

## Report for Special Master's Status Conference

July 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: \$120,005,069
  - January 2020: \$ 55,356,394
  - April 2021: \$ 64,648,175

#### Statement of Assets and Liabilities as of June 30, 2021

Total Assets:	\$258,988,794
Cash & Invested Assets:	\$ 45,242,571
Non-Cash Assets:	\$213,746,223
Total Liabilities:	\$406,071,710
Negative Equity:	(\$147,082,916)

#### Asset Recovery through June 30, 2021

Premium Collected:	\$ 10,792,951
Subrogation/Salvage:	\$ 910,550
Reinsurance Collected:	\$ 87,372,557
CDs Sold/Matured:	\$ 23,249,715
IOLTA Funds Recovered:	\$ 592,965
Litigation/Settlement Recovery:	\$ 9,600,000

## Status and Activity Since Last Status Conference

### General Matters

**First Report of Claims:** The SDR filed its Application for Approval of First Report of Claims on June 11, 2021. It was set for submission to the Special Master on June 28, 2021, and he recommended approval of the application on July 2, 2021. The Receivership Court entered the order granting the application on July 9, 2021.

**COVID-19 Response:** The estate continues to function without delays despite the pandemic.

### Claims Activity

**Proofs of Claim (“POCs”):** The SDR has received 6,635 POCs as of June 30, 2021. The vast majority of the POCs (including the 325 filed after the September 13, 2019, deadline) are subrogation claims from other insurers. Pursuant to the Receivership Court’s POC Order, there is no deadline for the timely filing of subrogation claims.

**Subrogation Claims:** In the fifteen months since the Claims Committee began reviewing POCs, it has fully adjudicated 4,128 POCs, and approved approximately \$24.4 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 June 30, 2021, UDS-A records have been sent to the associations for 51,262 open/reopened claims (51,169 as of March 31, 2021).

As of June 30, 2021, California, the association with by far the largest number of claims (40,366), reports paid losses of \$53.5 million (+\$1.2 million since last report), loss reserves of \$5.3 million (-\$1.4 million), and UEP of \$16 million. Alabama roughly doubled its loss reserves this quarter going from approximately \$60,000 to approximately \$120,000.

As of June 30, 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>
\$68,687,304	\$15,089,657	\$7,841,272	\$3,030,107	\$19,753,078

In comparison, the guaranty associations reported the following totals as of March 31, 2021

<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

### **Asset Recovery Activity**

**Reinsurance:** Reinsurance collections recovered from inception of the estate total \$87,372,557, an increase of \$7,100,493 since the last report. 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:** In early July, the SDR and the Embark/ABC Defendants agreed to abate both special appearance appeals for 90 days pending settlement discussions. Appellate specialist (and former Austin Court of Appeals Justice), Cindy Bourland, has joined the SDR’s legal team as additional counsel on the appeals.

On March 17, 2021, the Third Court of Appeals in Austin issued a Memorandum Opinion and Judgment in Case No. 03-19-00721-CV (the SDR’s action seeking to enforce the permanent injunction against certain defendants). The Court reversed the trial court’s interlocutory order denying the special appearances and rendered judgment dismissing the claims against the appellants for lack of personal jurisdiction.

The SDR filed a Motion for Rehearing on April 15, 2021, and the Court overruled the motion in late May. The SDR’s Petition for Review is currently due to the Texas Supreme Court on July 25, 2021, but the SDR is filing a motion to abate the deadline.

On June 4, 2021, the Court issued a Memorandum Opinion and Judgment in Case No. 03-19-00724-CV, which is the appeal from the SDR’s asset recovery lawsuit. The Court reversed the trial court’s interlocutory order denying special appearances and rendered judgment dismissing the claims against the Embark and ABC appellants for lack of personal jurisdiction. The SDR obtained one extension of the deadline for filing a Motion for Rehearing, and then filed an unopposed motion to abate the deadline for 90 days to allow the parties to conduct settlement negotiations. The Court of Appeals granted the motion, extending the deadline to file the motion for rehearing until October 4, 2021.

**Cash/Securities:** As AIC’s portfolio of CDs mature, proceeds are deposited in the estate’s Texas Treasury Safekeeping Trust account. Since the last report, CDs totaling \$700,000 matured, bringing the total investments matured from inception of the estate to \$23,249,715, and leaving \$2.5 million which will mature between 2021 and June 2023.

**SDR v. John Paul Fuchs:** The SDR filed suit in the Receivership Court against a former AIC California defense counsel seeking to recovery \$30,000 in trust funds that were transferred to the attorney shortly before receivership. He failed to return or account for

the money and rejected the SDR's pre-suit efforts to resolve the matter. After service of the suit, defendant Fuchs stipulated to personal jurisdiction and did not file a special appearance before filing his answer. The SDR has recommended moving for summary judgment.

**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 addition to the lawsuit against Mr. Fuchs (see above), the SDR is researching whether certain other firms still need to account for pre-receivership trust funds.

## **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.

**Subpoenas:** The SDR continues to receive a substantial number of records subpoenas, primarily from California and Pennsylvania. The SDR has received 1,685 subpoenas and records requests from inception of the estate to June 30, 2021, including 48 new requests in the last quarter.

## **Conclusion**

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

- Adjudicated 846 POCs, and approved approximately \$5.6 million in Class 5 claims.
- Collected approximately \$7.1 million in reinsurance remittances.
- Obtained Receivership Court approval of the First Report of Claims.

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

- Resolve or litigate claims against responsible third parties, including, but not limited to, the Embark/ABC entities.
- Move for summary judgment against Mr. Fuchs for recovery of trust funds.
- Pursue preferential recovery claims.
- Continue reporting to reinsurers.

**Estate Closing Date of Receivership:** TBD

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