

## Report for Special Master's Status Conference

July 22, 2020

### R-559 Access Insurance Company

SDR: CANTILO & BENNETT, L.L.P.  
Primary Responsible Person: Susan E. Salch  
Estate Counsel: Christopher Fuller  
Receiver's Counsel: Moya McKenna  
RLO Analyst: Vicente Aguillon

#### Background on Receivership

- Date of Permanent Injunction (Liquidation): March 13, 2018
- Date of Appointment of SDR: March 14, 2018
- Claims Filing Deadline: September 13, 2019
- States Where Licensed: TX, AL, AZ, AR, CA, DE, TN, FL, GA, IN, KY, LA, MS, MO, MT, NV, NM, NC, OK, OR, PA, SC
- Lines of Business: Non-standard Auto
- Texas Guaranty Association Triggered: Texas Property and Casualty Insurance Guaranty Association ("TPCIGA")
- Date of Impairment: March 14, 2018
- First Early Access Distribution: \$55,310,174

#### Statement of Assets and Liabilities as of June 30, 2020

Total Assets:	\$255,434,251
Cash & Invested Assets:	\$ 76,603,536
Non-Cash Assets:	\$178,830,715
Total Liabilities:	\$467,039,512
Negative Equity:	(\$211,605,261)

#### Asset Recovery through June 30, 2020

Premium Collected:	\$ 10,792,951
Subrogation/Salvage:	\$ 895,814
Reinsurance Collected:	\$ 61,729,703
FF&E Sold:	\$ 0
CDs Sold/Matured:	\$ 21,049,715
IOLTA Funds Recovered:	\$ 592,965

## Status and Activity Since Last Status Conference

### General Matters

**COVID-19 Response:** The SDR and estate employees continue to work remotely, although a small staff supports the SDR's Minimum Basic Operations in compliance with the State of Texas' and City of Austin's guidance. Mail, faxes, voice mail messages, and e-mails are forwarded as needed to the responsible estate employee or subcontractor as usual.

The following notice is posted on the estate web site, [www.accessinsurancesdr.com](http://www.accessinsurancesdr.com):

*The SDR has developed contingency plans to address potential sources of disruption in our work due to the spread of COVID-19. At this time, the SDR's team does not expect significant delays in responding to inquiries. Our intention is to continue to serve the needs of policyholders, claimants, creditors, regulators, and guaranty associations while keeping our employees safe. Please note, due to the pandemic, the Special Master will not hold in-person Status Conferences in July 2020. The SDR will file a quarterly status report on July 22, 2020. We will update this web site as conditions warrant. Thank you for your patience and understanding.*

As of the date of this report, the SDR, staff, and contractors all report that they and their immediate family members are healthy. As more fully described herein, the estate is continuing to function with no delays.

**Annual Assessment, Key Events Timeline:** The SDR updated its Annual Assessment of Receivership Progress and Annual Key Objectives Timeline and submitted them to RLO on May 29, 2020.

**Disaster Recovery Plan:** On May 15, 2020, the Director of Supervisory Interventions issued a directive (FY20-01) requiring all SDR's to submit a Disaster Recovery Plan ("DRP") documenting the procedures and resources to be used to respond to any short- or long-term interruption to its essential business functions. On June 1, 2020, the SDR submitted its DRP to RLO.

**Early Access:** In January 2020, the SDR distributed a total of \$55,310,174 to twelve associations. The distribution funded all paid Class 1 and Class 2 claims reported as of August 31, 2019.

**Taxes:** AIC's federal tax return for 2017 was filed in early June.

### Claims Activity

**Proof of Claim Application:** The claims filing deadline was September 13, 2019. As of that date, 6,310 POCs were timely filed, the majority of which seek subrogation recoveries. Since the filing deadline, an additional 104 POCs have been received, bringing the total as of June 30, 2020, to 6,414.

**Claim Litigation:** The SDR continues to monitor all states for lawsuits against the company or SDR, notifies plaintiff’s counsel of the liquidation, and refers the claim to the appropriate guaranty association.

**Guaranty Associations:** Claims data is provided to all affected guaranty associations via transfer of UDS records. As of June 30, 2020, UDS-A records have been sent to the associations for 51,022 open/reopened claims (50,974 as of May 31, 2020). In the last six months, new and re-opened claims have fallen precipitously; only 323 have been transferred since the beginning of the year. Whereas for the year 2019, more than 3,600 were sent to the associations.

The guaranty associations continued to convert claims and expense reserves into reported loss and expense payments in June. As of June 30, 2020, California, the association with the largest number of claims by far, reports paid losses of \$46.8 million, loss reserves of \$14.6 million, and UEP of \$16 million. In contrast, as of December 31, 2019, it reported paid losses of \$39.4 million, loss reserves of \$29.5 million, and UEP of \$16 million.

As of June 30, 2020, the guaranty associations report the following totals:

<b>Loss Payments</b>	<b>Expense Payments</b>	<b>Loss Reserves</b>	<b>Expense Reserves</b>	<b>Return of Premium</b>
\$60,708,350	\$11,702,699	\$18,949,156	\$4,350,699	\$19,753,142

As of December 31, 2019, the guaranty associations reported the following totals:

<b>Loss Payments</b>	<b>Expense Payments</b>	<b>Loss Reserves</b>	<b>Expense Reserves</b>	<b>Return of Premium</b>
\$51,665,368	\$8,604,167	\$36,212,972	\$5,718,776	\$19,797,855

**Subrogation:** As noted above, subrogation claims are the largest category of POCs in this estate. The estate recovers approximately \$.90 in reinsurance for every dollar of approved claims. In order to both accelerate estate cash flow and convert the IBNR into recognized paid losses, the SDR has instituted a program to adjudicate the large block of subrogation claims efficiently.

### **Asset Recovery Activity**

**Reinsurance:** All reinsurers are now current on their obligations to the estate. In the last six months the SDR recovered almost \$19 million from reinsurers. The SDR has collected \$61,729,703 in reinsurance recovery to date.

**SDR v. Holdco et al., Texas Litigation:** The SDR has entered into a Rule 11 Agreement to settle its claims against AIC’s former directors and officers. The settlement documents are being drafted and are subject to a confidentiality agreement.

On October 3, 2019, Judge Sulak entered an Order Denying the ABC and Embark Defendants' Special Appearances in the SDR's asset recovery lawsuit and the SDR's application to enjoin the Delaware litigation against the SDR. The ABC and Embark Defendants appealed the rulings. All briefing to the Third Court of Appeals is complete. No hearing date is set.

**Statutory Deposits:** The SDR is working with the Arkansas Department of Insurance for the release of its \$120,000 deposit in exchange for an agreement to surrender AIC's certificate of authority in that state. The SDR provided authorizations to US Bank for the Georgia deposit to be transferred to the Georgia association, and this was accomplished in mid-April.

**Cash/Securities:** The SDR is liquidating AIC's portfolio of CDs as they mature. All proceeds are deposited in the estate's Texas Treasury Safekeeping Account.

**Attorney Trust Funds:** As previously reported, AIC had a practice of transferring the policy limits to defense counsel's trust account pending the ultimate settlement of the underlying lawsuit. After receivership, the SDR clawed back any unspent funds from counsel. To date, the SDR has recovered \$529,965 from defense counsel's trust accounts.

## General Legal Activities

**Delaware Proceedings:** On May 7, 2020, the Delaware court heard oral arguments (by telephone) on motions to dismiss the Delaware lawsuit against the SDR's two co-defendants: Heath & Yuen, a California law firm pursuing a fee recovery lawsuit; and POP 3 Ravinia, the Atlanta landlord. The SDR's motion to dismiss the case is stayed pending the appeal of the special appearances.

On May 8, 2020, the court granted the California law firm's motion to dismiss the case finding that Delaware did not have personal jurisdiction over the firm and that its claims did not interfere with the Delaware ABC proceeding. The court further ordered the Delaware lawsuit stayed pending final resolution of the landlord's lawsuit in Georgia. The judge found that Delaware law required him to stay Delaware litigation where a case between the same parties regarding the same issues was filed first in another state and can be resolved fully in that state.

The court made a number of findings on the record regarding the Holdco ABC proceedings, which the SDR contends were intended to defraud the SDR and the estate's creditors. He found that the Holdco ABC filings failed to follow the Delaware ABC statute. In particular, he ruled that the ABC process required (1) the case to be filed, (2) the ABC entities to file an inventory of assets, (3) the ABC entities to obtain and file an appraisal of the inventory, (4) posting of a bond, and (5) the ABC entities to file reports with the court and all creditors regarding the disposition of the assets. None of these procedures were followed in the AIC ABC proceedings. The judge was also critical of the failure to provide notice to creditors of the Holdco ABC entities' transfer of all or most of their assets to the Embark entities.

**Regulatory Action:** AIC's license has been, or will be, restricted, revoked, or suspended in Alabama, North Carolina, Oregon, Mississippi, Montana, Florida, Louisiana, Tennessee, Kentucky, and Arkansas.

**Subpoenas:** The SDR continues to receive a substantial number of records subpoenas, primarily from California and Pennsylvania. The SDR received 266 new subpoenas and records requests in the last two quarters, for a total of 1,359 from inception of the estate to June 30, 2020. Many of the subpoenas seek the production of voluminous records, which take additional time to retrieve and review. Accordingly, the SDR increased the non-refundable fee to \$1,000 for subpoenas that require additional work (such as the production of an entire litigation claim file), while leaving the standard \$500 fee in place for subpoenas that seek a smaller number of records (such as requests for policy-related documents). Very few parties actually end up paying the fee. The SDR waives the fee for regulators and other government agencies. Documents are produced in the order that the money and appropriate releases are received.

## **Conclusion**

### **Summary of Major Achievements:**

- Entered into Rule 11 Agreement to settle claims against AIC's former directors and officers.
- Transferred Georgia statutory deposit to the Georgia Insurers Insolvency Pool.
- Collected approximately \$19 million in reinsurance remittances.
- Began processing subrogation POCs.
- Funded first early access distribution.
- Filed 2017 federal tax return.

### **Estate Goals to Achieve Prior to Next Status Conference:**

- Complete and collect on settlement with directors and officers.
- Litigate claims against ABC/Embark entities after interlocutory appeal.
- Pursue preferential recovery claims.
- Continue reporting to reinsurers and pursue commutations.

**Estate Closing Date of Receivership:** TBD

**Factors Affecting Closing Date and Final Distribution:** TBD