfully and fraudulently received Spirit funds from CTC.

45. According to CTC California's website, it is the parent company of the other CTC Entities, as well as Chelsea and Criterion with Spirit and County Hall Insurance Company ("County Hall") in the same family group (on information and belief, CTC California is listed as CTC Transportation in the chart).[1]

46. Moreover, CTC Missouri, CTC Hawaii, CTC California, Spirit and County Hall Insurance Company ("County Hall") at relevant times were an insurance holding company system that was controlled by Mulligan and was/is subject to oversight by both the Nevada Division of Insurance and the North Carolina Department of Insurance.

47. DOE INDIVIDUALS I-XX and ROE ENTITIES I-XX are individuals or business entities who participated in the acts detailed below, and are responsible and liable to Plaintiff for their actions either in their own capacity or as alter egos of other defendants and/or were used as conduits to siphon amounts owed to Spirit away from Spirit. The true names and capacities of those parties sued as DOES I through XX and ROE Entities I through XX, inclusive, are presently unknown to

[1] On information and belief, Mulligan was also an officer or director of the companies listed as Chelsea and Lexicon in the diagram attached as Exhibit 1.

Plaintiff, which therefore sues said parties by such fictitious names. When the true names and capacities of such parties become known, Plaintiff will seek leave of Court to amend this Complaint to replace one or more "Doe" and/or "Roe" parties with the true name, identity and capacity of each additional party to this action, together with the proper charges and allegations, and to authorize service of process on such additional parties.

48. On information and belief, and as further outlined herein, one or more individual defendants or defendant entities is the alter ego of one or more of the defendant entities, and is/are therefore liable for any judgment against the alter ego.

Jurisdiction

49. Clark County, Nevada, is the proper venue and jurisdiction for the resolution of the claims contained herein, as the injury to Spirit occurred in Clark County, Nevada.

50. Further, venue and jurisdiction are vested in this Court under NRS 696B.010, *et seq.*, including NRS 696B.190 & 696B.200.

51. Further, an order was entered on February 27, 2019 by the Eighth Judicial District Court, Clark County, Nevada, Case No. A-19-787325, which gives the Receiver the authority to institute and prosecute lawsuits as deemed appropriate herein.

FACTUAL ALLEGATIONS

Background Information Regarding Spirit

52. In 2012, Spirit was granted a Certificate of Authority by the Nevada Division of Insurance as an "Association Captive – RRG." Spirit transacted commercial auto liability insurance business, specialized in serving commercial truck owners and was subject to Nevada insurance laws and regulations.

53. For instance, Spirit was subject to a three-year full-scope financial examination as of December 31, 2016 pursuant to NRS 694C.410 by the Nevada Division of Insurance ("Division"). As explained further below, the Division questioned certain of Spirit's financial results during that examination, but Spirit repeatedly misled the Division, including by misrepresenting the strength of its reserves and other financial information. Based on these misrepresentations, the Division extended the

examination to December 31, 2017. It was not until the results of an Examining Actuary were received later the Division began to be aware of the depth of financial trouble Spirit was in. Even then, Spirit's efforts to conceal the depth of its financial problems and management misconduct severely hindered the Division's ability to ascertain and act upon the company's true state of affairs.

54. Also, pursuant to NRS 692C.363, Spirit was required to obtain preapproval from the Division prior to entering into certain transactions with an affiliate including certain sale, purchase exchange, loan or extension of credit, pooling agreements, management agreements and material transactions, which it did not do. Instead, Spirit misrepresented to the Division the nature of a letter of credit it issued to the Division in the amount of $3,000,000. Spirit's funds were used for the letter of credit, but Spirit did not inform the Division of this material fact.

55. Prior to being granted a Certificate of Authority, in November of 2011, Spirit entered into a five-year Program Administrator Agreement with Defendant CTC California. The agreement provided that CTC California would act as its Program Administrator. Subsequently, in 2016, CTC California assigned the Agreement to CTC Missouri, and on July 1, 2016, CTC Missouri entered into an agreement similar to the Program Administrator Agreement referenced above. The July 1, 2016 agreement will be referred to herein as the "CTC Agreement."

56. Defendants CTC Missouri, CTC California and/or CTC Hawaii upon information and belief are all related entities with unity of interest and ownership and are affiliates of Spirit.

57. In 2011, Spirit entered into a claims administration agreement with Criterion (the "Criterion Agreement"), under which Criterion would provide claims management services to Spirit. Claims were to be investigated in accordance with applicable law and the terms of the parties' agreement. Criterion was to establish loss reserves, settle claims, and issue loss payments, maintaining a separate file for each loss. Upon information and belief, Criterion shared unity of interest and ownership with Spirit and was an affiliate of Spirit as well as an affiliate of the CTC Entities.

58. Chelsea Financial entered into agreements with entities desiring to purchase insurance from Spirit and although Chelsea Financial self identifies as a premium finance company, it did not provide premium financing for Spirit and instead collected premiums on Spirit's behalf on an installment

basis known as the "voucher system." Chelsea Financial was then to provide premiums due to Spirit to CTC on Spirit's behalf. Chelsea Financial led Spirit insureds to believe that it was funding and financing the insurance premiums that such insureds owed to Spirit, which was a false and misleading statement. Chelsea Financial did not fund or finance insurance premiums for Spirit's insureds, despite representations to the contrary. Chelsea Financial also misled Spirit policyholders into believing that it was paying all of their collected premium payments to Spirit, which was also untrue.

59. CTC did not track and/or document funds it received from Chelsea Financial on a per policy basis and then comingled such funds with those it collected on behalf of other insurance companies in its general operating account, obfuscating the true source and beneficiary of the funds and exposing Spirit to loss exposure for policies for which CTC may not have collected premiums through Chelsea Financial.

60. Upon information and belief, in other instances Chelsea Financial collected premium funds from Spirit insureds, wrongfully failed to remit those collected premium funds to CTC or Spirit, and worked actively in concert with CTC and its management, Mulligan and/or Pavel Kapelnikov, and Spirit management to cover up that Chelsea Financial had collected Spirit's premium funds but failed to remit them over to CTC or Spirit.

61. Similarly, upon information and belief, Thomas Mulligan, Pavel Kapelnikov, CTC and Spirit—and their management—worked in concert together to conceal that Chelsea Financial had collected premium funds and to implement that CTC would not cancel Spirit's insurance policies in such instances. The concealment enabled Chelsea Financial, Thomas Mulligan and Pavel Kapelnikov to loot Spirit of its premium money—and caused further losses to Spirit because it paid claims on insurance policies when it did not receive all premium payments for the policies—all while leaving Spirit policyholders to believe that their premium payments were being made to purchase viable insurance with Spirit.

62. Furthermore, the comingling of CTC funds obscured Defendants' efforts to use CTC as a personal "piggy bank" to provide preferential payments to Mulligan, the Kapelnikovs, and George and

entities affiliated with those Defendants. These preferential payments allowed insiders to be paid while Spirit suffered the losses those individuals and entities would otherwise suffer once CTC had been sucked dry and became unable to pay Spirit the money it is owed, with Mulligan, the Kapelnikovs, and George being the ultimate beneficiaries.

63. George, Guffey, Simon, McCrae and other management defendants of CTC and Spirit continued to conceal the true financial condition of Spirit, its misrepresentations to policyholders, and the wrongful financial transactions of Spirit and CTC so that they could continue Spirit and CTC in business and earn management or consultant pay.

Events Leading Up to the Discovery of Defendants' Misconduct

64. Spirit transacted commercial auto liability insurance for several years. As noted above, Spirit was subject to a three-year full-scope financial examination as of December 31, 2016 pursuant to NRS 694C.410 by the Division.

65. During that examination, the Division became concerned that Spirit was under-reserving claims by and through and/or at the direction of its third-party administrator Criterion, which operated under Mulligan's control as a part of his Enterprise, which was a serious risk.

66. Using an Examining Actuary, an independent actuarial review was conducted, the results of which suggested a significant deficiency as of December 31, 2016 in the reserves set to pay Spirit claims.

67. Spirit did not accept the findings, maintaining that 2016 was a year in which reserves were strengthened, and improvements were made, which would be reflected in 2017 results. Accordingly, the Division extended the examination to December 31, 2017.

68. However, the Examining Actuary's follow-up report on the extended examination revealed that Spirit was in extreme financial trouble in December of both 2016 and 2017. Likewise, Spirit's own Annual Statement as of December 31, 2017, filed with the Division, also contained numbers that led the Division to believe that Spirit was insolvent.

69. On June 1, 2018, Spirit's former[2] external auditor provided the Division with notice of material misstatements in Spirit's 2017 Annual Statement financial reporting. This included concerns

[2] "Former" is used because the auditor resigned thereafter for loss of independence, brought about by Spirit's then outside legal counsel, who threatened litigation if the auditor were to report his findings to the Division.

regarding deferred tax assets, contributed capital, loss reserves, bad debts and poor collection history, failure to collect premiums amounts due from CTC, changes in capital structure, overpayments to program managers (CTC), failure by CTC to make payments on recorded assets, concerns regarding bad debt and premium taxes, concerns regarding the cancellation dates of insurance policies and adjustment of premiums, and a failure by Spirit management to appropriately respond to auditor inquiries.

70. On June 8, 2018, Spirit was issued a confidential letter to cure deficiencies (the "Corrective Letter"), and was given a set amount of time to cure the items in the Corrective Letter which included providing the Division a plan of remediation to correct a $4.5 million reserve deficiency that was identified in the examination process; a plan of remediation to accomplish the recovery of fees paid by Spirit to CTC that were in excess of the contractual requirements; and to provide a plan of remediation to correct and replace $7.8 million in deferred tax assets with adequate investments.

71. On or about June 30, 2018, Spirit stopped writing new and renewal insurance business.

72. On August 1, 2018, the Division issued a confidential order of corrective action, ordered Spirit to, among other things: 1) secure an infusion of new Capital & Surplus of $20,803,000; 2) provide actuarial attestations if the Capital & Surplus infusion included any paid-in Capital & Surplus from the 2018 policy proceeds; and 3) revise its annual statements as of December 31, 2017 to correct material errors identified in the auditor's notice.

73. In an effort to salvage operations, Spirit proposed a loss portfolio transfer ("LPT") which was approved by the Division on August 7, 2018. The LPT was between Spirit and Accredited Surety and Casualty Company ("Accredited"), and was approved by the Division based on the understanding that Spirit had the finances to make the required payments and could fulfill the terms and conditions of the LPT. The LPT was meant to remove Spirit's liabilities and render it solvent. However, a mere four days after entering the LPT, Spirit requested significant changes. Even under the revised LPT, however, Spirit was unable to timely make its payments. Although the Division attempted to work with Spirit to approve a further amendment, the further-amended LPT was never finalized.

74. Throughout the process of seeking approval from the division for the LPT, the Revised LPT, the terms of which Spirit eventually violated resulting in a default, and the proposed Further-Revised LPT (collectively "LPT Proposals"), Spirit and CTC continually failed to provide the Division with timely, accurate, and complete information regarding the terms of the LPT Proposals, Spirit's ability to meet its payment obligations under the terms of the LPT Proposals and/or its plans for acquiring sufficient funds, or even why and how the LPT Proposals would resolve the material concerns raised by the Division regarding Spirit's previously misstated financial reports, its inability to pay its policyholder's claims, its runaway losses and, ultimately, its massive insolvency.

75. These failures to supply the Division with accurate and complete information, which, on information and belief, were intentionally orchestrated by Mulligan and carried out by Spirit and CTC management, were designed to hide the depth of financial problems at Spirit and CTC so that Spirit and CTC could continue to operate for the ultimate benefit of Defendants Mulligan, the Kapelnikovs, Simon, Guffey, McCrae and George at a detriment to Spirit and its policyholders.

76. On February 11, 2019, Accredited gave notice it was terminating the LPT pursuant to the Special Termination provision of the LPT for failure to pay premium owed under the LPT, which included a 15-day notice provision, making the termination effective on February 27, 2019.

Spirit Discloses a 27.6 Million-Dollar Receivable from CTC

77. Meanwhile, on October 1, 2018, Spirit filed its June 30, 2018 quarterly statement. For the first time, Spirit listed a $27.6 million-dollar receivable from affiliates.

78. Unbeknownst to the Division, this receivable was belatedly memorialized in a purported unsecured promissory note between Spirit and CTC, signed on or about August 2018, and provided for payment on the note by August 31, 2019. On information and belief, this note was signed by Mulligan on behalf of CTC Missouri and Simon on behalf of Spirit. The note was never submitted to and approved by the Division as an affiliated material transaction. This note is not valid, but instead was created after the fact as a ruse to try and legitimize the loss of Spirit's missing money.

79. This material affiliate transaction was not preapproved pursuant to NRS 692C.363, and no completed Form D was submitted to or approved by, the Division.

80. When asked about this massive receivable on October 2, 2018, then-outside legal counsel for Spirit informed the Division on October 4, 2018 that "there was no loan," but instead these amounts are "due from CTC in the ordinary course of business under its existing (approved) Program Administrator Agreement."

81. Counsel went on to state that he had suggested a note because "it would be sensible for CTC to provide Spirit with additional documentation in a tangible form so that there could be no question of the former's commitment to compliant payment to the latter. My idea for this Note had nothing to do with the LPT."

82. On November 2, 2018, then-outside legal counsel for Spirit represented something different about the $27.6 million-dollar receivable: that $24 million was "LPT Settlement Due 10/1/18" and that $3.6 million was "Commissions Repayment Balance reclassified to Due from Affiliate." These two explanations are inherently contradictory.

83. The $27.6 million-dollar receivable remained on the books for the September 30, 2018 statement, which was signed on November 1, 2018 by Messrs. Simon, Maloney, and George.

84. To date, the $27.6 million has not been paid to Spirit.

85. After extensive forensic work by Independent Auditors, the amount owed to Spirit by CTC is many millions higher than the $27.6 million amount, yet this was never disclosed to the Division by George, Simon, Guffey, McCrae, Lexicon, or other Spirit management defendants.

CTC's Duties Owed to Spirit under the CTC Agreement

86. Under the CTC Agreement, CTC, the Program Administrator, was appointed the agent of Spirit for certain purposes including "[t]o 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…"; "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 [Spirit]; and to adjust and pay certain claims."

87. CTC was also 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.

88. CTC was obligated to hold in trust all funds received by it in connection with the CTC Agreement as a fiduciary to Spirit.

89. The CTC Agreement establishes an agency relationship between Spirit, as principal, and CTC as its agent and counterparty; given the Court's February 27, 2019, Receivership Order, and the Receiver's election of the District Court of Clark County as the exclusive jurisdiction of delinquency proceedings under NRS 696B.010 to 696B.565, inclusive, this Court is the exclusive venue for resolution of any dispute between Spirit and CTC arising out of the CTC Agreement.

90. CTC breached its duties and obligations to Spirit.

Spirit's Certificate of Authority is Suspended, and Spirit is Placed in Receivership

91. Spirit's Certificate of Authority was suspended with the consent of Spirit on October 19, 2018, after Spirit had already sustained incredible losses due to the conduct of Defendants.

92. Ultimately, the Receiver moved to place Spirit into receivership. The Receivership Order was entered on February 27, 2019, appointing the Nevada Insurance Commissioner, Barbara D. Richardson as the Permanent Receiver of Spirit.

93. CTC and Spirit management vigorously contested the placement of Spirit into receivership, claiming that Spirit was not insolvent, could be run off as a solvent insurer, reinsurance of Spirit was valid and would fully pay all claims, and with no mention of prior fraudulent activities and the inability of CTC to pay tens of millions of balances to Spirit for which Spirit's solvency was very dependent. CTC and Spirit management vigorously contested the appointment of a Receiver until the Court finally placed Spirit into receivership following the termination of reinsurance by Spirit's reinsurer.

94. On March 18, 2019, Defendant Mulligan resigned – effective immediately – from all positions he held as an officer, director, or manager of those Mulligan Enterprise entities directly affiliated with Spirit, including: Spirit; Chelsea California; Chelsea New Jersey; Chelsea Holding Company; CTC

California; CTC Hawaii; CTC Missouri; Criterion; Lexicon; and Whitehall, Swan & Adams Freight Forwarding LLC.

95. The Receiver appointed the law firm of Cantilo & Bennett, L.L.P., as Special Deputy Receiver.

96. After Spirit entered receivership, the Special Deputy Receiver demanded that all balances due to Spirit by CTC be repaid immediately. However, to this date, CTC has not paid Spirit or the Receiver the $27.6 million dollars that is owed pursuant to the Agreement, and it is now apparent that CTC owes Spirit an amount that exceeds $40 million dollars.

97. After that appointment of the Receiver, information was obtained that indicates Spirit issued unauthorized and unapproved cross-border policies in Mexico which purported to insure trucking risks for Mexican insureds which were not disclosed to the Division.

98. In light of the Receiver's duties to conserve and preserve the affairs of Spirit, Plaintiff has brought the instant action in part to recover the tens of millions of dollars due and owing to Spirit from Defendant CTC.

99. Additionally, as detailed herein, events after the Receivership have uncovered millions of additional dollars owed to Spirit by CTC and the other Defendants who absconded with funds owed to Spirit, discovered in part as a result of an audit of CTC records conducted by Independent Forensic Auditors.[3]

CTC Fails to Collect and Pay to Spirit Premiums for Policies Issued

100. CTC was responsible for collecting and paying to Spirit all premiums due on the business written pursuant to the CTC Agreement. Failure to collect premiums due on business written pursuant to the CTC Agreement was not a defense under the CTC Agreement to payment by CTC to Spirit.

101. Based on the review of CTC's books and records by Independent Auditors, the amount owed to Spirit for written insurance premiums due and unpaid is $30,839,150.

102. CTC was obligated to transfer all amounts due to Spirit monthly. Fifteen days after the close

[3] CTC and Spirit co-retained an Independent Forensic Auditor to evaluate CTC's financial records and, among other things, quantify the amount of money owed to Spirit from CTC (the "Independent Auditor").

of each calendar month, CTC was to submit to Spirit a report listing gross premiums written and collected for all policies issued in the previous accounting month, less return premiums and cancellations, reconciliations, and commissions and fees. CTC did not do so.

103. If CTC became indebted to Spirit, Spirit had the right to offset commissions against any indebtedness.

104. CTC was obligated to keep accurate books and records, and permit inspection of the same by Spirit at any reasonable time, including after termination of the CTC Agreement.

105. Only Spirit had the right of offset.

106. CTC was to initially be paid 23.5% commission on all policies written under the CTC Agreement. However, two addendums signed on September 30, 2016 reduced this amount to 20%: the first (retroactive) for the timeframe between July 1, 2014 – June 30, 2016, and the second (retroactive and prospective) commencing July 1, 2016. The amount of overpayment was to be repaid in monthly installments.

107. Spirit was not paid back for overpayments taken by CTC under the guise of commission payments which resulted in an additional deficit of $3,077,911 which is still due and owing to Spirit, in addition to amounts owed for written insurance premiums.

108. On December 30, 2016, the parties to the CTC Agreement amended the CTC Agreement to provide for what would occur in the event of receivership: a) CTC would have no right to terminate the CTC Agreement; b) Spirit's rights under the CTC Agreement would extend to the Receiver; c) All books and records of Spirit would be made available upon request; and d) CTC would continue to maintain systems, programs, or other infrastructure related to the CTC Agreement and make them available to the Receiver.

109. The December 30, 2016 addendum also specified that Spirit shall not advance any funds to CTC except to pay for services as specifically defined in the CTC Agreement.

110. Despite the numerous contractual provisions meant to ensure that CTC does not become indebted to Spirit, Spirit is owed at least $40 million dollars from CTC.

111.

CTC Retroactively Reclassifies Uncollected Premiums

112. CTC could not keep up with all the monthly billing and collection of premiums for insured accounts—and the resulting cancellations that were needed for those insureds failing to pay premiums timely. As a result, insureds remained on the books that should have been cancelled for which CTC never collected premiums – and Spirit was never paid all the insurance premiums—and got saddled with losses that it should never have paid if the insurance policies were properly cancelled for nonpayment of premiums.[4]

113. Upon information and belief, Mulligan and George instructed employees of CTC and/or Spirit, such as Simon and Guffey, not to cancel insurance policies, even when premiums were delinquent and/or not being paid by the insureds.

114. Mulligan and CTC's decision not to cancel Spirit policies was intended to line their own pockets and to protect CTC as cancelling the policies would require CTC to return commissions on said policies to Spirit and funds were not available to pay Spirit such amounts. This failure to act materially harmed Spirit by exposing it to potential claim liability for policies on which it was not receiving a premium.

115. Worse, CTC tried to cover up its failure to collect on policies so to avoid its liability to Spirit for the uncollected premiums under the CTC Agreement.

116. First, CTC classified $5,067,679 in uncollected premium with transaction type "FPA" in its QuickBase system. ("FPA" is insurance terminology that generally refers to "final premium audit" endorsement, an endorsement typically issued by an insurer following the expiration of a policy to "true up" premiums paid by a policyholder during the policy period that were less than or in excess of the policyholder's actual premium liability. For instance, if a policyholder expects to have two employees covered by a policy during its term, but, employs three insureds, an endorsement would issue requiring additional premium to be paid.)

117. However, CTC's "FPA" classifications had nothing to do with adjusting Spirit's policyholders

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[4] The amount due from CTC is materially greater when considering that CTC did not timely terminate Spirit insurance policies for nonpayment of insurance premiums. Spirit incurred at least $9,305,233 of claim losses because CTC did not timely terminate Spirit's insurance policies for nonpayment of premiums by insureds.

premium charges and were nothing more than an accounting artifice utilized to "write-off" uncollected balances, avoid liability to Spirit for the unpaid premiums due under the terms of the CTC Agreement, and by which CTC retained commissions to which it was not entitled.

118. Spirit is due approximately $4,054,143 in uncollected premiums incorrectly classified as "FPA" by CTC.

119. CTC also engaged in a practice of retroactively cancelling Spirit policies long after the expiration of the policies, in an apparent effort to curb its liability for uncollected premiums during the time in which the policy had been effective.

120. Specifically, certain FPA classifications were made by CTC to retroactively cancel Spirit policies to earlier cancellation dates, even though Spirit had not timely notified insureds of terminated insurance coverages that would justify the earlier policy cancellation dates, and the artifice used for these cancellations was done so that CTC could avoid paying uncollected premiums to Spirit. Worse yet, premium money went uncollected by CTC, the Spirit insurance policies were not terminated timely by CTC for nonpayment of premiums, and Spirit paid claim losses during the time when these policies should have been cancelled for nonpayment of premium.

121. The Independent Auditors identified approximately 600 transactions in which CTC issued "Cancellation Endorsements" more than 180 days after the "effective" date of the cancellation, reducing premium owed to Spirit by CTC of approximately $5,443,229.

122. Of those 600 Cancellation Endorsements, 468 endorsements were bound more than 180 days after the expiration of the supposedly canceled policy and the net reduction to premium was $2,986,901.

123. Under NRS 687B.320, Spirit (and CTC, as its agent) are required to give at least ten days' notice to the policyholder before cancelling a policy for failure to pay a premium when due.

124. On information and belief, CTC did not provide Spirit's policyholders with the statutorily required ten-day notice, rendering the cancellation endorsements unlawful and ineffective.

125. Accordingly, Spirit was liable for losses on these policies even though premiums were not collected.

126. Spirit did not disclose these accounting improprieties and financial misrepresentations to the Division after it retroactively altered its books.

127. CTC breached its obligations to Spirit by failing in its responsibility to collect premiums and remit the premiums to Spirit, instead of retroactively "canceling" policies after Spirit took on the risk of administering the policies for CTC's own benefit.

128. Spirit's claims against CTC are properly before this Court pursuant to NRS 696B.190 & 696B.200.

Mulligan Dominated and Controlled the Affairs of CTC and Spirit and other Related Entities

129. As explained above, Mulligan owned and controlled both CTC and Spirit and other related entities such as Spirit's management company, Lexicon.

130. CTC was months behind on processing endorsements for Spirit, yet could transfer millions of dollars to individuals and entities affiliated with Mulligan and his Enterprise as a direct result of the outsized influence he exercised over the control, affairs, finances, management and employees of Spirit, CTC, Lexicon, and the rest of the Mulligan Enterprise.

131. On information and belief, Mulligan and CTC never intended to follow the CTC Agreement, which instead served as a cover for Defendant Mulligan and other insiders to move money between individuals and entities he was affiliated with and/or controlled, treating funds in CTC's operational account as a "piggy bank" for Mulligan and the entities comprising the Mulligan Enterprise, even when those funds should have been held in a trust account for the benefit of CTC's insured customers.

132. Indeed, CTC operated with limited financial controls and functioned with limited financial oversight, allowing its management, directors, and agents, including Mulligan, Pavel Kapelnikov, Igor Kapelnikov, George, Guffey, McCrae, Simon, and Lexicon to use their undue influence to override controls and use technology systems with limited internal controls and a lack of financial "checks and balances" that might otherwise have prevented management override of critical fiduciary constraints.

133. For instance, Mulligan was obsessed with increasing CTC's premium volume by increasing

Spirit policy underwriting regardless of whether a policy in question was a bad insurance risk that presented unacceptable loss exposure.

134. Upon information and belief, Mulligan would rebuff efforts by employees like Defendant Guffey, Spirit's former president. Moreover, when Guffey, in her official capacity as President of Spirit, refused to approve a policy on Spirit's behalf due to the policy's unreasonable risk, Mulligan would go behind her back and cause Spirit to issue the policy anyway.

135. At the same time, Mulligan indicated to Guffey that if third-party brokers would not use his premium finance company, Chelsea Financial, then he would not let Spirit underwrite the policies, favoring high premium volume only when it benefitted the Mulligan Enterprise and not just Spirit.

136. On information and belief, Mulligan, George, and/or other insiders instructed Guffey to tell the Division at a Division meeting in early 2018 that things were "going well" with underwriting, which was incorrect. Due to Mulligan's coercive management of the Mulligan Enterprise, Guffey did not raise multiple material concerns she had with Spirit's underwriting process and team to the Division at the early 2018 meeting.

137. On information and belief, Guffey did not feel she could state her true opinion. Accordingly, Guffey made an inaccurate statement to the Division on behalf of Spirit, and at the direction of Mulligan and/or those he controls, on which the Division reasonably relied.

138. On information and belief, two "settlement" payments to law firms related to Guffey's resignation as President of Spirit were "hush money" intended to keep Guffey "quiet" with regard to the unlawful conduct she witnessed and/or participated in during her stint as an officer of Spirit and employee of CTC/participant in the Mulligan Enterprise.

139. Similarly, both Simon and nonparty Holly Whitaker, an inside accountant at CTC, were instructed, upon information and belief, by Mulligan, George, and/or others under their control to override financial controls in approving unusual transactions of all types, including, without limitation, setting insufficient reserve amounts, transfers of funds to insiders without supporting documentation, payments to vendors lacking supporting documentation, and unsupported reimbursement for employee and nonemployee expense submittals.

140. On information and belief, other employees and management of Spirit, including, but not limited to, Defendant McCrae, perceived similar issues with the management and affairs of Spirit, but after speaking to Mulligan, "fell in line" with the Mulligan narrative out of fear for pressing the issue(s) with the domineering Mulligan and the retaliation and personal financial repercussions that would result from raising the issue.

Criterion and 10-4 Preferred Managers Harm to Spirit

141. On or about September 1, 2011, Criterion entered into a Claims Administration Agreement with Spirit (the "Criterion Agreement") for a three-year term which was subsequently renewed by the parties thereto.

142. Under the terms of the Criterion Agreement, Criterion was to provide claims management services on behalf of Spirit and had authority to recommend loss reserves on claims, settle claims and issue loss payments and expense payments up to an agreed upon claim amount.

143. Although Criterion was entitled to certain claims handling fees from Spirit, an independent audit of CTC's books and records revealed that Criterion was overpaid by CTC for services Criterion was providing on Spirit's behalf by at least $101,566 for purported claims fees.

144. Additionally, Criterion was to maintain separate claims files for each loss, provide monthly reports to Spirit, develop a plan and pursue reasonable subrogation, contribution, or indemnity recoveries and was to notify Spirit of any complaint or inquiry from any state insurance department or other governmental official or authority.

145. Criterion was owned by Mulligan who often was involved in the operations of Criterion and, among other things, inserted himself into the claims reserve process and overruled the comments provided by claims professionals.

146. Further, Mulligan and George caused CTC to "loan" approximately $2.8 Million to fund Criterion's operations at a time when, on information and belief, CTC owed those funds to Spirit, which funds were never repaid to Spirit in full, benefitting Mulligan and George as Criterion's owners to the detriment of Spirit and its policyholders.

147. Upon information and belief Mulligan, George and McCrae would participate in "claims

committee" meetings which were held at Criterion, during which Defendants Mulligan, George, and/or McCrae would knowingly and intentionally adjust claim reserves downward on total loss and severe injury cases and/or fail to adjust upwards claims on which information had been provided to support significant losses and/or payments. In so doing, Spirit would put the claim reserve at an artificially low amount, sometimes as low as $100, even when the severity of the loss exceeded the reserve amount demanded by Mulligan and other individuals, with the intent of overstating Spirit's financial performance. Guffey was aware of claim reserve manipulations that were unjustified and inappropriate, and yet, she did nothing about reporting or disclosing these wrongful matters to the Division.

148. For instance, for one insurance claim of which the Plaintiff is aware, a loss reserve was set at $100 for over six months when Criterion's claim adjuster's notes indicate that Criterion and the "claim committee" were aware that the accident resulted in a fatality for which the policyholder was deemed responsible. The claims reserve was never raised to the full policy limit of $1 Million, even after the claim adjuster was given authority to attend a mediation with authority to settle for that amount. In fact, the claim was eventually resolved at the policy limit of $1 Million, even though the reserve had never been increased past $750,000.

149. While Plaintiff's investigation of loss reserve manipulation by Criterion with regard to claims by Spirit's policyholders is ongoing, Plaintiff has discovered evidence of a significant and wide-ranging pattern of manipulation of high-severity claims reserves, which, on information and belief, was orchestrated by Mulligan with the knowledge and participation of Defendants George, Guffey and McCrae, among others.

150. Upon information and belief when Mulligan would veto the recommendations made by others on the Claim Committee and set his own reserves, Mulligan would belittle, rebuff, or otherwise retaliate against the employees that questioned his actions.

151. Upon information and belief, claims decisions were primarily made by Mulligan and George, and without objection from McCrae, and were purposefully set at amounts lower than levels that would have been expected for similar type claims, which resulted in Spirit having claims exposure

significantly greater than the money set aside to pay the same.

152. The regular under-reserving of claims served to underreport Spirit claim liabilities, mislead the Division and other insurance regulators with regard to Spirit's financial condition and performance, and lead to further losses to Spirit that would have been avoided if the Company had suspended operations earlier.

153. Beyond setting reserves at shockingly low levels, Criterion, by and through the influence of Mulligan and the Mulligan Enterprise, engaged in patterns of the following improper conduct, all of which served to prolong Spirit staying in business, which ultimately allowed Mulligan and the other individual Defendants to continue to operate the Mulligan Enterprise for their benefit and to the detriment of Spirit, its policyholders, and its other creditors:

a. Repeated material misstatements, financial and otherwise, to state regulators, including the Division, concerning claims by Spirit policyholders;

b. Failure to properly report and maintain other claims reserves, including incurred but not reported claim reserves of which Criterion was aware;

c. Repeated failures to maintain and enforce a governance structure that would ensure that Criterion acts in the unconflicted interest of Spirit and the operation of its business; and

d. Delays in claim payments and proper claims settlement which resulted in deeper Spirit losses.

154. The under-reserving and intentional misreporting to the Division of claims directly caused the material deficiencies identified by the Division as set forth above, as well as Spirit's ballooning insolvency. Given the foregoing, the under-reserving of claims constituted knowing financial misreporting by Spirit and the individuals and entities that exercise control over Spirit and Spirit's financial statements.

155. Criterion, which was dominated and controlled by Mulligan, also participated in approving and paying claims when Spirit did not receive insurance premiums for the very policies on which such claims were paid. As a consequence of Criterion's actions, Spirit sustained and paid large and unjustified losses.

156. Criterion, which was dominated and controlled by Mulligan, also participated in approving and paying claims for Spirit's unauthorized writing of insurance business in Mexico, which covered Mexican insureds. As a consequence of Criterion's actions, the claim payments for Mexican insurance business led to large and unjustified Spirit losses.

157. Additionally, Criterion failed to conduct the services it was required to provide to Spirit such as providing coverage verification.

158. Defendant 10-4 Preferred Managers, was, upon information and belief, unnecessarily paid a $125 fee for "coverage verification" on each Spirit claims file which amounts were unnecessary and such charges used as a mechanism to siphon Spirit funds to this Mulligan related entity. The "services" purportedly provided by 10-4 Preferred Managers were services that Criterion was obligated to conduct.

159. Spirit's claims against Criterion and 10-4 Preferred Managers are properly before this Court pursuant to NRS 696B.190 & 696B.200.

Chelsea Financial Harm to Spirit

160. Chelsea Financial purported to provide CTC and Spirit with "premium financing," but Chelsea Financial did not in fact provide financing services for Spirit. Indeed, Chelsea Financial represented itself to Spirit and its policyholders as having financed insurance premiums of Spirit, for which it charged a high rate of interest to such Spirit policyholders, when such representations were false and misleading. Chelsea Financial also misled Spirit policyholders into believing that it was paying all their collected premium payments to Spirit, which was also false and misleading. During the receivership, it has become apparent that large premium balances were collected by Chelsea Financial from Spirit insureds but never paid to CTC or Spirit, and insiders Mulligan and Pavel Kapelnikov inappropriately took Spirit's money—and Defendants George, Simon, McCrae, Guffey, former directors, and CTC management did nothing about it, failing to report or disclose these matters to the Division.

161. Although the Independent Auditors identified so-called financing agreements for Spirit's insureds with interest rates of 8 to 19%, Spirit did not benefit from the financing because Chelsea

Financial nevertheless paid Spirit its premium payments on an installment – and not "lump sum" basis. In other words, Chelsea Financial did not "finance" Spirit's premiums but instead provided nothing more than premium collection service through invoicing and payment services Chelsea Financial contracted for with non-party Input1, LLC, which was used to assist with premium billing and collection services.

162. Spirit's money was inappropriately kept and used by Chelsea Financial insiders and owners Mulligan and Pavel Kapelnikov. It is unclear if Spirit knew the extent of what was collected by Chelsea Financial on its behalf and not provided to Spirit. Regardless, Spirit has now lost the collection or use of these premium funds.

163. Spirit was directly damaged by these misrepresentations because it did not receive the full written premium at the outset of a policy but only an installment basis, depriving it of valuable capital that could have covered claims or been deployed as an investment. Spirit has also not received all of the premium funds due from Chelsea Financial, and it collected these premium funds as a fiduciary of Spirit.

164. Beyond the direct damage to Spirit, Chelsea Financial, by charging Spirit's policyholders for financing that did not exist, also extracted a corporate opportunity from Spirit – who was the entity *extending* credit to its own policyholders – from which Spirit could have obtained substantial income in the form of the interest payments that its policyholders instead paid to Chelsea.

165. Worse, preliminary analysis by the Independent Auditors suggests that after hiding the uncollected premiums with specious reclassifications, CTC then transferred "return premium" funds to Chelsea Financial for premiums Chelsea Financial failed to collect in the first place. In one case, CTC's books and records show a written premium of approximately $110,000 owed by a trucking company identified herein as "Trucking Co. A," under which Trucking Co. A was to pay approximately $110,000 for a one-year policy starting with paying 25% down (~$27,450) and making nine additional monthly installment payments of ~$8,235. However, CTC's records indicate that only $22,946 was ever collected from the insured by Chelsea Financial. Notwithstanding this fact, and defying all logic, CTC made a "reverse" payment to Chelsea

Financial for the same policy of $24,659 of "return premium" to the insured for the policy's cancellation.

166. Because CTC's books indicate that Trucking Co. A never even made the initial installment, the cancellation should have been transacted in March 2017. Instead, approximately eight months later, in or about November of 2017, CTC and/or Chelsea Financial finally executed a cancellation of the policy.

167. Then, in or about December 2017, Chelsea Financial and/or CTC executed an after-the-fact FPA transaction to hide their malfeasance and reduce the written premium by approximately $60,000, apparently to reconcile the uncollected premium and cancellation dates.

168. Put simply, CTC "returned" to Chelsea Financial *more* premium than was collected for a policy for which Spirit was liable for losses and claims for over nine months, when the policy should have been canceled for nonpayment after the first two months.

169. Further, Spirit funded Chelsea Financials' operating expenses and the interests of Mulligan and Pavel Kapelnikov, through a $3,500,000 loan, provided in exchange for a purported promissory note from Chelsea Financial (executed by Pavel Kapelnikov).

170. Not only is such a transaction inherently and wholly suspect, but any related party transaction was required to be approved by the Division. The purported promissory note from Chelsea Financial was hidden and not disclosed to the Division.

171. Further, Chelsea Financial failed to keep and maintain complete and accurate records relating to the premiums collected on Spirit's behalf. Under basic insurance industry practices, premium finance and return premium records should be clear and evident as to amounts owed, amounts due, premiums collected, or premiums uncollected, which is not the case regarding the premium finance relationship among Spirit, CTC, and Chelsea Financial.

172. In addition to the foregoing, the Independent Auditors identified $3.39 million in transactions that appear to write off un-collectible balances in the insurance policy administration system that tracked Spirit's insurance policy information. This is in addition to the $5.1 million in FPA transactions identified above. The total identified premium receivable written off by CTC which

should have been collected by Chelsea Financial with cancellation endorsements totaled $8.49 million.

173. As a result of the scheme perpetuated by Chelsea Financial, CTC, Mulligan, P. Kapelnikov and others, Spirit incurred approximately $9.3 million in losses after the calculated termination date for the FPA on 333 endorsements that should have been cancelled due to non-payment.

174. Spirit's claims against Chelsea are properly before this Court pursuant to NRS 696B.190 & 696B.200.

Lexicon Insurance Management LLC Harm to Spirit

175. Lexicon purported to provide Spirit management, supervision, administrative and other insurance services pursuant to a September 2018 Management Agreement which among other things appointed Lexicon to represent Spirit in Nevada and to do all things necessary or incidental to the conduct of the insurance Spirit was authorized or required to do under the law of the State of Nevada and to maintain Spirit books and records with respect to its business, including rendering annual accounts and other schedules as Spirit reasonably required and/or as required by the laws of the State of Nevada.

176. Lexicon by and through its 50% owner, Defendant George, accepted such appointment and agreed to faithfully perform the duties to the best of its skill and judgment and agreed to "obey promptly such instructions" it received from Spirit. Defendant Simon purported to authorize such action on behalf of Spirit.

177. In order to facilitate the requisite Division approval to act as a Captive Manager Service Provider for Spirit, Defendant George and Lexicon applied to the state of Nevada to become a Captive Insurance Manager, touting George's background and experience in the insurance industry, financial management skills and regulatory expertise.

178. Upon information and belief, the application by Lexicon and George to become a Captive Insurance Manager was made due to Spirit's former manager terminating its relationship with Spirit due to non-payment and was an effort to conceal from the Division Spirit's noncompliance with various provisions of NRS 694C.

179. After assuming the role as Spirit's Captive Insurance Manager, Lexicon and George failed to live up to their contractual and statutory obligations to the harm and detriment of Spirit.

180. Among other things, Lexicon was required to maintain and operate Spirit's banking and investment accounts and is required to indemnify Spirit with respect to the loss of funds as a result of an act of infidelity by any employee and/or official of Lexicon.

181. Under Lexicon's watch, Spirit was placed into receivership and Spirit's banking and investment accounts are in a complete disarray. Moreover, as detailed herein, Spirit by and through Lexicon concealed the true financial condition of Spirit to the Division and in so doing facilitated payments to Lexicon and George and others as purported management and/or consultant pay.

182. These concealments and the failure to supply the Division with accurate and complete information, which, on information and belief, were intentionally orchestrated by George and Mulligan and carried out through Lexicon, were designed to hide the depth of financial problems at Spirit so that Spirit could continue to operate for the ultimate benefit of Defendants, including without limitation Lexicon, Mulligan, McCrae, and George at a detriment to Spirit and its policyholders.

183. Moreover, as Spirit's Risk Retention Group Manager, Lexicon, by and through George initiated, approved, executed, effectuated and/or hid the improper transfers or withholdings of Spirit funds by CTC, as alleged above and below, at the direction and under the control of Mulligan.

184. Lexicon by and through George and/or others, also failed to properly implement and oversee Spirit's claim reserve handling which resulted in the overpayment of claims when Spirit's policies should have been cancelled, and failed to properly collect premium balances due Spirit, and knowingly allowed the co-mingling of premiums of Spirit with other insurance client accounts of CTC.

185. As the Captive Manager Service Provider to Spirit and for the reasons set forth herein, Lexicon is in breach of its duties and obligations to Spirit, and Spirit is entitled to monetary damages as a result of the same.

186. Spirit's claims against Lexicon are properly before this Court pursuant to NRS 696B.190 &

696B.200.

Spirit's "Investment" in New Tech Capital LLC for Mulligan's Personal Benefit

187. On or about January 8, 2018, Spirit transferred approximately $500,000 from its Spirit Premium Trust Account to an entity called New Tech Capital LLC.

188. On information and belief, Mulligan and Pavel Kapelnikov formed, owned, and operated New Tech Capital for their own personal interests and monetary gain.

189. On information and belief, Mulligan and/or Pavel Kapelnikov then caused New Tech Capital to invest the $500,000 with a private fund called Iterative Capital LP, a high-risk investment fund that invests in cryptocurrencies, network tokens, as well as in the mining operations and equipment relating to the generation of "new" cryptocurrency tokens.

190. Even though the funds wired to New Tech Capital were wired in Spirit's name from Spirit's bank account, Mulligan and Pavel Kapelnikov, as well as the complacent Spirit Director Defendants, failed to ensure that the investment was titled in Spirit's name and not made for the benefit of Mulligan and/or Pavel Kapelnikov. The investment itself, even if it had ever been for Spirit's benefit, which it was not, is a highly risky and unreasonable investment for Spirit as a financially troubled insurer.

191. Not only is the use of Spirit's funds for his personal benefit a fraudulent breach of Mulligan's fiduciary duties, but he has not repaid the funds he took from Spirit to make this personal investment or otherwise compensated or repaid Spirit for the use of its assets and has refused to provide Spirit information regarding its interest in New Tech Capital LLC and any resulting investment made in Iterative Capital LP, and Spirit has lost its funds in the process.

Other Significant Findings of Spirit's Former Auditor

192. The former external auditor of Spirit[5] (the "Former Auditor") notified the Division of a number of concerns regarding the manner in which Spirit's books and records were maintained and found

[5] Spirit's former external auditor, Shores, Tagman, Butler & Company, P.A., resigned on May 23, 2018.

after reviewing receivables that the collection history and relationship between receivable accounts and unearned premiums was substantially worse than prior years and noted that policies with receivables in excess of the unearned premiums were $14.4 million in March of 2018 compared to $3.3 million for the same period in 2017.

193. Based on information available to the auditor at the time of his letter, he indicated that he believed the bad debt reserve need to be increased by at least $1 million and stated that the actual reserves need to be substantially higher.

194. The Former Auditor also noted that CTC as Spirit's program administrator did not pay Spirit in situations where an account or accounts did not pay the premiums due and instead when any insured was not paying the premium, CTC would endorse downward the amount that was actually paid contrary to the terms of its contractual obligations.

195. It was later learned that CTC, Risk Services (former captive manager of Spirit), and Criterion agreed verbally to write off uncollectible balances and that the FPA transactions wrote off premiums of $3,403,591, not collected by CTC, which equates to Spirit being owed $2,722,872 by CTC, net of commissions.

196. Additionally, Spirit's Former Auditor identified significant write-downs for premiums earned, vehicle fees and previously recorded capital which reduced surplus.

The Officers and Directors of Spirit Failed to Govern the Company Appropriately

197. Mulligan, Simon, George, Maloney, Guffey, Marx, C. Torres and V. Torres (collectively, the "Spirit Director Defendants") were officers and/or directors of Spirit, each of whom failed to discharge his or her duties to govern the Company appropriately, independently, and in good faith on an informed basis, causing harm to Plaintiff.

198. As officers and directors of Spirit, each of the Spirit Director Defendants owed duties of good faith and loyalty to Spirit and was charged with exercising his or her powers, authority, and discretion in the best interests of Spirit.

199. The Spirit Director Defendants also adopted a Code of Ethics and Corporate Governance Standards that required, among other things, the avoidance of conflicts of interest and the

documentation of all financial transactions.

200. The duties owed by the Spirit Director Defendants included instituting adequate internal controls to protect company assets and operations, adequately selecting and supervising employees and contractors, making accurate, non-misleading statements to regulators, avoiding self-dealing, fully and adequately disclosing related party transactions, avoiding the squandering of the company's assets, and reviewing and ensuring the accuracy of company documents, financial statements, and regulatory filings.

201. Each of the Spirit Director Defendants failed to uphold these duties owed to Spirit, resulting in improper "loans," "dividends," and other unusual transactions and the disappearance of tens of millions of dollars due to Spirit from CTC, Criterion, Chelsea Financial, and other entities in the Mulligan Enterprise.

202. Further, the Spirit Director Defendants failed to collect substantial balances in accounts receivable owed to Spirit, failed to obtain premiums from CTC, failed to accurately report financials, misguided the Division as to the financial and operating status of Spirit, and failed to maintain reserve requirements, leaving the company in precarious financial condition.

203. Additionally, the Spirit Director Defendants purportedly approved a $500,000 "investment" from Spirit to New Tech Capital, LLC an entity owned and controlled by Mulligan and Pavel Kapelnikov in violation of NRS 692C and for which Spirit received no benefit, and failing further to facilitate any credible monitoring or follow up regarding the status of this so called "investment" and Spirit's interest therein.

204. Further, the Spirit Director Defendants made misrepresentations or outright failed to disclose critical information to state insurance regulators regarding the financial condition of Spirit, including collateral for a $3 million "Letter of Credit"; reinsurance agreements; Spirit's loan transaction with Chelsea Financial; a lack of resources to honor the Loss Portfolio Transfer agreement; company reserves; claims reserves; collection of premium funds from Chelsea; overpayments of claims; underwriting capabilities; New Tech Capital transaction; and corporate insider transactions that benefitted those parties that controlled Spirit's operations; and interference

with regulatory oversight and external audits.

205. Additionally, the Spirit Director Defendants knowingly continued Spirit's business operations beyond the point of financial solvency in an effort to continue arrogating Spirit assets to Mulligan and the other Spirit Director Defendants for as long as possible before the inevitable "drying up of the well" at Spirit and CTC, all while getting paid.

206. The Spirit Director Defendants failed to satisfy regulatory corrective order provisions necessary for continuing solvency.

207. The Spirit Director Defendants did not properly account for balances owed to or from Wesco, a reinsurer, and the Receiver demands a full accounting of the reinsurance balances due to or from and supporting records.

208. Further, the Spirit Director Defendants worked with Defendant McCrae and non-party Troy Shankel to misrepresent the financial condition of Spirit by reducing claim reserves for fatality and severe injury cases despite the recommendations of the former President of Spirit, Brenda Guffey, and claims professional Dona Anderson.

209. The Spirit Director Defendants had knowledge of and/or actively adjusted claims reserves downward, failing to realistically set reserves for claim losses and potential losses. By way of example, Defendant Mulligan worked with non-party Troy Shankel to set up initial claim reserves at levels of one dollar, four dollars, and one hundred dollars on certain claims; these unrealistic claim reserves had the effect of boosting the financial condition of Spirit on paper.

210. The Spirit Director Defendants should have known that Criterion and CTC, both of which were dominated and controlled by Mulligan, were participating in approving and paying claims when Spirit did not receive insurance premiums for the very policies on which such claims were paid. As a consequence of Criterion's and CTC's actions, Spirit sustained and paid large and unjustified losses.

211. The Spirit Director Defendants should have known that Criterion and CTC, both of which were dominated and controlled by Mulligan, were participating in approving and paying claims for Spirit's unauthorized writing of insurance business in Mexico, which covered Mexican insureds.

As a consequence of Criterion's and CTC's actions, the claim payments for Mexican insurance business led to large and unjustified Spirit losses.

212. On information and belief, Defendant Mulligan would request and receive money from the companies for personal use without the oversight of, and/or with the acquiescence of, the officers or directors, and Defendant Mulligan personally absconded with more than $829,446 in addition to siphoning further monies to entities under his ownership and/or control.

213. On information and belief, monies owed to Spirit from CTC were transferred inter-company with insufficient reason or documentation, including $9.9 million dollars in transfers between CTC Hawaii, Spirit, Criterion, and Defendant Mulligan's company Chelsea Holdings without the oversight of, or the acquiescence of, Spirit's officers or directors.

214. Overall, the Spirit Director Defendants failed to institute sufficient internal controls to ensure the protection of Spirit's assets. Instead of hiring qualified and independent entities to transact key components of the business, such as program administration, the Spirit Director Defendants engaged in self-dealing, entering into contracts with affiliated businesses to perform services that they knew or should have known would not be adequately performed, and/or providing loans to affiliate businesses that they knew or should have known would not be repaid to Spirit.

215. Further, the Spirit Director Defendants failed to take appropriate action when such affiliates retained funds payable to Spirit and otherwise failed to perform in accordance with their contracts and/or industry standards.

216. As a result, the Spirit Director Defendants knew, or should have known but for their intentional lack of oversight, that Spirit's financial statements and other documents were misleading or false and that insureds were at risk, and that they were providing misleading or false information to the public, the Division, and others.

217. The Spirit Director Defendants knew, or should have known but for their intentional lack of oversight, that large and uncollectible balances were owed by CTC, Criterion, and Chelsea Financial, and yet, such Director Defendants did nothing to collect balances, terminate business arrangements to reduce losses, or report and disclose such matters to the Division.

218. The Spirit Director Defendants' negligent and/or intentional misconduct and knowing violations of the law are illustrated by the Directors' fraudulent statements in a series of "Board of Directors Annual Performance Self-Evaluation" forms filled out by Director Defendants Guffey, Marx, C. Torres, and V. Torres in late November and December of 2017, in which each Spirit Director indicated they "agree[d]" or "strongly agree[d]" with the following statements, which have been shown to be false in the Division's investigation of Spirit:

a. "The board fully understands the roles and responsibilities of the Board;"

b. "The board adequately reviews and discusses with executive management the Company's business plan, strategic goals and performance;"

c. "The board effectively monitors the Company's financial information;"

219. In addition, in the 2017 Self-Evaluation Forms, Defendants Guffey, V. Torres, and C. Torres each indicated they "agree[d]" with the following statements, while Defendant Marx indicated a "neutral" level of agreement:

a. "The board regularly evaluates the Company's performance and progress toward strategic goals;"

b. "The board effectively stays informed of issues and developments that could materially impact the Company's business."

220. In the same 2017 Self-Evaluation Forms, Defendants Guffey and V. Torres each indicated they "agree[d]" with the following statement, while Defendants C. Torres and Marx indicated a "neutral" level of agreement: "The board receives adequate financial updates, report and other materials necessary to ensure the Company's operations are sound."

221. Had Defendants Guffey, Marx, C. Torres, and V. Torres been discharging their duties to Spirit on an informed and good faith basis, they would have known the statements in the 2017 Self-Evaluation Forms were false and/or misleading; on information and belief, Defendants Guffey, Marx, C. Torres, and V. Torres knew or should have known as much – but made the misstatements anyway.

222. When the Division identified issues with Spirit's financial condition, the Spirit Director

Defendants made the intentional decision to mislead regulators into providing additional time for Spirit to respond. On information and belief, the Spirit Director Defendants sought to keep Spirit out of receivership so that they could continue to use Spirit's funds as part of their fraudulent scheme to enrich themselves and their affiliated businesses, avoiding accountability for their prior actions that caused substantial harm to Spirit.

223. This conduct amounts to fraud, gross negligence, intentional misconduct, and/or knowing violations of the laws of the State of Nevada.

The Other Individual Defendants' Roles in the Scheme to Divert Funds to the Mulligan Enterprise

224. On information and belief, the other Individual Defendants – Pavel Kapelnikov, Igor Kapelnikov, Yanina Kapelnikov, George and McCrae, participated negligently, knowingly and/or intentionally in the Mulligan Enterprise and the diversion of Spirit funds and other losses of Spirit. In addition, and on information and belief, Director Defendants Simon and Guffey participated in the Mulligan Enterprise by the same conduct described above and as further described below.

225. Pavel Kapelnikov owned and controlled Chelsea Financial. Accordingly, among other things, he participated in the misconduct of Chelsea Financial described above. Pavel Kapelnikov also benefitted correspondingly from those funds that were improperly diverted to and/or withheld from Spirit by Chelsea Financial. Pavel Kapelnikov knew that CTC was insolvent and/or unable to pay its debts as they became due and, therefore, that the funds he was siphoning to Chelsea Financial could not be paid to Spirit, which had a superior claim, thereby providing an unlawful preference to an entity he owned and controlled.

226. On information and belief, Pavel Kapelnikov knew that Chelsea Financial was receiving and/or withholding funds from Spirit unlawfully and improperly; in fact, on information and belief, and alongside Mulligan, Pavel Kapelnikov was a principal architect of the Mulligan Enterprise and Defendants' (ultimately successful) efforts to divert funds properly belonging to Spirit to the vast web of Mulligan Enterprise entities, including those ultimately owned by Pavel Kapelnikov and his family members or business associates.

227. On information and belief, Pavel Kapelnikov influenced, directed, and/or controlled the other

Defendants, both directly and through Mulligan, and was involved in and/or knowledgeable of those Defendants' misconduct. Pavel Kapelnikov also misrepresented to Spirit policyholders that Chelsea Financial financed their insurance premiums owed to Spirit and that their premiums were being paid to Spirit for viable insurance.

228. McCrae, as Executive Vice President and later President of CTC, participated negligently, knowingly and/or intentionally in initiating, approving, executing, effecting and/or hiding the improper transfers or withholdings of Spirit funds by CTC and Chelsea Financial, as alleged above and below, at the direction and under the control of Mulligan.

229. McCrae, as Executive Vice President and later President of CTC, also participated negligently, knowingly and/or intentionally in reducing or delaying the proper implementation of Spirit's claim reserves, overpayment of claims when Spirit's policies should have been cancelled, failure to properly collect premium balances due Spirit, co-mingling of premiums of Spirit with other insurance client accounts of CTC, misrepresentation of financial reports and disclosures to the Division by Spirit and CTC, and unrelenting spending by CTC of funds properly belonging to Spirit—all as alleged above and below, at the direction and under the control of Mulligan to further and prolong the scheme to divert funds to the Mulligan Enterprise.

230. McCrae, upon information and belief also sat idly by and participated in misrepresentations to Spirit policyholders as to their policies being premium financed by Chelsea Financial—and that their premiums were being paid to Spirit for viable insurance. In doing so, and at a minimum, he failed to exercise his informed, independent, and good faith judgment as a fiduciary of CTC and/or Spirit.

231. Guffey, as President of Spirit and an employee of CTC, participated negligently, knowingly and/or intentionally in initiating, approving, executing, effecting and/or hiding the improper transfers or withholdings of Spirit funds by CTC, as alleged above and below, at the direction and under the control of Mulligan.

232. Guffey, as President and employee of CTC, also participated negligently, knowingly and/or intentionally in reducing or delaying the proper implementation of Spirit's claim reserves,

overpayment of claims when Spirit's policies should have been cancelled, failed to properly collect premium balances due Spirit, allowed the co-mingling of premiums of Spirit with other insurance client accounts of CTC, was responsible for misrepresentation of financial reports and disclosures to the Division by Spirit and CTC, and allowed unrelenting spending by CTC of funds properly belonging to Spirit—all as alleged above and below, at the direction and under the control of Mulligan to further and prolong the scheme to divert funds to the Mulligan Enterprise. In doing so, and at a minimum, she failed to exercise informed, independent, and good faith judgment as a fiduciary of Spirit.

233. Guffey also sat idly by and upon information and belief participated in misrepresentations to Spirit policyholders as to their policies being premium financed by Chelsea Financial—and that their premiums were being paid to Spirit for viable insurance.

234. George, and through his management company Lexicon which served as Spirit's Risk Retention Group Manager, participated negligently, knowingly and/or intentionally in initiating, approving, executing, effecting and/or hiding the improper transfers or withholdings of Spirit funds by CTC, as alleged above and below, at the direction and under the control of Mulligan.

235. George, through his Lexicon role, also participated negligently, knowingly and/or intentionally in reducing or delaying the proper implementation of Spirit's claim reserves, overpayment of claims when Spirit's policies should have been cancelled, failed to properly collect premium balances due Spirit, co-mingled premiums of Spirit with other insurance client accounts of CTC, was responsible for misrepresentation in financial reports and disclosures to the Division by Spirit and CTC, and allowed unrelenting spending by CTC of funds properly belonging to Spirit—all as alleged above and below, at the direction and under the control of Mulligan to further and prolong the scheme to divert funds to the Mulligan Enterprise.

236. On information and belief, George, even though he did not hold the title of President or Chairman, regularly chaired the meetings of the Boards of Directors of Spirit in an effort to further exert his and/or Mulligan's improper control over Spirit. In doing so, and at a minimum, he failed to exercise informed, independent, and good faith judgment as a fiduciary of Spirit. George also

sat idly by and participated in misrepresentations to Spirit policyholders as to their policies being premium financed by Chelsea Financial—and that their premiums were being paid to Spirit for viable insurance.

237. Simon, as a director of Spirit and Chief Operating Officer of CTC California—and while holding other executive positions at CTC and its many related entities— participated negligently, knowingly and/or intentionally in initiating, approving, executing, effecting and/or hiding the improper transfers or withholdings of Spirit funds by CTC and Chelsea Financial, as alleged above and below, at the direction and under the control of Mulligan. Simon, through his director role at Spirit and management role at CTC, also participated negligently, knowingly and/or intentionally in reducing or delaying the proper implementation of Spirit's claim reserves, overpayment of claims when Spirit's policies should have been cancelled, failed to properly collect premium balances due Spirit, allowed the co-mingling of premiums of Spirit with other insurance client accounts of CTC, facilitated misrepresentation of financial reports and disclosures to the Division by Spirit and CTC, and allowed for the unrelenting spending by CTC of funds properly belonging to Spirit—all as alleged above and below, at the direction and under the control of Mulligan to further and prolong the scheme to divert funds to the Mulligan Enterprise.

238. Simon also sat idly by and upon information and belief, participated in misrepresentations to Spirit policyholders as to their policies being premium financed by Chelsea Financial—and that their premiums were being paid to Spirit for viable insurance. In doing so, and at a minimum, he failed to exercise his informed, independent, and good faith judgment as a fiduciary of CTC and/or Spirit.

239. Igor Kapelnikov, as CTO of CTC California, was responsible for ensuring that CTC had sufficiently sophisticated information technology services, applications, and hardware to ensure that CTC had sufficient electronic internal controls to assure accurate reporting of financial information and prevent management override of critical financial reporting controls to ensure the accuracy of CTC's records. As detailed herein, CTC had no such electronic controls, due, on information and belief, to the negligent, knowing, fraudulent, and/or intentional acts or omissions

of Igor Kapelnikov, resulting in improper bookkeeping and accounting and, ultimately, the loss or transfer away of tens of millions of dollars due and owing to Spirit.

240. On information and belief, Igor Kapelnikov and Yanina Kapelnikov, through their ownership and/or control of Global Forwarding Enterprises and/or Global Forwarding Inc., participated negligently, knowingly and/or intentionally in initiating, approving, executing, effecting and/or hiding the improper transfers or withholdings of Spirit funds by CTC, as alleged above and below, at the direction and under the control of Mulligan.

Deficiencies in CTC's Books and Records

241. Grossly deficient and/or negligent book and record keeping by CTC and a lack of policies and procedures, as well as a financial reporting environment devoid of meaningful internal controls, led to and/or facilitated the scheme that precipitated Spirit's financial demise. Examples of such are included below.

242. CTC did not record payments collected on Spirit's behalf based on cash received on a "policy-by-policy" basis and instead the application of premiums on Spirit's books were completed on a "first-in first-out" basis, per the direction of George, obfuscating Spirit's and its auditors' ability to match cash received with the policy for which it was received.

243. Worse, cash collected by CTC for multiple insurance carriers – unaffiliated with Spirit – were commingled in the General Trust account and regular reconciliations were not completed.

244. Commingled insurance carrier funds (collected insurance premiums due to insurance carriers) that were at one time deposited into CTC California's "General Trust Account" were later moved into CTC California operational bank accounts and directly disbursed to pay for CTC operations, instead of being properly remitted to the carrier to which the funds were due.

245. Examples of the deficiencies include CTC's policy listing for Spirit business containing 63 policies with negative premiums totaling $141,308 and CTC's claims listing for Spirit containing 40 claims with a total incurred loss of $849,240 for policies with zero or negative premium. There are substantially more claims paid by Spirit for which premiums were never collected by CTC and paid to Spirit, or where such premiums were collected by CTC and spent inappropriately.

246. Spirit's annual statements were not consistent with information found in CTC's QuickBase program, and clear inconsistencies are evident when comparing the total "written premium" figure – representing the premium charge on the face of each policy issued – in the two systems.

247. Not only were there inconsistencies with CTC's QuickBase program and Spirit's annual statements, but data from the Spirit Aspire system for policy information is materially different than QuickBase policy information kept by CTC on its own books. Some of these differences are very material and, based on the work of the Receiver since her appointment, has revealed that CTC failed to turn over or collect large premium amounts owed to Spirit, had undocumented entries for policy information, and engaged in a pattern of activity that lost Spirit's premium money and overpaid insurance claims.

248. Based on the review of CTC's books and records by the Independent Auditor, CTC California's federal tax returns identify cash basis losses totaling approximately $28.7 million for the years 2013-2018, and CTC ownership did not provide capital to fund the losses, which appear to have been covered with monies owing to and improperly withheld from Spirit.

249. Other deficiencies in CTC's record keeping which harmed Spirit include, but are not limited to:

a. interest paid for debts was not recorded in CTC records;
b. payments made to employees were made from the operating account, not through payroll;
c. payroll expenses and accrual entries were not updated on a regular basis;
d. payments were made for credit card expenses without supporting documentation and without utilizing an IRS approved employee expense process;
e. payments were made to vendors without contracts or invoices;
f. payments were made to related parties without contracts or invoices;
g. payments were made to management and other insiders without expense reports, invoices or contracts;
h. subledger and general ledger accounts were not reconciled; and
i. payment transactions were changed in QuickBooks without appropriate documentation.

250. Based on the review of CTC's books and records by the Independent Auditors, at least $40 million and potentially millions more is currently due from CTC to Spirit, which CTC records show was collected but then overpaid to CTC, Criterion, and/or Chelsea Financial as commissions and claim fees and not sent to Spirit, as it should have been under the CTC Program Administrator Agreements.

251. An additional amount of approximately $4,054,143 is due Spirit for uncollected premiums, which CTC wrote off and identified as "final premium audit" endorsements.

252. Additional endorsements recorded by CTC indicate they wrote off balances that may be due Spirit of approximately $3 million as a result of endorsements being entered into the CTC policy system after the corresponding policy expired.

253. Approximately $9,306,227 of claims were paid by Spirit as incurred losses for claims with loss dates after the date such policies should have been cancelled for nonpayment of premiums as calculated by the Independent Auditor. Conversely, CTC failed to collect premium amounts from Chelsea Financial that were owed to Spirit for insured premium payments by insureds.

254. If the losses incurred and paid by Spirit on policies that should have been cancelled are included in the calculations of amounts CTC owes to Spirit, then the total amount due to Spirit is in excess of $43 million.

Improper Fund Transfers and Improper Transactions

255. Although it is not entirely clear where all of Spirit's money went, an independent audit of CTC's books and records identified $32.6 million transferred to related parties, Mulligan affiliated entities and/or in transactions which lacked specificity and back-up support to such an extent the auditors could not determine the complete nature of the transaction and merely deemed them "unusual."

256. Payments made by CTC to related parties, Mulligan affiliated entities and/or in transactions which lacked specificity and back-up support to such an extent the auditors deemed them "unusual" include:

a. Over $6.5 million dollars being paid to Chelsea Financial Group;

b. More than $3 million dollars being paid to Global Capital Group for purported loan payments, with no loan documents available;

c. Approximately $2.67 million dollars paid to Chase Bank, which on information and belief was utilized to pay the personal credit card bills of Mulligan;

d. Payments totaling more than $2.3 million dollars paid to Kapa Management Consulting Inc.;

e. More than $1.8 million paid to unknown entities and/or individuals for unknown reasons in multiple transfers, including cryptic information in the "memo" field. On information and belief, these Doe and/or Roe Defendants are fraudulent transferees or alter egos of Defendants Mulligan, George, Simon, McCrae, Pavel Kapelnikov, Yanina Kapelnikov, and/or Igor Kapelnikov.

f. Three payments in excess of $1.8 million dollars to Mulligan and more than $4,000 sent to a title company to purchase property for Mulligan's benefit;

g. More than $1.5 million dollars was recorded as being paid by CTC to ICAP Management Solutions LLC; however, upon information and belief some of such payments were actually paid to Kapa Management Consulting, Inc.

h. Payments of approximately $1.2 million and $214,000 to Fourgorean in two separate transactions, an entity which upon information and belief was created and controlled by Mulligan;

i. Payments of approximately $872,000 and $337,913 and, on information and belief, $72,000 to Six Eleven LLC, an entity which upon information and belief was created and controlled by Mulligan;

j. Payments totaling approximately $719,000 to Global Forwarding;

k. Payments of $363,384.46 to Bank of America, which on information and belief was utilized to pay credit card used by Mulligan;

l. Approximately $354,000 paid to Igor and/or Yanina Kapelnikov;

m. Over $304,000 was paid to Quote My Rig, LLC;

n. Payments of $100,000 and $200,000 to Carrus Mobile, purportedly for cameras for trucks; however, the Independent auditor was not able to locate support showing the cameras were delivered and only located camera invoices for a different amount to a different company;

o. Approximately $256,000 was paid to Borson Law LLC in connection with a "settlement" with Brenda Guffey, Spirit's former President and a CTC employee;

p. Approximately $194,000 was paid to Siro Smith Dickson in connection with a "settlement" with Brenda Guffey, Spirit's former President and a CTC employee;

q. Approximately $194,767 was paid to Chelsea Premium Finance;

r. Approximately $173,000 paid to Yanina Kapelnikov;

s. Approximately $74,700 was transferred to 10-4 Preferred Risk Managers to cover short-term operating expenses (and remains due back to CTC, according to its books). This amount is in addition to the $125.00 that was purportedly paid to 10-4 Preferred Risk Mangers as a "coverage verification" fee on each Spirit claim;

t. Criterion was paid over $90,000;

u. Over $86,000 in cash withdrawals are recorded on the general ledger without back up documentation;

v. Approximately $35,889 was paid to Kapa Ventures;

w. Approximately $15,300 was paid to Ironjab, LLC an entity owned and controlled by Igor Kapelnikov;

x. Nearly $14,000 was paid to Global Consulting; and

y. At least $44,000 was paid to 195 Gluten Free LLC Red Bank which is a Mulligan related entity.

257. On information and belief, CTC made these transfers despite owing money to Spirit and despite its duty and obligation to hold the money collected on Spirit's behalf in trust for Spirit and thus such funds should be returned and paid to Spirit forthwith.

258. Moreover, a review by the Independent Auditors of CTC's QuickBooks General Ledger for 2018 (which was provided in October of 2019) compared with the prior 2018 General Ledger

evidenced unaccounted for transactions and that significant intercompany balances were adjusted to reflect amounts due to Spirit being written off retroactively and balances due from related parties were reclassified to dividends paid, again retroactively and without support for such classification.

259. Based on the revised General Ledgers, CTC wrote off balances of $4,451,121 due from Chelsea Financial; $50,943 due from Criterion; $25,000 due from County Hall and recorded "Dividends Paid" of $792,794 to Mulligan, even though CTC was insolvent and thus unable to issue lawful distributions to its stockholders.

260. Mulligan also obtained inherently suspicious mortgages totaling $3,350,000 in 2011 and 2012 for property with a current assessed value of $440,500 from Global Consultants and Global Capital Group entities controlled by Dmitry Suprunov and/or Pavel Kapelnikov.

261. On information and belief, all of these funds properly belong to CTC and/or Spirit and, were they not transferred away, could have satisfied amounts due to Spirit and, ultimately, been paid to satisfy claims of Spirit's policyholders.

262. Moreover, even if Spirit had been able to satisfy all of its creditors maintaining claims against it at the time it suspended business, these wrongfully transferred sums of money would still ultimately be due to Spirit's policyholders (and not Defendants) since Spirit was a member based insurance group by which any surpluses inure to the policyholders, not Spirit's management or stockholders.

FIRST CAUSE OF ACTION

(Breach of Contract, as Against CTC)

263. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

264. The CTC Agreement was a valid and enforceable contract.

265. Spirit performed, or was excused from performance, under the CTC Agreement.

266. CTC failed to perform under the CTC Agreement; to wit, comingling Spirit funds with funds received on behalf of other entities, failing to remit payments due Spirit until CTC's indebtedness to Spirit grew to over $30 million dollars for unpaid premiums alone, unlawfully writing off

balances of an additional $3.4 million due to Spirit, failing to timely cancel policies for nonpayment, overpaying Spirit claims, under-reserving Spirit's claims, failure to properly report and disclose the financials and operations of Spirit, deceiving Spirit policyholders about their policies being premium financed and about their premiums being paid for viable insurance, aiding and abetting Chelsea Financial to abscond and dissipate assets belonging to Spirit, and failing to safeguard Spirit's assets and using Spirit funds to pay the operating expenses of CTC and other entities in the Mulligan Enterprise.

267. As a direct and proximate result of CTC's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars.

268. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

SECOND CAUSE OF ACTION

(Breach of Contract as Against Lexicon)

269. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

270. Lexicon and Spirit entered into a valid and enforceable contract by which Lexicon was to provide certain management, supervision, administrative and other insurance services ("Lexicon Management Agreement").

271. Lexicon failed to perform under the Lexicon Management; to wit, after assuming the role as Spirit's Captive Insurance Manager, Lexicon failed to live up to its contractual and statutory obligations to the harm and detriment of Spirit by among other things, failing to maintain and operate Spirit's banking and investment accounts to protect Spirit's assets; allowing Spirit funds to be comingled with accounts of other insurance companies; concealing the true financial condition of Spirit to the Division; failing to properly implement and oversee Spirit's claim reserve handling which resulted in the overpayment of claims when Spirit's policies should have been cancelled; failing to properly collect premium balances due Spirit; failing to remit payments due Spirit until its indebtedness grew to over $30 million dollars for unpaid premiums alone; deceiving Spirit

policyholders about their policies being premium financed and about their premiums being paid for viable insurance, aiding and abetting Chelsea Financial to abscond and dissipate assets belonging to Spirit, safeguarding Spirit's assets and using Spirit funds to pay the operating expenses of CTC and other entities in the Mulligan Enterprise.

272. As a direct and proximate result of Lexicon's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars.

273. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

THIRD CAUSE OF ACTION

(Breach of Contract as Against Criterion)

274. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

275. The Criterion Agreement was a valid and enforceable contract.

276. Spirit performed, or was excused from performance, under the Criterion Agreement.

277. Criterion failed to perform under the Criterion Agreement, by mishandling claims, failing to properly set claims reserves, failing to properly report claims, overpaying claims, and paying claims outside of Spirit's authority to do business.

278. As a direct and proximate result of Criterion's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars.

279. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FOURTH CAUSE OF ACTION

(Breach of Contract as Against the Spirit Director Defendants)

280. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

281. Upon information and belief, the Spirit Director Defendants Mulligan, Simon, Guffey, George, Mahoney, Marx, C. Torres and V. Torres entered into enforceable agreements with Spirit,

including, but not limited to, employment agreements, ethics and conflicts of interest agreements, and others, which contractually provided for the Individual Defendants to operate in a fiduciary manner and to exercise the utmost good faith in all transactions involving their duties and to refrain from conflicts of interest, as set forth herein.

282. Spirit performed, or was excused from performance, under these agreements.

283. The Spirit Director Defendants failed to perform under these agreements, as set forth herein.

284. As a direct and proximate result of the Spirit Director Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars.

285. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FIFTH CAUSE OF ACTION

(Breach of Fiduciary Duty as Against CTC and Lexicon)

286. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

287. A fiduciary duty existed between Spirit and CTC, and Spirit and Lexicon pursuant to the agreements between the parties and pursuant to CTC and Lexicon's trusted position as set forth herein.

288. CTC breached its duty by failing to safeguard Spirit's funds pursuant to its fiduciary duty and instead operating in a manner as to leave tens of millions of dollars unaccounted for and owing to Spirit, by failing to act in Spirit's best interests, and instead acting in its own self-serving interest by failing to disclose financial records to Spirit, failing to safeguard or account for Spirit's funds, using Spirit's assets for its own benefit rather than for the benefit of Spirit, dissipating Spirit's assets, aiding and abetting Mulligan and Pavel Kapelnikov and their affiliated parties and entities to loot Spirit of its money, deceiving Spirit policyholders about their policies being premium financed and about their premiums being paid for viable insurance, and by otherwise failing to conduct its affairs in a manner faithful to the parties' agreement, expectations, and Spirit's best interests.

289. Lexicon breached its duty by failing to safeguard Spirit's funds pursuant to its fiduciary duty and instead operating in a manner as to leave tens of millions of dollars unaccounted for and owing to Spirit, by failing to act in Spirit's best interests, and instead acting in its own self-serving interest by failing to disclose financial records to Spirit, failing to safeguard or account for Spirit's funds, using Spirit's assets for its own benefit rather than for the benefit of Spirit, dissipating Spirit's assets, aiding and abetting Mulligan and Pavel Kapelnikov and their affiliated parties and entities to loot Spirit of its money, deceiving Spirit policyholders about their policies being premium financed and about their premiums being paid for viable insurance, and by otherwise failing to conduct its affairs in a manner faithful to the parties' agreement, expectations, and Spirit's best interests.

290. As a direct and proximate result of the Defendants' conduct, including CTC's and Lexicon's extensive efforts – at Mulligan's direction – to mislead Spirit and its policyholders, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars.

291. In committing the acts herein above alleged, Defendants are guilty of oppression, fraud, and malice toward Spirit and its policyholders. Therefore, Spirit is entitled to recover punitive damages for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

292. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

SIXTH CAUSE OF ACTION

(Breach of Fiduciary Duty as Against the Spirit Director Defendants)

293. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

294. A fiduciary duty existed between Spirit and its officers and directors by virtue of their positions with Spirit, which required Defendants Mulligan, Simon, Guffey, George, Maloney, Marx, C. Torres and V. Torres to act in Spirit's best interests, apply their best judgment on an informed basis, and act in good faith.

295. The Spirit Director Defendants breached their fiduciary duties to Spirit as described herein, including, but not limited to, using Spirit's assets for their own benefit rather than the benefit of Spirit, making false and misleading financial statements, self-dealing, authorizing loans to affiliate companies knowing or suspecting that they would not be repaid, acquiescing to the improper loss of Spirit's funds to third parties at the behest of and under the control of Mulligan, deceiving Spirit policyholders about their policies being premium financed and about their premiums being paid for viable insurance, and otherwise failing to act in Spirit's interest as described herein.

296. As a direct and proximate result of the defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars.

297. In committing the acts herein above alleged, the Spirit Director Defendants are guilty of fraud, intentional misconduct, and/or knowing violations of the law. Therefore, the Spirit Director Defendants are individually liable to Spirit.

298. In committing the acts herein above alleged, the Spirit Director Defendants are guilty of oppression, fraud, and malice toward Spirit. Therefore, Spirit is entitled to recover punitive damages for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

299. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

SEVENTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing – Tortious as Against CTC and Lexicon)

300. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

301. Plaintiff entered into the CTC Agreement with CTC, as detailed above, which is a valid and enforceable contract.

302. Plaintiff entered into the Lexicon Management Agreement with Lexicon, as detailed above, which is a valid and enforceable contract.

303. A special element of reliance existed where the CTC Agreement and the Lexicon Management Agreement imposed a fiduciary duty upon CTC and Lexicon with respect to Spirit.

304. Every contract, including the CTC Agreement and the Lexicon Management 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.

305. As explained herein, CTC and Lexicon breached the duty of good faith and fair dealing by acting in a manner unfaithful to the purpose of their contracts with Spirit to the disadvantage of Spirit.

306. Spirit's reasonable, justified expectations were denied as a result of CTC's and Lexicon's breach of the implied covenant of good faith and fair dealing.

307. As a direct and proximate result of CTC's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars.

308. As a direct and proximate result of Lexicon's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars

309. In committing the acts herein above alleged, CTC and Lexicon are guilty of oppression, fraud, and malice toward Spirit. Therefore, Spirit is entitled to recover punitive damages from CTC and Lexicon for the purpose of deterring it and others similarly situated from engaging in like conduct in the future

310. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

EIGHTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing – Contract as Against CTC and Lexicon)

311. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

312. Spirit entered into the CTC Agreement with CTC, as detailed above, which is a valid and enforceable contract.

313. Plaintiff entered into the Lexicon Management Agreement with Lexicon, as detailed above, which is a valid and enforceable contract.

314. Every contract, including the CTC Agreement, and the Lexicon Management 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.

315. As explained herein, CTC and Lexicon breached the duty of good faith and fair dealing by acting in a manner unfaithful to the purpose of the contract to the disadvantage of Spirit.

316. Spirit's reasonable, justified expectations were denied as a result of CTC's breach and Lexicon's breach of the implied covenant of good faith and fair dealing.

317. As a direct and proximate result of CTC's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars.

318. As a direct and proximate result of Lexicon's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars

319. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

NINTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing – Contract as Against Criterion)

320. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

321. Spirit entered into the Criterion Agreement, as detailed above, which is a valid and enforceable contract.

322. Every 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.

323. As explained herein, Criterion breached the duty of good faith and fair dealing by acting in a manner unfaithful to the purpose of the contract to the disadvantage of Spirit.

324. Spirit's reasonable, justified expectations were denied as a result of Criterion's breach of the implied covenant of good faith and fair dealing.

325. As a direct and proximate result of Criterion's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars.

326. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

<u>TENTH CAUSE OF ACTION</u>

(Nevada RICO Claims as Against Mulligan, George, Simon, Guffey, McCrae, Kapelinkovs, CTC, Lexicon, and Criterion)

327. Mulligan, George, Simon, Guffey, McCrae, the Kapelinkovs, CTC, Lexicon and Criterion, participated in racketeering activity through the affairs of Spirit and the Mulligan Enterprise: to wit, repeated embezzlement of Spirit's funds for Defendants' respective purposes and to the detriment and harm of Spirit, including the Defendants acquiescing to, willfully ignoring, or participating in Mulligan's transfer of Spirit assets to other individuals or entities with knowledge that Mulligan intended to use the property to further the racketeering activity of the Mulligan Enterprise and that Mulligan intended to conceal the location, source, ownership or control of the Spirit assets to avoid detection of his ongoing embezzlement enterprise.

328. Defendants Mulligan, Pavel Kapelnikov, George, Simon, Guffy, Igor Kapelnikov, Yanina Kaplenikov, Lexicon, CTC California, CTC Missouri, CTC Hawaii, Kapa Management Consulting Inc., ICAP Management Solutions LLC, Fourgorean, Six Eleven LLC, Global Forwarding, Global Capital Group, Chelsea Financial Group; Chelsea Premium Finance, Lexicon, Global Consulting, Kapa Ventures, Criterion, One West Main Street LLC, Quote My Rig, LLC, New Tech Capital, LLC, Fourgean Capital LLC, Ironjab, LLC, 10-4 Preferred Risk Managers, and other Defendants acquired or maintained an interest in Spirit through racketeering activity, to wit, repeated embezzlement of Spirit's funds and/or obtaining money or other Spirit assets by false pretenses or serial fraud for Defendants' respective purposes, as detailed herein.

329. Defendants violated a predicate racketeering act by conspiracy to engage in the above-described

conduct, constituting serial and systematic embezzlement of Spirit assets.

330. Specifically, Defendants designed the Mulligan Enterprise to systematically comingle the assets and liabilities to the various entities and individuals comprising the Enterprise to obscure the location, source, ownership, and/or control of Spirit assets such that they could be surreptitiously diverted for the benefit of Mulligan and the other individual Defendants and deprived of Spirit, deceiving the public, the Division, and others in the process, as detailed herein.

331. Put differently, Defendants used the Mulligan Enterprise to convert Spirit assets to Mulligan and/or the other Defendants for their own use with the intent to defraud or steal the assets from Spirit, with the effect of appropriating Spirit's property for Mulligan's and the other Defendant's use, all in derogation of their roles as Spirit's trusted fiduciaries, as detailed herein.

332. Defendants perpetrated their scheme to expropriate and embezzle Spirit property through false and deceiving pretenses, including by providing knowingly and designedly false and incomplete financial statements to Spirit, the Division, and others with the intent to cheat or defraud and systematically failing to properly account for insurance premiums and loss reserves in an environment lacking any meaningful internal accounting control, all in violation of NRS 205.300, 205.380, 207.400 & 207.470, as detailed herein.

333. Specifically, Defendants misrepresented the financial condition of Spirit to the Division and Spirit's policyholders; mispresented to Spirit policyholders the nature of their Chelsea Financial premium finance arrangements and about their insurance premiums being paid to Spirit for viable insurance; misrepresented the financial condition and books and records of CTC to obscure its mismanagement of Spirit's policies to Spirit, the Division, and Spirit's policyholders; and concealed the transfer away from Spirit/CTC and to Mulligan, George, McCrae, Simon, Guffey, the Kapelnikovs, entities in the Mulligan Enterprise that are the alter egos and/or fraudulent transferees of CTC or Mulligan, and entities that are the alter egos and/or fraudulent transferees of George, McCrae, Simon, Guffey, Lexicon, Criterion and/or the Kapelnikovs, as detailed herein.

334. Defendants further misrepresented to the Division that Spirit had, or would have, the financial wherewithal to pay for a reinsurance relationship with Accredited, with such representations based

on the false premises that CTC was a viable entity that would and could make good on balances that it owed to Spirit and that CTC would arrange for other funds to also make the reinsurance payments to Accredited.

335. Defendants perpetuated their expropriation and embezzlement through extensive patterns of the fraudulent and/or otherwise unlawful conduct described in detail above, including, but not limited to:

a. Causing CTC to fail to remit premiums collected by CTC to Spirit consistent with the CTC Agreement and instead using funds properly belonging to Spirit (and held in trust for Spirit) to fund CTC, Criterion, Chelsea Financial, and other entities in the Mulligan Enterprise;

b. Causing CTC to fail to collect premiums due to Spirit and misreporting those failures as canceled policies or "FPA" transactions retroactively to avoid paying Spirit premiums to which it is entitled;

c. Causing CTC to overpay commissions and other amounts due to CTC, Criterion, Chelsea Financial, and other entities in the Mulligan enterprises in an effort to avoid paying Spirit amounts owed it by CTC, Criterion, Chelsea Financial, and other entities in the Mulligan Enterprise;

d. Allowing Chelsea Financial to retain and squander Spirit's premium assets for the benefit of the Mulligan enterprises and insiders and related parties, and covering up that Chelsea Financial had collected but failed to remit such premium funds to Spirit;

e. Allowing or enabling Spirit policyholders to enter into premium finance loan agreements with Chelsea Financial under the false premise that premiums were being financed by Chelsea Financial and that the premium money would be used to buy insurance with a viable insurance company (*i.e.*, Spirit);

f. Through Criterion, and at the direction of Defendants Mulligan and McCrae, causing Spirit to set claim reserves at artificially low amounts, even when the severity of the loss exceeded such reserve amount, 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.

g. Making payments on related-party loans without documentation of the underlying debt and without proper disclosure to the Division;

h. Disguising fraudulent payments to insiders and/or related parties as legitimate transactions;

i. Diverting Spirit's bank account money to New Tech Capital, LLC for the use of the Mulligan Enterprise and insiders and related parties;

j. Continuing Spirit's business operations far past the point of insolvency by manipulating Spirit's books and records and its representations to the Division and exposing Spirit's policyholders to unpayable claims, including by making misleading, false, incomplete, and/or untimely representations and omissions to the Division regarding Spirit and/or CTC's ability to fund the LPT Spirit proposed with a reinsurer and/or Spirit's ability to obtain financing, delaying the ultimate suspension of Spirit's business and receivership by months, and allowing Spirit to continue to incur losses under ballooning insolvency while the Mulligan Enterprise and the individual Defendants responsible for it continued to benefit.

336. This pattern of racketeering activity was undertaken as efforts by Mulligan and the other Individual Defendants to maintain control of the vast Mulligan Enterprise, allowing them to transfer away funds while retaining control over remaining assets, all while Spirit funded the losses of CTC and the other entity Defendants so that Defendants could continue to make payments to their preferred creditors, leaving pennies for Spirit and other non-insider creditors.

337. Defendants used the interstate wire system and/or the United States interstate mail system to facilitate the fraudulent scheme described here, in violation of federal law. Specifically, Spirit and the Defendants, who exercise control over Spirit, made fraudulent statements to the Division and Spirit's policyholders by mail and electronic mail, and CTC and the individual defendants who exercise control over CTC and the rest of the Mulligan Enterprise made the unlawful transfers of

funds described above using the interstate system of wires.

338. Plaintiff suffered injury by reason of the above-mentioned conduct, specifically, the loss of tens of millions of dollars, the inability to operate as a going concern, being placed in receivership and ultimately liquidation, and being unable to pay its creditors and policyholders.

339. Defendants' conduct as described herein proximately caused Plaintiff's injury.

340. Plaintiff did not participate in the violation, as the officers and directors of Spirit were not acting in Spirit's interest but in their own interest.

341. As a result of Defendants' conduct and violation of the RICO statute, Plaintiff is entitled to three times actual damages.

342. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

ELEVENTH CAUSE OF ACTION

(Unjust Enrichment as Against All Defendants)

343. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

344. As detailed herein, Defendants received benefits from Spirit, namely, monetary benefits, such that it would be inequitable for Defendants to retain those benefits at the expense of Spirit.

345. Defendant Lexicon received at least $44,364.47 directly from Spirit for which it was not entitled.

346. Additionally, CTC transferred funds and/or other property rightfully belonging to Spirit to the following individuals and entities (in the amounts listed in parentheses, respectively): Chelsea Financial (~$6.5 million dollars); Global Capital Group (more than $3 million dollars); Chase Bank to pay, on information and belief, personal credit card bills of Mulligan (~$2.67 million dollars); Kapa Management Consulting (~$2.3 million dollars); unidentified transferees (multiple transfers totaling more than $1.8 million dollars); Mulligan (three transfers totaling more than $1.8 million dollars); ICAP Management Solutions (more than $1.5 million dollars); Fourgorean (two transfers of ~$1.2 million and $214,000); Six Eleven LLC (three transfers of ~$872,000 and ~$354,000 and,

on information and belief, ~$72,000); Global Forwarding (~$719,000); Bank of America to pay, on information and belief, personal credit card bills of Mulligan (~$363,000); Igor and/or Yanina Kapelnikov (~$354,000); Quote my Rig, LLC (more than $300,000); Carrus Mobile (two transfers of ~$100,000 and ~$200,000); Borson Law LLC for "settlement" with Guffey (~$256,000); Chelsea Premium Finance (~$195,000); Siro Smith Dickson for "settlement" with Guffey (~$194,000); Yanina Kapelnikov (~$173,000); 10-4 Preferred Risk Managers (~$150,000); Criterion (more than $90,000); cash withdraws with unidentified recipients/purpose (more than $86,000); 195 Gluten Free LLC (~$44,000); Kapa Ventures (more than $35,000); Ironjab, LLC (more than $15,000); and Global Consulting (nearly $14,000), as detailed herein.

347. In addition, CTC improperly and fraudulently "wrote off" debts due to CTC and payable by the following related-party entities (in the amounts listed in parentheses, respectively), which funds would be due Spirit had CTC not "written off" these debts from related parties and instead collected them: Chelsea Financial (~4.45 million dollars); Criterion (more than $50,000); and County Hall ($25,000), as detailed herein.

348. Further, CTC reclassified a debt due to CTC and payable by Mulligan (in an amount in excess of $790,000) as "Dividends Paid," which funds would be due Spirit had CTC not reclassified this debt and instead collected it from Mulligan, as detailed herein.

349. Further, Spirit money was improperly diverted to New Tech Capital, LLC for the use of the Mulligan Enterprise and insiders and related parties.

350. As a direct and proximate result of defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars.

351. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

TWELFTH CAUSE OF ACTION

(Fraud as Against All Defendants)

352. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

353. Plaintiff asserts that she has met the standard for pleading a fraud claim pursuant to NRCP 9(b), but if she has not, that the relaxed standard for pleading fraud pursuant to *Rocker v. KPMG LLP*, 122 Nev. 1185 (2006) applies here, as the full factual basis of the fraud is not available because much of the relevant information and documents are solely within certain Defendants' possession and cannot be secured without discovery.

354. Defendants, including those comprising the Mulligan Enterprise, are or operate a series of companies in insurance-related fields covering the spectrum of the insurance business and include, but are not limited to the CTC Entities, Criterion, Lexicon, and Chelsea Financial. Upon information and belief, these companies are merely vehicles by which funds are knowingly and intentionally siphoned from Spirit for the benefit of the individual defendants and/or entities controlled by the same. With the active participation or knowledge of Defendants, Chelsea Financial misled Spirit insureds that it had financed their insurance premiums, which was untrue, and had paid all of their collected premiums to Spirit for viable insurance, which was also untrue.

355. Under this scheme, tens of millions of dollars rightfully owed to Plaintiff for the benefit of Spirit's insureds has gone missing and Spirit is entitled to recover the same.

356. As set forth in detail above, the Spirit Director Defendants ran Spirit with little oversight and participated and/or acquiesced in the scheme, or they should have known of the scheme, by which tens of millions of dollars rightfully owed to Plaintiff for the benefit of Spirit's insureds has gone missing.

357. The Spirit Director Defendants made and/or allowed to be made false representations on Spirit's websites, in its public statements, and in statements or omissions to the Division, intending to dupe the recipients of the statements into believing that Spirit was solvent and viable, could pay out on claims, and/or that the Defendant entities would repay Spirit monies owed.

358. The Spirit Director Defendants knew the representations or omissions were false, or that they had an insufficient basis for making them, and intended to induce reliance by state regulators, including the Division, and policyholders on the representations or omissions by hiding the true state of Spirit's affairs, including its paltry loss reserves and mounting insolvency.

359. Defendants formed an agreement to act in concert to misrepresent the financial condition of Spirit to the Division and Spirit's policyholders; to mispresent to Spirit policyholders the nature of their Chelsea Financial premium finance arrangements and their insurance premiums being paid to Spirit for viable insurance; to misrepresent the financial condition and books and records of CTC to obscure its mismanagement of Spirit's policies to Spirit, the Division, and Spirit's policyholders; and to conceal the transfer away from Spirit/CTC and to Mulligan, George, McCrae, Simon, Guffey, the Kapelnikovs, entities in the Mulligan enterprise that are the alter egos and/or fraudulent transferees of CTC or Mulligan, and entities that are the alter egos and/or fraudulent transferees of George, McCrae, Simon, Guffey, and/or the Kapelnikovs, as detailed herein.

360. With the active participation or knowledge of Defendants, Chelsea Financial misled Spirit insureds that it had financed their insurance premiums, which was untrue, and had paid all of their collected premiums to Spirit for viable insurance, which was also untrue. With the active participation or knowledge of Defendants, Spirit policyholders entered into these premium finance loan agreements with Chelsea Financial under the false premise that the premiums were being financed and paid for by Chelsea Financial and that the premium money would be used to buy insurance with a viable insurance company (*i.e.*, Spirit), and not that the premium money would be squandered, dissipated, or improperly used by the Mulligan Enterprise and insiders and related parties.

361. With the active participation or knowledge of Defendants, Spirit's money was improperly diverted to New Tech Capital, LLC for the use of the Mulligan Enterprise and insiders and related parties—all while making it seem like Spirit was investing money in, and would be the owner of, New Tech Capital, LLC.

362. Defendants perpetuated their fraud through acts described in detail above, including, but not limited to:

a. Making unnecessary payments to Lexicon;

b. Causing CTC to fail to remit premiums collected by CTC to Spirit consistent with the CTC Agreement and instead using funds properly belonging to Spirit (and held in trust for Spirit) to fund CTC, Criterion, Chelsea Financial, and other entities in the Mulligan Enterprise. Causing CTC to fail to collect premiums due to Spirit and misreporting those failures as canceled policies or "FPA" transactions retroactively to avoid paying Spirit premiums to which it is entitled;

c. Causing CTC to overpay commissions and other amounts due to CTC, Criterion, Chelsea Financial, and other entities in the Mulligan enterprises in an effort to avoid paying Spirit amounts owed it by CTC, Criterion, Chelsea Financial, and other entities in the Mulligan Enterprise;

d. Allowing Chelsea Financial to retain and squander Spirit's premium assets for the benefit of the Mulligan Enterprises and insiders and related parties, and covering up that Chelsea Financial had collected but failed to remit such premium funds to Spirit; and

e. Allowing Chelsea Financial to issue premium finance agreements that misled Spirit insureds into believing that it had financed their insurance premiums and that such premiums would be paid in full to Spirit for viable insurance.

363. Through Criterion, at the direction of Defendants Mulligan, George and McCrae, or with the active participation of George, McCrae, or Guffey in working with Mulligan, fraud was perpetuated against Spirit by setting claim reserves at artificially low amounts, even when the severity of the loss exceeded such reserve amount, with the intent of overstating Spirit's financial performance. The understatement of Spirit's loss reserves had the actual effect of not setting aside enough money to cover future loss payments as the understatement made it appear that Spirit was a viable insurance business that could pay all of its claims.

364. Through Criterion, at the direction of Defendants Mulligan, George and McCrae--or with the active participation of George, McCrae, Simon, or Guffey in working with Mulligan, fraud was perpetuated as Spirit was caused to overpay claims when coverage should have been cancelled and to pay claims for Mexican insureds when Spirit was not authorized to write such business.

365. Defendants' fraud was further perpetuated by payments on related-party loans without documentation of the underlying debt; Diverting Spirit's money to New Tech Capital, LLC for the

use of the Mulligan Enterprise and insiders and related parties; Disguising fraudulent payments to insiders and/or related parties as legitimate transactions; Continuing Spirit's business operations far past the point of insolvency by manipulating Spirit's books and records and its representations to the Division and exposing Spirit's policyholders to unfunded claims; and Representing to the Division that Spirit had, or would have, the financial wherewithal to pay for a reinsurance relationship with Accredited, with such representations based on the false premises that CTC was a viable entity that would and could make good on balances that it owed to Spirit and that CTC would arrange for other funds to also make the reinsurance payments to Accredited.

366. Absent Defendants' fraudulent actions and false representation, Spirit may have operated as a successful insurer or, absent Defendants' fraudulent representations to the Divisions, Spirit's operations would have been halted by the state regulators earlier, protecting its insureds and other creditors. At the very least, more Spirit money would be available to pay policy claims but for the actions of Defendants.

367. Plaintiff justifiably relied upon the representations of the Spirit Director Defendants and was harmed due to the same.

368. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars.

369. In committing the acts herein above alleged, the Defendants are guilty of oppression, fraud, and malice toward Spirit. Therefore, Spirit is entitled to recover punitive damages from the Defendants for the purpose of deterring it and others similarly situated from engaging in like conduct in the future

370. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

<u>THIRTEENTH CAUSE OF ACTION</u>

(Civil Conspiracy as Against All Defendants)

371. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

372. Defendants acted in concert with each other to falsify results and reserves, to conceal financial problems and wrongdoing, to acquiesce to financial transactions and transfers of funds that were improper and detrimental to the interests of Spirit, to mislead Spirit policyholders as to the nature of their Chelsea Financial premium finance arrangements and about their insurance premiums being paid to Spirit for insurance with a viable insurer, and to avoid regulatory oversight by the use of untruthful, unreliable, or altered financial data or other information they knew to be false and not in accordance with required statutory and professional standards in order to continue the operation of Spirit for their own personal gain.

373. Specifically, and without limitation, Defendants formed an agreement to act in concert to misrepresent the financial condition of Spirit to the Division and Spirit's policyholders; to mispresent to Spirit policyholders the nature of their Chelsea Financial premium finance arrangements and their insurance premiums being paid to Spirit for viable insurance; to misrepresent the financial condition and books and records of CTC to obscure its mismanagement of Spirit's policies to Spirit, the Division, and Spirit's policyholders; and to conceal the transfer away from Spirit/CTC and to Mulligan, George, McCrae, Simon, Guffey, the Kapelnikovs, entities in the Mulligan enterprise that are the alter egos and/or fraudulent transferees of CTC or Mulligan, and entities that are the alter egos and/or fraudulent transferees of George, McCrae, Simon, Guffey, and/or the Kapelnikovs, as detailed herein.

374. Further, Defendants formed an agreement to act in concert to expropriate funds owed Spirit and its policyholders through the acts and/or omissions described in detail above, including, but not limited to:

a. Making unnecessary payments to Lexicon;

b. Causing CTC to fail to remit premiums collected by CTC to Spirit consistent with the CTC Agreement and instead using funds properly belonging to Spirit (and held in trust for Spirit) to fund CTC, Criterion, Chelsea Financial, and other entities in the Mulligan Enterprise;

c. Causing CTC to fail to collect premiums due to Spirit and misreporting those failures as canceled policies or "FPA" transactions retroactively to avoid paying Spirit premiums to which it is entitled;

d. Causing CTC to overpay commissions and other amounts due to CTC, Criterion, Chelsea Financial, and other entities in the Mulligan enterprises in an effort to avoid paying Spirit amounts owed it by CTC, Criterion, Chelsea Financial, and other entities in the Mulligan Enterprise;

e. Allowing Chelsea Financial to retain and squander Spirit's premium assets for the benefit of the Mulligan Enterprises and insiders and related parties, and covering up that Chelsea Financial had collected but failed to remit such premium funds to Spirit;

f. Allowing or enabling Spirit policyholders to enter into these premium finance loan agreements with Chelsea Financial under the false premise that premiums were being financed by Chelsea and that the premium money would be used to buy insurance with a viable insurance company (*i.e.*, Spirit);

g. Through Criterion, and at the direction of Defendants Mulligan and McCrae, causing Spirit to set claim reserves at artificially low amounts, even when the severity of the loss exceeded such reserve amount, with the intent of overstating Spirit's financial performance. These actions let to proper loss reserve funds being unavailable to pay claims and financial misreporting of Spirit's viability;

h. Diverting Spirit's money to New Tech Capital, LLC for the use of the Mulligan Enterprise and insiders and related parties;

i. Making payments on related-party loans without documentation of the underlying debt;

j. Disguising fraudulent payments to insiders and/or related parties as legitimate transactions;

k. Representing to the Division that Spirit had, or would have, the financial wherewithal to pay for a reinsurance relationship with Accredited, with such representations based on the false premises that CTC was a viable entity that would and could make good on balances that it owed to Spirit and that CTC would arrange for other funds to also make the reinsurance payments to Accredited; and

l. Continuing Spirit's business operations far past the point of insolvency by manipulating Spirit's books and records and its representations or omissions to the Division and exposing Spirit's policyholders to unfunded claims.

375. Defendants' conduct described herein involved intentional misconduct, fraud, and/or knowing violations of the law.

376. Each of the Defendants are jointly and severally liable for the damages described herein.

377. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars.

378. In committing the acts herein above alleged, the Defendants are guilty of oppression, fraud, and malice toward Spirit. Therefore, Spirit is entitled to recover punitive damages from the Defendants for the purpose of deterring it and others similarly situated from engaging in like conduct in the future

379. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FOURTEENTH CAUSE OF ACTION

(Alter Ego as Against Mulligan, George, Guffey, Simon and Pavel Kapelnikov)

380. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

381. Spirit and the entity defendants named herein were at all relevant times influenced and governed by the Individual Defendants, including Mulligan, George, Guffey, Simon and Pavel Kapelnikov.

382. There is such unity of interest between the Individual Defendants and the entities such that the Individual Defendants are inseparable from the entities, where, on information and belief, Mulligan, George, Guffey, Simon and Pavel Kapelnikov commingled personal funds and the funds of each of their entities, treated the companies' assets as their own, exercised majority control over the affairs of the entities separately and/or collectively, undercapitalized the entities, failed to pay lawful dividends, promoted fraud, shared corporate addresses and offices, and failed to observe corporate

formalities.

383. Adherence to the corporate fiction of a separate entity under the circumstances outlined in this complaint would sanction fraud or promote a manifest injustice.

384. Accordingly, the Individual Defendants are personally liable for the debts of the entities.

FIFTEENTH CAUSE OF ACTION

(NRS 112 - Avoidance of Transfers as Against CTC and its Transferees)

385. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

386. CTC was, and is, a debtor with respect to Spirit and the Receivership Estate, where CTC owes substantial monies to Spirit/Plaintiff, including monies due under the Program Administrator Agreement, monies due under the loan note, and other monies due as stated herein.

387. To avoid paying Spirit/Plaintiff these monies, CTC made transfers to natural persons and entities with the actual intent to hinder, delay, or defraud Spirit/Plaintiff.

388. Specifically, CTC transferred funds and/or other property rightfully belonging to Spirit to the following individuals and entities (in the amounts listed in parentheses, respectively): Chelsea Financial (~$6.5 million dollars); Global Capital Group (more than $3 million dollars); Chase Bank to pay, on information and belief, personal credit card bills of Mulligan (~$2.67 million dollars); Kapa Management Consulting (~$2.3 million dollars); unidentified transferees (multiple transfers totaling more than $1.8 million dollars); Mulligan (three transfers totaling more than $1.8 million dollars); ICAP Management Solutions (more than $1.5 million dollars); Fourgorean (two transfers of ~$1.2 million and ~$214,000); Six Eleven LLC (three transfers of ~$872,000 and ~$337,913 and, on information and belief, $72,000); Global Forwarding (~$719,000); Bank of America to pay, on information and belief, personal credit card bills of Mulligan (~$363,000); Igor and/or Yanina Kapelnikov (~$354,000); Six Eleven LLC (~$340,000); Quote my Rig, LLC (more than $300,000); Carrus Mobile (two transfers of ~$100,000 and ~$200,000); Borson Law LLC for “settlement” with Guffey (~$256,000); Chelsea Premium Finance (~$195,000); Siro Smith Dickson for “settlement” with Guffey (~$194,000); Yanina Kapelnikov (~$173,000); 10-4 Preferred Risk Managers

(~$150,000); Criterion (more than $90,000); cash withdraws with unidentified recipients (more than $86,000); 195 Gluten Free LLC (~$44,000); Kapa Ventures (more than $35,000); Ironjab, LLC (more than $15,000); and Global Consulting (nearly $14,000), as detailed herein.

389. In addition, CTC improperly and fraudulently "wrote off" debts due to CTC and payable by the following related-party entities (in the amounts listed in parentheses, respectively), which funds would be due Spirit had CTC not "written off" these debts from related parties and instead collected them: Chelsea Financial (~4.45 million dollars); Criterion (more than $50,000); and County Hall ($25,000), as detailed herein.

390. Further, CTC reclassified a debt due to CTC and payable by Mulligan (in an amount in excess of $790,000) as "Dividends Paid," which funds would be due Spirit had CTC not reclassified this debt and instead collected it from Mulligan, as detailed herein.

391. Pursuant to NRS 112.210, Plaintiff is entitled to avoidance of these fraudulent transfers.

392. Defendants' conduct described herein involved intentional misconduct, fraud, and/or knowing violations of the law.

393. Each of the Defendants are jointly and severally liable for the damages described herein.

394. As a direct and proximate result of defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars.

395. In committing the acts herein above alleged, the Defendants are guilty of oppression, fraud, and malice toward Spirit. Therefore, Spirit is entitled to recover punitive damages from the Defendants for the purpose of deterring it and others similarly situated from engaging in like conduct in the future

396. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

<u>SIXTEENTH CAUSE OF ACTION</u>

(NRS 696B – Voidable Transfers as Against CTC and its Transferees)

397. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

398. On information and belief, in the period leading up to Spirit's insolvency and receivership, transfers were made from Spirit by or at the direction of its officers or directors from Spirit's funds held in trust by CTC or others to individuals and entities claiming to be creditors.

399. On information and belief, Spirit's officers and directors and/or CTC made these transfers with the intent of giving these "creditors" a greater percentage of their debt than any other creditor of the same class, allowing some creditors/insiders to receive preferential transfers they would not have obtained once Spirit was under the Division's receivership.

400. On information and belief, these "creditors" accepted the transfers with reasonable cause to believe that a preference would occur.

401. Specifically, CTC transferred funds and/or other property rightfully belonging to Spirit to the following individuals and entities (in the amounts listed in parentheses, respectively): Chelsea Financial (~$6.5 million dollars); Global Capital Group (more than $3 million dollars); Chase Bank to pay, on information and belief, personal credit card bills of Mulligan (~$2.67 million dollars); Kapa Management Consulting (~$2.3 million dollars); unidentified transferees (multiple transfers totaling more than $1.8 million dollars); Mulligan (three transfers totaling more than $1.8 million dollars); ICAP Management Solutions (more than $1.5 million dollars); Fourgorean (two transfers of ~$1.2 million and $214,000); Six Eleven LLC (three transfers of ~$872,000 and ~$340,000 and, on information and belief, $72,000); Global Forwarding (~$719,000); Bank of America to pay, on information and belief, personal credit card bills of Mulligan (~$363,000); Igor and/or Yanina Kapelnikov (~$354,000);); Quote my Rig, LLC (more than $300,000); Carrus Mobile (two transfer of ~$100,000 and ~$200,000); Borson Law LLC for "settlement" with Guffey (~$256,000); Chelsea Premium Finance (~$195,000); Siro Smith Dickson for "settlement" with Guffey (~$194,000); Yanina Kapelnikov (~$173,000); 10-4 Preferred Risk Managers (~$150,000); Criterion (more than $90,000); cash withdraws with unidentified recipients (more than $86,000); 195 Gluten Free LLC (~$44,000); Kapa Ventures (more than $35,000); Ironjab, LLC (more than $15,000); and Global Consulting (nearly $14,000), as detailed herein.

402. In addition, CTC improperly and fraudulently "wrote off" debts due to CTC and payable by the

following related-party entities (in the amounts listed in parentheses, respectively), which funds would be due Spirit had CTC not "written off" these debts from related parties and instead collected them: Chelsea Financial (~4.45 million dollars); Criterion (more than $50,000); and County Hall ($25,000), as detailed herein.

403. Further, CTC reclassified a debt due to CTC and payable by Mulligan (in an amount in excess of $790,000) as "Dividends Paid," which funds would be due Spirit had CTC not reclassified this debt and instead collected it from Mulligan, as detailed herein.

404. Pursuant to NRS 696B.410, such transfers are voidable, and every director, officer, employee, member, or any other person acting on behalf of Spirit who participated therein, to wit, Mulligan, Simon, George, McCrae, Guffey, Maloney, Marx, C. Torres and V. Torres, is jointly and severally liable for the same and is bound to account to the Receiver.

405. Pursuant to NRS 696B.410, the Receiver is entitled to recover this property, or its value, from the above-named Defendants.

406. Each of the Defendants are jointly and severally liable for the damages described herein.

407. Defendants' conduct described herein involved intentional misconduct, fraud, and/or knowing violations of the law.

408. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars.

In committing the acts herein above alleged, the Defendants are guilty of oppression, fraud, and malice toward Spirit. Therefore, Spirit is entitled to recover punitive damages from the Defendants for the purpose of deterring it and others similarly situated from engaging in like conduct in the future.

409. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

SEVENTEENTH CAUSE OF ACTION

(NRS 696B – Recovery of Distributions and Payments as Against CTC and its Transferees)

410. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs

as if fully set forth herein.

411. On information and belief, in the period leading up to Spirit's insolvency and receivership, distributions were made from Spirit by or at the direction of its officers or directors or from Spirit's funds held in trust by CTC to parent corporations, holding companies, affiliates, or other controlling persons.

412. Specifically, CTC transferred funds and/or other property rightfully belonging to Spirit to the following individuals and entities (in the amounts listed in parentheses, respectively): Chelsea Financial (~$6.5 million dollars); Global Capital Group (more than $3 million dollars); Chase Bank to pay, on information and belief, personal credit card bills of Mulligan (~$2.67 million dollars); Kapa Management Consulting (~$2.3 million dollars); unidentified transferees (multiple transfers totaling more than $1.8 million dollars); Mulligan (three transfers totaling more than $1.8 million dollars); ICAP Management Solutions (more than $1.5 million dollars); Fourgorean (two transfers of ~$1.2 million and ~$214,000); Six Eleven LLC (three transfers of ~$872,000 and $337,913 and, on information and belief, ~$72,000); Global Forwarding (~$719,000); Bank of America to pay, on information and belief, personal credit card bills of Mulligan (~$363,000); Igor and/or Yanina Kapelnikov (~$354,000); Quote my Rig, LLC (more than $300,000); Carrus Mobile (two transfers of ~$100,000 and $200,000); Borson Law LLC for "settlement" with Guffey (~$256,000); Chelsea Premium Finance (~$195,000); Siro Smith Dickson for "settlement" with Guffey (~$194,000); Yanina Kapelnikov (~$173,000); 10-4 Preferred Risk Managers (~$150,000); Criterion (more than $90,000); cash withdraws with unidentified recipients (more than $86,000);); 195 Gluten Free LLC (~$44,000); Kapa Ventures (more than $35,000); Ironjab, LLC (more than $15,000); and Global Consulting (nearly $14,000), as detailed herein.

413. In addition, CTC improperly and fraudulently "wrote off" debts due to CTC and payable by the following related-party entities (in the amounts listed in parentheses, respectively), which funds would be due Spirit had CTC not "written off" these debts from related parties and instead collected them: Chelsea Financial (~4.45 million dollars); Criterion (more than $50,000); and County Hall ($25,000), as detailed herein.

414. Further, CTC reclassified a debt due to CTC and payable by Mulligan (in an amount in excess of $790,000) as "Dividends Paid," which funds would be due Spirit had CTC not reclassified this debt and instead collected it from Mulligan, as detailed herein.

415. On information and belief, in the period leading up to Spirit's insolvency and receivership, payments were made from Spirit by or at the direction of its officers and directors, or from Spirit's funds held in trust by CTC, as bonuses, settlement on termination, or extraordinary salary adjustments, to individuals and entities such as Mulligan, Pavel Kapelnikov, Yanina Kapelnikov, Igor Kapelnikov, George, Borson Law, and Siro Smith Dickson.

416. Pursuant to NRS 696B.412, Plaintiff is entitled to recover these monies from Defendants, who are jointly and severally liable, along with anyone who controlled Defendants at the time of these distributions or payments.

417. Each of the Defendants are jointly and severally liable for the damages described herein.

418. Defendants' conduct described herein involved intentional misconduct, fraud, and/or knowing violations of the law.

419. As a direct and proximate result of defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars.

420. In committing the acts herein above alleged, the Defendants are guilty of oppression, fraud, and malice toward Spirit. Therefore, Spirit is entitled to recover punitive damages from the Defendants for the purpose of deterring it and others similarly situated from engaging in like conduct in the future

421. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

<u>EIGHTEENTH CAUSE OF ACTION</u>

(NRS 692C.402 - Recovery of Distributions and Payments as Against CTC and its Transferees)

422. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

423. On information and belief, in the period leading up to Spirit's insolvency and receivership,

distributions were made from Spirit by or at the direction of its officers or directors, or from Spirit's funds held in trust by CTC to parent corporations, holding companies, affiliates, or other controlling persons.

424. Specifically, CTC transferred funds and/or other property rightfully belonging to Spirit to the following individuals and entities (in the amounts listed in parentheses, respectively): Chelsea Financial (~$6.5 million dollars); Global Capital Group (more than $3 million dollars); Chase Bank to pay, on information and belief, personal credit card bills of Mulligan (~$2.67 million dollars); Kapa Management Consulting (~$2.3 million dollars); unidentified transferees (multiple transfers totaling more than $1.8 million dollars); Mulligan (three transfers totaling more than $1.8 million dollars); ICAP Management Solutions (more than $1.5 million dollars); Fourgorean (two transfers of ~$1.2 million and $214,000); Six Eleven LLC (three transfers of ~$872,000 and ~$337,913 and, on information and belief, ~$72,000); Global Forwarding (~$719,000); Bank of America to pay, on information and belief, personal credit card bills of Mulligan (~$363,000); Igor and/or Yanina Kapelnikov (~$354,000); Quote my Rig, LLC (more than $300,000); Carrus Mobile (two transfers of ~$100,000 and ~$200,000); Chelsea Premium Finance (~$195,000); Yanina Kapelnikov (~$173,000); 10-4 Preferred Risk Managers (~$150,000); Criterion (more than $90,000); cash withdraws with unidentified recipients (more than $86,000); 195 Gluten Free LLC (~$44,000); Kapa Ventures (more than $35,000); Ironjab, LLC (more than $15,000); and Global Consulting (nearly $14,000), as detailed herein.

425. In addition, CTC improperly and fraudulently "wrote off" debts due to CTC and payable by the following related-party entities (in the amounts listed in parentheses, respectively), which funds would be due Spirit had CTC not "written off" these debts from related parties and instead collected them: Chelsea Financial (~4.45 million dollars); Criterion (more than $50,000); and County Hall ($25,000), as detailed herein.

426. Further, CTC reclassified a debt due to CTC and payable by Mulligan (in an amount in excess of $790,000) as "Dividends Paid," which funds would be due Spirit had CTC not reclassified this debt and instead collected it from Mulligan, as detailed herein.

427. On information and belief, in the period leading up to Spirit's insolvency and receivership, payments were made from Spirit by or at the direction of its officers and directors, or from Spirit's funds held in trust by CTC.

428. Pursuant to NRS 692C.402, Plaintiff is entitled to recover these monies from Defendants, who are jointly and severally liable, along with anyone who controlled Defendants at the time of these distributions or payments.

429. Pursuant to NRS 692C.404, Defendants are jointly and severally liable up to the amount of distributions they received or would have received had they been paid immediately, and if any Defendant is not able to pay, its parent corporation, holding company, or controlling persons are jointly and severally liable for any deficiency.

430. Defendants' conduct described herein involved intentional misconduct, fraud, and/or knowing violations of the law.

431. Each of the Defendants are jointly and severally liable for the damages described herein.

432. As a direct and proximate result of defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars.

433. In committing the acts herein above alleged, the Defendants are guilty of oppression, fraud, and malice toward Spirit. Therefore, Spirit is entitled to recover punitive damages from the Defendants for the purpose of deterring it and others similarly situated from engaging in like conduct in the future

434. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

<u>NINETEENTH CAUSE OF ACTION</u>

(NRS 78.300 – Recovery of Unlawful Distribution as Against the Spirit Director Defendants)

435. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

436. On information and belief, CTC "updated" its QuickBooks General Ledger for the calendar year 2018 sometime in 2019. Significant intercompany balances and balances due from related

parties were adjusted.

437. Among other "adjustments," CTC reclassified a balance due from Mulligan of $792,794 as "Dividends Paid."

438. During both 2018 and 2019 (when the "debt" was reclassified as a "dividend"), a distribution of $792,794, after giving that distribution effect, would make CTC unable to pay its other debts as they became due in the normal course of business.

439. In fact, CTC was already unable to pay its debts to Spirit as they became due. Accordingly, the distribution was unlawful.

440. In January 2018, Spirit wrongfully transferred $500,000 to New Tech Capital, LLC, which was supposedly for an investment of the company. This so-called Spirit "investment" turned out to be an investment for the sole use and benefit of Mulligan and Pavel Kapelnikov—and possibly others.

441. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court grant the following relief:

A. An award of compensatory, consequential, special, statutory, restitution, and/or punitive damages to Plaintiff in an amount in excess of $15,000.00;

B. For pre- and post- judgment interest;

C. For attorneys' fees and costs of suit; and

G. For such other and further relief as this Court deems just and proper.

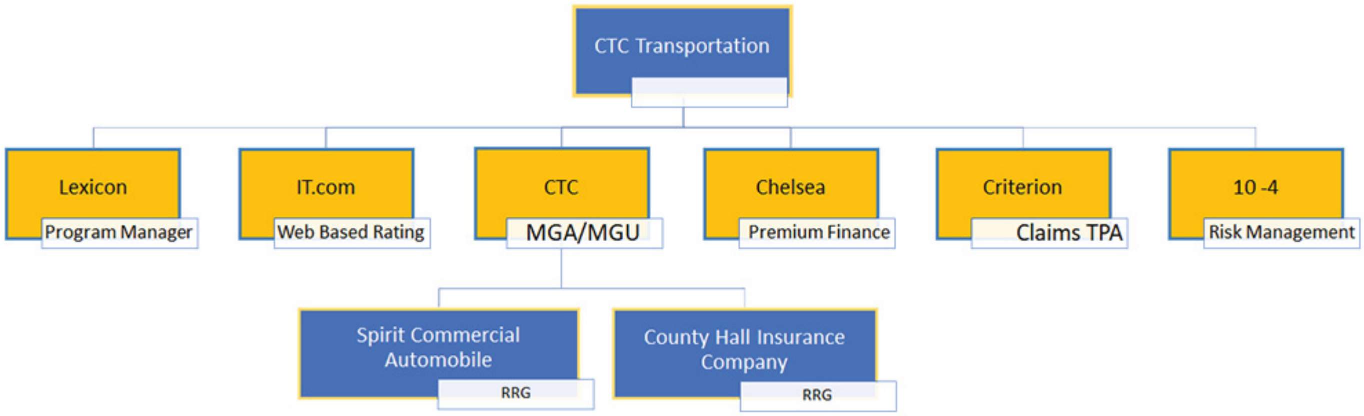
DATED: this 6th day of February 2020.

<u>/s/ Mark E. Ferrario</u>

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

Attorneys for Plaintiff

Exhibit 1



HELPFUL LINKS

- Careers

OUR PRODUCTS

- Auto Liability
- Physical Damage
- Cargo Coverage
- Occupational Accident
- Non-Trucking Liability
- General Liability

CONTACT INFO

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EXHIBIT “B”

Electronically Filed
5/14/2020 10:23 AM
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CTC TRANSPORTATION INSURANCE SERVICES OF MISSOURI, LLC; CTC TRANSPORTATION INSURANCE SERVICES LLC; and **CTC TRANSPORTATION INSURANCE SERVICES OF HAWAII LLC**

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

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

Corporation; CHELSEA HOLDING COMPANY, LLC, a Nevada Limited Liability Company; CHELSEA HOLDINGS, LLC, a, Nevada Limited Liability Company; FOURGOREAN CAPITAL, LLC, a New Jersey Limited Liability Company; KAPA MANAGEMENT CONSULTING, INC., a New Jersey Corporation; KAPA VENTURES, INC., a New Jersey Corporation; GLOBAL FORWARDING ENTERPRISES LIMITED LIABILITY COMPANY, a New Jersey Limited Liability Company; GLOBAL CAPITAL GROUP, LLC, a New Jersey Limited Liability Company; GLOBAL CONSULTING; NEW TECH CAPITAL, LLC, a Delaware Limited Liability Company; LEXICON INSURANCE MANAGEMENT LLC, a North Carolina Limited Liability Company; ICAP MANAGEMENT SOLUTIONS, LLC, a Vermont Limited Liability Company; SIX ELEVEN LLC, a Missouri Limited Liability Company; 10-4 PREFERRED RISK MANAGERS INC., a Missouri Corporation; IRONJAB LLC, a New Jersey Limited Liability Company; YANINA G. KAPELNIKOV, an individual; IGOR KAPELNIKOV, an individual; QUOTE MY RIG LLC, a New Jersey Limited Liability Company; MATTHEW SIMON, an individual; DANIEL GEORGE, an individual; JOHN MALONEY, an individual; JAMES MARX, an individual; CARLOS TORRES, an individual; VIRGINIA TORRES, an individual; SCOTT McCRAE, an individual; BRENDA GUFFEY, an individual; 195 GLUTEN FREE LLC, a New Jersey Limited Liability Company, DOE INDVIDUALS I-X; and ROE CORPORATE ENTITIES I-X,

Defendants.

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

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

DATED this 1c(day of May, 2020.

SALTZMAN MUGAN DUSHOFF

By ______________________

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CTC TRANSPORTATION INSURANCE SERVICES OF MISSOURI, LLC; CTC TRANSPORTATION INSURANCE SERVICES LLC; and **CTC TRANSPORTATION INSURANCE SERVICES OF HAWAII LLC**

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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.

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

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

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

> **SECTION 17**
> **<u>ARBITRATION</u>**
>
> 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, <u>shall</u> 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 discretion, award reasonable attorneys fees, costs and expenses related to the mediation or arbitration to the prevailing party and such amounts will be in additional to any settlement.

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

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

Pursuant to Section 5 of the CTC Agreement, the general duties of CTC-MO included 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. S*ee* CTC Agreement, Section 5.

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

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

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

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

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

III. LEGAL ARGUMENT

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

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

> **NRS 38.221 Motion to Compel or stay arbitration.**
>
> 1. On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:
>   (a) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and
>   (b) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.
>
> ****
>
> 5. If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court....[1]

Here, the enforceability of the CTC Agreement, including the arbitration provision, is not at issue as Spirit admits that the CTC Agreement "was a valid and enforceable contract." 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.

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[1] 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.

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

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

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

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

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

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

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

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

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

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

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i. Breach of Contract (First Cause of Action)[2]

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

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

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

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

[2] In the Complaint, Spirit makes all its allegations against CTC-CA, CTC-MO, and CTC-HI collectively, referring to them almost exclusively as "CTC" and, in doing so, alleges that CTC has breached the CTC Agreement. We note that the initial PAA between Spirit and CTC-CA as well as the CTC Agreement between CTC-MO both contain 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.

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

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

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

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

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

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v. Nevada RICO Claim (Tenth Cause of Action)

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

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

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

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

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

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

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

vi. Unjust Enrichment (Eleventh Cause of Action)

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

vii. Fraud (Twelfth Cause of Action)

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

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

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

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

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

viii. Civil Conspiracy (Thirteenth Cause of Action)

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

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

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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.

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

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

IV. CONCLUSION

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

DATED this 14 day of May, 2020.

SALTZMAN MUGAN DUSHOFF

By____________________

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SALTZMAN MUGAN DUSHOFF, and that on the 14th 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:

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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 of 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 make 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 aas of the date first written above.

SPIRIT COMMERCIAL AUTO RISK RETENTION GROUP, INC.

Witness: Autumn Carey

By: ______________________
Name: Michael Sawaried
Title: President

CTC TRANSPORTATION INSURANCE SERVICES, LLC

Witness: ______________________

By: ______________________
Name: Barbara O'Brien
Title: President

Addendum A

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 31st 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.

Addendum C

PROGRAM ADMINISTRATOR AGREEMENT

BETWEEN

SPIRIT COMMERCIAL AUTO RISK RETENTION GROUP, INC.

AND

CTC TRANSPORTATION INSURANCE SERVICES

EXCESS LAYER PROFIT COMISSION 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. BRESLOW
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
E-mail: insinfo@doi.nv.gov

June 29, 2016

Sent Via Electronic Mail tmatthews@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 kdstern@doi.nv.gov.

Sincerely,

Ken Stern
Management Analyst III

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 make 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
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 liabililty 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 Guffey
Title: President

CTC TRANSPORTATION INSURANCE SERVICES OF MISSOURI, LLC

Witness: ______________________

By: ______________________
Name: Thomas A. Mulligan
Title: CEO

Addendum A

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 31st 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.

Addendum C

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.

EXHIBIT “C”

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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]**

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

DATED this 14th day of May, 2020.

BAILEY❖KENNEDY

By: */s/ Joshua M. Dickey*
JOHN R. BAILEY
JOSHUA M. DICKEY
REBECCA L. CROOKER

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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.[1] 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.

[1] Prior to the filing of this Motion, Criterion requested that the Receiver submit these claims to arbitration. The Receiver refused.

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

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

> 13. ***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,"[4] this agreement to arbitrate is governed by the Federal Arbitration Act, 9 U.S.C. 1 through 15 (1988).[5]

B. <u>The Receivership</u>

On January 11, 2019, the Nevada Insurance Commissioner (the "Commissioner") filed a Petition for Appointment of Commissioner as Receiver in the Eighth Judicial District Court.[6]

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

[3] *See id.*

[4] 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 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.")

[5] Criterion/Spirit Agreement, Ex. A.

[6] *See* 1/11/2019 Petition for Appointment of Commissioner as Receiver and Other Permanent Relief, on file in case number A-19-787325-B).

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

C. <u>The Instant Litigation</u>

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

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

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

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[7] *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").

[8] *See, e.g.*, Compl. ¶ 53.

[9] Compl. ¶ 141.

[10] Compl. ¶ 275.

[11] Compl. ¶ 142.

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Each of the nine claims asserted against Criterion are premised upon the Criterion/Spirit Agreement.[12] 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.

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[12] 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).

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III. ARGUMENT

A. <u>The Federal Arbitration Act Requires Arbitration of the Claims Against Criterion</u>

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."[13] 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).[14]

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.*,

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[13] 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.

[14] 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).

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

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

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

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

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

17 *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."

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

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

B. <u>The Court Should Stay or Dismiss Proceedings Against Criterion Pending Arbitration</u>

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

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[18] Moreover, the Receiver cannot, on the one hand, sue for Criterion's alleged breach of the Agreement, and on the other, avoid the Agreement's arbitration provision. See *Inter. Paper v. 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).

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

IV. CONCLUSION

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

DATED this 14th day of May, 2020.

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By: */s/ Joshua M. Dickey*
JOHN R. BAILEY
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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 14th 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:

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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 [illegible] per Claim. Any loss reserve, settlement, or payment exceeding [illegible] 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 purposed 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 Finley Criterion Claim Solutions Inc.

DATE SIGNED 10/21/11

By: ______________________

Printed Name: Rick McCord

ATTEST ______________________ Spirit Commercial Auto Risk Retention Group Inc.

DATE SIGNED 10/26/11

By: ______________________

Printed Name: Michael Garatick

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: Barbara 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

Criterion Claim Solutions Inc.
P.O. Box 247049
Omaha, NE 68124

Contact Person:
Rick McCord
President
Tel.
Fax
E-Mail rmccord@criterionclaim.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 10th day of each month.