

## Report for Special Master's Status Conference

October 26, 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 September 30, 2021

Total Assets:	\$259,317,791
Cash & Invested Assets:	\$ 48,637,573
Non-Cash Assets:	\$210,680,218
Total Liabilities:	\$497,857,225
Negative Equity:	(\$238,539,434)

#### Asset Recovery through September 30, 2021

Premium Collected:	\$ 10,792,951
Subrogation/Salvage:	\$ 910,926
Reinsurance Collected:	\$ 91,204,105
CDs Sold/Matured:	\$ 23,749,715
IOLTA Funds Recovered:	\$ 592,965
Litigation/Settlement Recovery:	\$ 9,600,000

## Status and Activity Since Last Status Conference

### General Matters

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

**IT Security:** The SDR commissioned a review of the estate's IT network for vulnerabilities in the last quarter. No critical vulnerabilities were reported. The SDR provided a copy of the report (and a summary prepared by the IT subcontractors) to RLO and has instructed IT subcontractors to work with the providers to make the minor recommended changes to the system.

**Financial Statement Updates:** The SDR's accounting and reinsurance subcontractors conferred in the last quarter regarding updates to the reporting of guaranty association claims, reserves, and recoveries. The reinsurance reporting should mirror the financial information reported to RLO, but, due to timing issues with the guaranty associations' handling of reserves and recoveries, the reports appeared inconsistent. Several material adjustments were made in the July financial reports, and some additional minor adjustments were made to the August figures as a result of the September conference.

### Claims Activity

**Proofs of Claim ("POCs"):** The SDR has received 6,640 POCs as of September 30, 2021. The vast majority of the POCs (including the 330 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 eighteen months since the Claims Committee began reviewing POCs, it has fully adjudicated 5,077 POCs, and approved approximately \$26 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 September 30, 2021, UDS-A records have been sent to the associations for 51,285 open/reopened claims (51,262 as of June 30, 2021).

As of September 30, 2021, California, the association with by far the largest number of claims (40,373), reports paid losses of \$54.4 million (+\$.9 million since last report), loss reserves of \$4 million (-\$1.3 million since last report), and UEP of \$16 million.

As of September 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>
\$69,833,950	\$15,686,275	\$6,286,402	\$2,794,616	\$19,753,293

In comparison, the guaranty associations reported the following totals as of June 30, 2021:

<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

### **Asset Recovery Activity**

**Reinsurance:** Reinsurance collections recovered from inception of the estate total \$91,204,105, an increase of \$3,831,548 since the last report. Collections in 2021 have increased because of the 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 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.

The SDR’s Petition for Review in Case No. 03-19-00721-CV (the SDR’s action seeking to enforce the permanent injunction against certain defendants) was due to the Texas Supreme Court on July 25, 2021. However, the Supreme Court granted the SDR’s motion to abate the appeal until September 20, 2021. On September 20, 2021, the SDR filed a status report with the Court regarding the status of the parties’ settlement negotiations and request to continue the abatement of the proceeding while the parties continue to discuss settlement.

The Austin Court of Appeals granted the SDR’s second motion to extend the deadline to file a Motion for Rehearing in Case No. 03-19-00724-CV, which is the appeal from the SDR’s asset recovery lawsuit. The new deadline was October 4, 2021. On October 4, 2021, the SDR filed a Second Unopposed Motion to Abate Appeal Pending Settlement Negotiations, or, Alternatively, Unopposed Third Motion for Extension of Time to file Motion for Rehearing. On October 19, 2021, the Court granted the motion. The new deadline to file is February 1, 2022.

**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 \$500,000 matured, bringing the total investments matured from inception of the estate to \$23,749,715, and leaving \$2 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 recover \$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 recently filed a motion for summary judgment in the lawsuit.

**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 1,747 subpoenas and records requests from inception of the estate to September 30, 2021, including 62 new requests in the last quarter.

## **Conclusion**

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

- Adjudicated 949 POCs, and approved approximately \$1.8 million in Class 5 claims.
- Collected approximately \$3.8 million in reinsurance remittances.

### **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.
- Obtain 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