

## **Report for Special Master's Status Conference**

**April 27, 2021**

### **R-559 Access Insurance Company**

SDR: CANTILO & BENNETT, L.L.P.

Primary Responsible Person: Susan E. Salch

Estate Counsel: Christopher Fuller

Receiver's Counsel: Kimberly Hammer

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
- Early Access Distributions: \$119,969,601
  - January 2020: \$55,321,427
  - April 2021: \$64,648,174

### **Statement of Assets and Liabilities as of March 31, 2021**

Total Assets:	\$253,389,200
Cash & Invested Assets:	\$103,238,637
Non-Cash Assets:	\$150,150,563
Total Liabilities:	\$412,735,146
Negative Equity:	(\$159,345,946)

### **Asset Recovery through March 31, 2021**

Premium Collected:	\$ 10,792,951
Subrogation/Salvage:	\$ 910,126
Reinsurance Collected:	\$ 80,272,064
CDs Sold/Matured:	\$ 22,549,715
IOLTA Funds Recovered:	\$ 592,965
Litigation/Settlement Recovery:	\$ 9,600,000

## Status and Activity Since Last Status Conference

### General Matters

**Early Access:** The Receivership Court granted the SDR's Second Early Access Application on March 5, 2021. The SDR distributed \$64,648,174 to the associations in early April. In January 2020, the SDR distributed \$55,321,427 to twelve associations pursuant to the order granting the First Early Access Application. Together, these distributions cover all paid and reported Class 1 and Class 2 claims, including payments for unearned premium, by the guaranty associations as of October 31, 2020.

**COVID-19 Response/Snowpocalypse 2021:** The February winter storm in Texas affected estate activity only modestly. A number of team members were without power and/or water although no deadlines were missed, and everyone remains healthy. The estate continues to function without delays despite the ongoing pandemic.

### Claims Activity

**Proofs of Claim ("POCs"):** The SDR has received 6,632 POCs as of March 31, 2021. The vast majority of the POCs (including the 322 filed after the September 13, 2019, deadline) are subrogation claims from other insurers. Pursuant to the Court's POC Order, there is no deadline for the timely filing of subrogation claims.

**Subrogation Claims:** The Claims Committee has fully adjudicated 3,421 POCs, and approved approximately \$18.8 million in subrogation claims.

**Claim Litigation:** The SDR continues to be served with lawsuits against the company, SDR, or alleged insured. Upon receipt, the SDR notifies plaintiff's counsel of the liquidation and, if applicable, 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 March 31, 2021, UDS-A records have been sent to the associations for 51,214 open/reopened claims (51,169 as of December 31, 2020).

Based on the guaranty associations' UDS data, it appears that they have adjusted a majority of open claims that can be resolved easily. As of March 31, 2021, California, the association with by far the largest number of claims, 40,326, reports paid losses of \$52.3 million, loss reserves of \$6.7 million, and UEP of \$16 million. By comparison, as of December 31, 2020, California reported paid losses of \$50.5 million and loss reserves of \$8.8 million. UEP has remained largely unchanged since the first year of the receivership.

As of March 31, 2021, 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>
\$67,279,117	\$14,408,665	\$9,516,051	\$3,286,623	\$19,752,836

In comparison, the guaranty associations reported the following totals as of December 31, 2020:

<b>Loss Payments</b>	<b>Expense Payments</b>	<b>Loss Reserves</b>	<b>Expense Reserves</b>	<b>Return of Premium</b>
\$65,213,843	\$13,654,890	\$11,848,758	\$3,550,827	\$19,752,662

### **Asset Recovery Activity**

**Reinsurance:** Reinsurance collections totaled \$4,238,110 in March 2021, bringing the total recovered from inception of the estate to \$80,272,064. Collections in 2021 have increased because of the increasing number of approved subrogation POCs that are being added to paid losses in the bordereaux.

**SDR v. Holdco et al., Texas Litigation:** On March 17, 2021, the Third Court of Appeals in Austin reversed Judge Sulak, granted the Embark and ABC parties' objections to personal jurisdiction in Texas, and dismissed the SDR's claims against them. The ruling was issued in the appeal arising from the SDR's application to enforce the permanent injunction against the suit the Embark and ABC parties filed against the SDR in Delaware state court. The dismissal is without prejudice.

The Panel's opinion found that the SDR did not establish that the Embark and ABC parties had sufficient contacts with the state of Texas to enable its courts to assert jurisdiction over them.

The SDR filed a motion for rehearing on April 15, 2021. If the motion is denied, the SDR has forty-five (45) days from the date of that denial to file a petition for review to the Texas Supreme Court.

As of the date of this report, the appellate court has not ruled on the other appeal, which involves the SDR's asset recovery suit filed in Texas state court in which most of the same parties claim Texas lacks jurisdiction over them.

**Cash/Securities:** The SDR consolidated AIC's portfolio of CDs so that all instruments are with one broker. As the CDs mature, proceeds are deposited in the estate's Texas Treasury Safekeeping Trust account. During March, three CDs totaling \$750,00 matured,

bringing the total investments matured from inception of the estate to \$22,549,715, and leaving \$3,200,00 which will mature between 2021 and June 2023.

**Preferential Transfer Recovery Research:** Estate counsel prepared demand letters arising from six pre-receivership transfers for the SDR to review. The SDR will submit CBAs for the recovery of such transfers if litigation becomes necessary.

**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 attempted to claw back any unspent funds from counsel. To date, the SDR has recovered \$592,965 from defense counsel. In October 2020, the SDR filed suit against a California defense counsel who failed to account for \$30,000 deposited into his trust account in January 2018. The attorney entered into a Rule 11 agreement waiving any objections to personal jurisdiction and produced bank and accounting records. The records failed to account for the missing funds. The SDR will move for a default judgment in the near future.

## **General Legal Activities**

**Delaware Proceedings:** The SDR's motion to dismiss the lawsuit filed by the Embark and ABC parties is stayed pending the Texas appeals of the special appearances. The SDR's lead Delaware counsel, Scott Cousins, left the Bayard firm and started his own firm. He has substituted as local counsel for the SDR in all the Delaware proceedings.

**Subpoenas:** The SDR continues to receive a substantial number of records subpoenas, primarily from California, and Pennsylvania. The SDR has received 1,637 subpoenas and records requests from inception of the estate to March 31, 2021, including 36 new requests in the last month. Many of the subpoenas seek the production of voluminous records, which take additional time to retrieve and review, at receivership expense. A non-refundable fee of \$1,000 must be paid for subpoenas that require additional work (such as the production of an entire litigation claim file). The standard \$500 fee remains in place for subpoenas that seek a smaller number of records (such as requests for policy-related documents). Very few parties pay the fees. The SDR has observed an increasing number of payments that are received for subpoenas that were many months old. Estate counsel can find no authority that such subpoenas expire or become stale so the SDR is responding to them. Nevertheless, documents continued to be produced in the order that the money and appropriate releases are received.

**New Mexico Ancillary:** As previously reported, the New Mexico ancillary receiver's motion to close the estate was granted. The SDR received \$33,024.76 from the New Mexico proceeding in early February.

## **Conclusion**

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

- Adjudicated more than 1,900 subrogation POCs for a total of approximately \$14.2 million in approved claims.
- Collected approximately \$7 million in reinsurance remittances.
- Distributed \$64,648,174.79 to guaranty associations per the Order Granting the SDR's Application to Approve Second Early Access Distribution.

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

- Litigate claims against responsible third parties, including but not limited to, the Embark/ABC entities.
- Move for default judgment against former defense counsel for recovery of trust funds.
- Analyze preferential recovery claims.
- Continue reporting to reinsurers and negotiate commutations.

**Estate Closing Date of Receivership:** TBD

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