

## Report for Special Master's Status Conference

April 26, 2022

### 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, 2022

Total Assets:	\$260,437,369
Cash & Invested Assets:	\$ 59,855,847
Non-Cash Assets:	\$200,581,522
Total Liabilities:	\$483,137,725
Negative Equity:	(\$222,700,356)

#### Asset Recovery through March 31, 2022

Premium Collected:	\$ 10,792,951
Subrogation/Salvage:	\$ 913,267
Reinsurance Collected:	\$ 97,108,933
CDs Sold/Matured:	\$ 24,999,715
IOLTA Funds Recovered:	\$ 592,965
Litigation/Settlement Recovery:	\$ 15,600,000

## Status and Activity Since Last Status Conference

### Asset Recovery Litigation

**SDR v. Holdco, et al., Texas Litigation:** The SDR has collected \$7 million from the global agreement with the Holdco defendants and certain other related parties (the “Holdco Parties, et al.”) (\$1 million of this recovery is not shown in the “Asset Recovery through March 31, 2022, above, because it was collected on April 1). The parties have moved to dismiss the pending Receivership Court lawsuit, the PI enforcement application, the related appeals, the SDR’s claims in the Delaware ABC proceedings, and the Embark parties’ Delaware state court lawsuit.

### Claims Activity

**Proofs of Claim (“POCs”):** The SDR has received a total of 6,858 POCs as of March 31, 2022. Additional review of the remaining, unadjudicated POCs identified several that included more than one claim. For example, POC 3939 actually contains 216 separate subrogation claims. Therefore, the POC count was increased to reflect those as separate claims. The vast majority of the POCs (including the POCs 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. However, in March 2022 the SDR’s claims staff sent notices to companies who have filed subrogation claims urging them to submit any additional subrogation claims they have before such a deadline is established.

**Subrogation Claims:** Since the Claims Committee began reviewing POCs in early 2020, the SDR has adjudicated 6,071 POCs. The 45-day appeal period has run on 5,656 claims. The total amount of approved claims is approximately \$30.5 million.

**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, 2022, UDS-A records have been sent to the associations for 51,310 open/reopened claims (51,299 as of December 31, 2021).

As of March 31, 2022, California, the association with by far the largest number of claims, 40,386, reports paid losses of \$55.6 million, loss reserves of \$2.4 million, and unearned premium (“UEP”) of \$16 million. Total guaranty association loss reserves totaled \$4.1 million as of March 31, 2022.

As of March 31, 2022, 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>
\$71,435,754	\$16,667,256	\$4,086,473	\$2,035,776	\$19,654,206

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

<b>Loss Payments</b>	<b>Expense Payments</b>	<b>Loss Reserves</b>	<b>Expense Reserves</b>	<b>Return of Premium</b>
\$70,300,273	\$16,104,140	\$5,593,646	\$2,400,787	\$19,752,859

### **Asset Recovery Activity**

**Reinsurance:** Reinsurance collections recovered from inception of the estate total \$97.1 million.

**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 \$750,000 matured, bringing the total investments matured from inception of the estate to \$24,999,715, and leaving \$750,000 which will mature in 2022 and 2023.

**SDR v. John Paul Fuchs:** On November 18, 2021, the district court granted the SDR's motion for summary judgment against Mr. Fuchs. The SDR sued Mr. Fuchs, a former California insurance defense counsel for AIC, because he was unable to account for \$30,000 in trust funds deposited into his IOLTA account in January 2018. The judgment totals \$52,213.73 and accrues simple interest at 5% per year. The award includes return of the missing \$30,000 in trust funds, \$16,744 in attorney fees, and \$5,469.73 in pre-judgment interest.

Mr. Fuchs' motion for new trial was overruled as a matter of law on February 16, 2022 (the 90<sup>th</sup> day after the judgment was entered). There was no appeal, and the judgment is now final. Estate counsel will consult with collections counsel in California, where Mr. Fuchs resides, about registering the judgment.

**Attorney Trust Funds:** With the exception of the final judgment against Mr. Fuchs (see above), the SDR has resolved the recovery of attorney trust funds.

### **General Administrative Matters**

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

### **General Legal Activities**

**Subpoenas:** The SDR continues to receive a substantial number of records subpoenas, primarily from California and Pennsylvania. The SDR has received 1,870 subpoenas and records requests from inception of the estate to March 31, 2022, including 54 new requests in the last quarter.

## **Conclusion**

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

- Collected \$7 million from the global settlement with Holdco Parties, et al.
- Approved approximately \$2.4 million in Class 5 claims.
- Collected approximately \$1.4 million in reinsurance remittances.

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

- Continue adjudicating subrogation POCs.
- Pursue collection of judgment against Mr. Fuchs.
- Continue reporting to reinsurers.

**Estate Closing Date of Receivership:** TBD

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