

1 EXPEDITE

2 No Hearing is Set

The Honorable Erik D. Price

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7 **STATE OF WASHINGTON**
THURSTON COUNTY SUPERIOR COURT

8 MIKE KREIDLER,
INSURANCE COMMISSIONER,

9
10 Petitioner,

11 v.

12 CASCADE NATIONAL INSURANCE
COMPANY,

13
14 Respondent.

NO. 04-2-02427-4

TWENTY-EIGHTH
REPORT OF RECEIVER

15 Mike Kreidler, Insurance Commissioner of the State of Washington and Statutory
16 Receiver of Cascade National Insurance Company in Liquidation (“Cascade” or “CNIC”),
17 James T. Odiorne, Chief Deputy Insurance Commissioner and Court-appointed Receiver of
18 Cascade, and Marshall McGinnis, court-appointed Deputy Receiver of Cascade (collectively
19 the “Receiver”), by and through their attorneys, Robert W. Ferguson, Attorney General, and
20 Marta DeLeon, Assistant Attorney General, hereby submit the Twenty-Eighth Report of
21 Receiver pursuant to RCW 48.31.040(5), and state as follows:

22 1. *Order of Liquidation.* On November 4, 2005, this Court declared Cascade
23 insolvent and entered an Order of Liquidation and Approval of Plan of Liquidation (“Order of
24 Liquidation” or “Order”) pursuant to Chapters 48.31 and 48.99 RCW.

1 2. *Accounting to the Court.* In accordance with the Court's July 22, 2011 Order
2 Granting Motion For Semiannual Reporting By The Receiver, the Receiver shall file a report
3 with the Court twice per year, on or about May 15th and November 15th.

4 3. *Financial Report.* Attached hereto as Exhibits A, B, and C are Cascade's April
5 30, 2014 Balance Sheet, and Statement of Receipts and Disbursements, and its Supplemental
6 Claims Information as of March 31, 2014. The financial figures are derived from calculations
7 made in accordance with the Receiver's Handbook for Insurance Company Insolvencies
8 published by the National Association of Insurance Commissioners ("NAIC").

9 The enclosed financial statements have been prepared from available information.
10 Certain assets and liabilities are estimates. Assets with uncertain realizable value have not
11 been included. Additional assets resulting from legal and/or collection efforts may be recorded
12 in the future when realized. The review of incoming claims is an ongoing process. The
13 estate's largest creditors are various Insurance Guaranty Associations. Current known Class 2
14 (Loss Claims) liabilities of \$29,290,560 are calculated based upon the Receiver's best estimate
15 of outstanding loss and loss adjustment expense reserves for automobile claims as of March
16 31, 2014, and estimated Workers Compensation claims based on the most current actuarial
17 study performed using claims data as of September 30, 2013. Since the Guaranty Associations
18 are now handling the automobile claims, the usual and traditional actuarial methodology for
19 estimating loss reserves is not applicable. Periodically, the Receiver reviews automobile loss
20 experience and adjusts Class 2 automobile claims liabilities to reflect the Receiver's best
21 estimate of those liabilities going forward. A current review was completed to adjust such
22 liabilities as of March 31, 2014. Note that this adjustment includes a corresponding reduction
23 in applicable reinsurance recoverable, a Balance Sheet asset. In this review process, the
24 Receiver also re-categorized estimated Insurance Guaranty Association unallocated loss
25 adjustment expenses as Class 1 Liabilities.

1 As of April 30, 2014, known assets totaled \$17,834,259 with 60% in cash and short-
2 term investments. The estate's cash and short-term investment decreased significantly as a
3 result of early access distributions to the Insurance Guaranty Associations totaling \$6 million.
4 All of Cascade's Alaska automobile claims have been closed. In accordance with Alaska
5 statutes, Cascade's restricted deposit held by the state was transferred to the Alaska Guaranty
6 Association, increasing the amount advanced to it by \$312,749. The Receiver has requested
7 the finalization of the association's previously submitted proof of claim against the estate and
8 is awaiting their response. Known liabilities totaled \$33,995,150 resulting in a deficiency of
9 assets over liabilities of \$16,160,891. For the period ending April 30, 2014, exclusive of the
10 early access distribution of \$6 million, cash disbursements exceeded cash receipts by
11 \$2,534,990. Cash receipts were primarily from asset recovery efforts, collection of loss
12 recoverable from reinsurers, refund of state premium taxes and recovery of salvage and
13 subrogation on paid loss claims. Operating expenses continue to be well within amounts
14 budgeted by the Receiver. Based on electronic claims data received from the guaranty
15 associations as of March 31, 2014, a total of \$16,484,581 of loss claims and allocated loss
16 adjustment expenses have been paid. See the Supplemental Claims Information, Exhibit C for
17 details.

18 4. *Proof of Claims.* In accordance with paragraph 3.5 of the Plan of Liquidation,
19 the Receiver issued Proof of Claim forms to all policyholders and other potential claimants.
20 All claimants had until March 4, 2006, to file a timely Proof of Claim form. Claims continue
21 to be reviewed. Some have been denied. The Receiver is seeking additional information from
22 some claimants. The Receiver anticipates that there may be some claims that will be rejected
23 in whole or part, which will be disputed by the claimant and will require a hearing for ultimate
24 resolution. The Receiver denied Mainstay Business Solutions' Proof of Claim No. 1284, and
25 on July 22, 2011, the Court entered an Order confirming the Receiver's Final Determination
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1 denying the Claim of Mainstay Business Solutions. The Receiver also denied Statewide
2 General Insurance Agency, Inc.'s Proof of Claim Nos. 3594-3599, and on January 6, 2012, the
3 Court entered an Order confirming the Receiver's Final Determination denying Statewide's
4 Claims. The Receiver denied Columbia State Bank's Proof of Claim No. 1203, and on
5 February 3, 2012, the Court entered an Order confirming the Receiver's Final Determination
6 denying Columbia's Claim. Finally, the Receiver denied Proof of Claim No. 4354 from James
7 S. Feltman, Chapter 11 Trustee for the Estate of Certified HR Services Company et al., and on
8 November 2, 2012, the Court entered an Order confirming the Receiver's Final Determination
9 denying Feltman's Claim. That confirmation was appealed to the Washington State Court of
10 Appeals for Division II and was subsequently transferred to Division I. Oral argument was
11 held on January 9, 2014 and on March 10, 2014, the Court of Appeals issued a written opinion
12 affirming the ruling of the lower court.

13 5. *Operations.* The Receiver received approval by the Court to cease all
14 operations of its subsidiary, MBR Corporation DBA Allied Pacific Adjusting Group
15 ("Allied"), effective April 14, 2006. All Allied assets were disposed of or sold, with all funds
16 received from the sale maintained in a separate account. The funds were subsequently
17 disbursed and documents to dissolve the corporation were filed with all appropriate
18 jurisdictions. All activities required to cease all operations of Allied have now been
19 completed.

20 6. *Marshalling Assets.* The Receiver completed a global reconciliation of
21 accounts current for its former general agents, Kenneth I. Tobey, Inc. and the Statewide
22 General Insurance Agency Inc., and has billed them for closing amounts totaling over \$1
23 million. Both general agents dispute the global reconciliations presented by the Receiver.

24 The Office of the Insurance Commissioner (OIC) initiated a license revocation action
25 against K.I. Tobey for failure to pay and mishandling of trust funds, and K.I. Tobey has
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1 voluntarily accepted revocation. Settlement negotiations between the OIC and K.I. Tobey
2 failed, and K.I. Tobey filed for bankruptcy in Atlanta, Georgia. A trustee was subsequently
3 appointed by the bankruptcy court. The Receiver pursued the claim in the bankruptcy court. On
4 October 23, 2009, the case was converted from Chapter 11 to Chapter 7. No recovery is
5 anticipated.

6 In 2007, the Receiver initiated an adversarial claim for \$941,879.55 in wrongfully
7 withheld premiums against Statewide General Insurance Agency Inc.(Statewide) and Marcel
8 Matar, personal guarantor of amounts owed. Statewide was served, and its attorneys filed
9 notices of appearance. In 2008, an Answer was filed claiming lack of personal service against
10 Mr. Matar. The Receiver's counsel requested information regarding the financial status of Mr.
11 Matar and his business in order to determine whether resources exist to repay Cascade. The
12 information provided was limited and insufficient to determine the financial status of Mr.
13 Matar. Mr. Matar was personally served in Pasadena, California on January 28, 2010. Mr.
14 Matar and Statewide have had several different attorneys appear and withdraw. On November
15 9, 2012, the Receiver filed a Motion for Summary Judgment. On March 13, 2013, the Court
16 granted the Receiver's motion for summary judgment. Mr. Matar's Motion for
17 Reconsideration was denied. The Judgment for \$941,879.55 was entered on April 26, 2013.
18 Mr. Matar and Statewide have filed a notice of appeal. Oral argument is set for May 19, 2014.

19 The Receiver is also pursuing amounts owed by Mainstay, one of Cascade's workers'
20 compensation accounts in California, which include payment for premium, paid claims, and
21 reserves. Cascade has requested payment and information required under the policy with
22 Mainstay for Cascade to conduct a premium audit. Mainstay has not provided payment, but an
23 agreement regarding the audit premiums due was reached. Cascade made a formal demand for
24 payment from Mainstay on November 19, 2009. On April 30, 2012, the Receiver filed a
25 Complaint in United States District Court, Eastern District of California, against Mainstay for
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1 breach of contract and other remedies. On June 29, 2012, the Court issued a Default Judgment
2 in favor of the Receiver. On September 27, 2012, Mainstay filed a Motion to Vacate Default
3 Judgment. On February 11, 2013 the parties agreed to a Stipulation for Judgment and filed it
4 with the Superior Court of California, County of Sacramento. The signed approval of that
5 judgment has been received from the California court. The Receiver, through counsel,
6 continues to pursue various legal avenues that could result in recovery of assets to the
7 receivership estate. The Receiver filed a Complaint for Damages in King County Superior
8 Court against several defendants, including Danny Pixler, Anthony Huff, American Staff
9 Resources of California, Inc., Certified Services, Inc., and Midwest Merger Management,
10 LLC. The case was removed to U.S. District Court for the Western District of Washington,
11 No. C06-697 RSL. On May 21, 2010 the jury returned a \$19,310,744 verdict in favor of the
12 Receiver on claims of civil conspiracy, criminal profiteering, unfair trade practices/consumer
13 protection, misrepresentation and fraud. On January 3, 2011, the Court awarded \$2,031,925.75
14 in attorney's fees and \$494,496.61 in litigation expenses under the Consumer Protection Act
15 and Criminal Profiteering Act. Defendants Anthony Huff, Sheri Huff, and Midwest Merger
16 Management, LLC filed an appeal to the U.S. Court of Appeals for the Ninth Circuit. Oral
17 argument was heard on April 9, 2012. On May 2, 2012, the Court issued an unpublished
18 opinion affirming the District Court's judgment, following a jury trial, in favor of the Receiver.

19 By way of additional background, the SEC initiated criminal proceedings against
20 defendant Danny Pixler in Florida. Defendant Pixler has entered into a plea agreement in those
21 proceedings, pleading guilty to conspiracy to commit wire fraud, and was sentenced to five
22 years of incarceration. The SEC initiated civil proceedings against Anthony Huff and a bench
23 trial was held beginning February 16, 2010. On September 30, 2010, the judge entered an
24 order in favor of the SEC, finding Huff violated federal securities laws and ordering him to
25 disgorge over \$10 million in ill-gotten gains. On January 3, 2012, the U.S. Court of Appeals
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1 for the Eleventh Circuit affirmed that order. On October 1, 2012, the United States Attorney's
2 Office for the Southern District of New York announced the filing of a 13-Count Indictment
3 charging Huff with fraudulent schemes including but not limited to Wire Fraud, Tax Evasion,
4 and several different counts of Conspiracy.

5 After filing suit against the Defendants, the Receiver learned that Certified HR
6 Services, a subsidiary of Defendant Certified Services, Inc. ("Certified Services"), had entered
7 into bankruptcy proceeding in the U.S. District Court, Southern District of Florida, Case No.
8 05-22912-BKC-RBR. The Receiver ultimately entered into an agreement with the bankruptcy
9 trustee and obtained a Court order establishing that none of Cascade's claims against the
10 Defendants in the Washington litigation were affected by the Florida bankruptcy action, and
11 preserving the possibility of recovery against the consolidated Certified HR Services/Certified
12 Services bankruptcy estate. The Receiver subsequently filed a \$2 million claim against the
13 bankruptcy estate. A \$100,000 interim distribution was received in April 2011. A second, and
14 final distribution of \$200,000 was received on December 26, 2013.

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1 The Receiver filed a civil action in King County Superior Court, No. 06-2-34413-8-
2 SEA, to recover damages for officer/director actions that harmed Cascade. A favorable
3 settlement has been reached and the action has been dismissed.

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5 RESPECTFULLY SUBMITTED this 16th day of May, 2014

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8 MARSHALL MCGINNIS
Deputy Receiver

9 Presented by:

10 ROBERT W. FERGUSON
11 Attorney General

12 
13 MARTA U. DeLEON WSBA #35779
14 Assistant Attorney General
Attorneys for the Insurance Commissioner

Cascade National Insurance Company in Liquidation
Balance Sheet
As of April 30, 2014

		4/30/2014	
ASSETS			
Operating cash		121,276	
ST investments		10,621,762	
Cash & ST Investments	(1)		10,743,038
Advances to Guaranty Associations		6,312,749	
Reinsurance recoverable (net)	(2)	776,473	
Deposits/advances		2,000	
Total Other Assets			7,091,221
TOTAL ASSETS	(3)	17,834,259	
 LIABILITIES			
Secured Claims		-	
Class 1	(4)	4,494,389	
Class 2	(5)	29,290,560	
Class 3		-	
Class 4		-	
Class 5		55,284	
Class 6		138,863	
Class 7		16,054	
Class 8		-	
Class 9		-	
TOTAL LIABILITIES			33,995,150
Excess (Deficiency) of Assets Over Liabilities			(16,160,891)
TOTAL		17,834,259	

Note: The information contained in this report is prepared by the receiver from information available to, known or estimated by the receiver as of the date of the report. The receiver makes no warranty as to the accuracy of the information or of the opinions or evaluations contained in this report and expressly disclaims any liability arising from the statements of fact, evaluation or opinion contained in the report.

- (1) Cash & ST investments include \$133,946 of restricted state deposits.
- (2) Reinsurance recoverable includes \$776 thousands of ceded losses, loss adjustment expenses and related reserves estimated for Company's automobile business.
- (3) Assets reported in this statement do not include all possible recoveries that may result from various legal and/or collection efforts.
- (4) The Class 1 Liability represents the remainder of the receivership operating expense budget and estimated unallocated loss adjustment expenses of the Insurance Guaranty Associations.
- (5) Automobile loss reserves are the Receiver's best estimates of outstanding losses and loss adjustment expenses as of March 31, 2014. These estimates will continue to be updated from time to time. For workers' compensation policies, the receivership, with the help of an independent consulting actuary, updated its Class 2 workers' compensation liabilities using paid losses and loss reserves data from the California Guaranty Association as of September 30, 2013.

Cascade National Insurance Company in Liquidation
Statement of Receipts and Disbursements
Period Ending April 30, 2014

	6 Months Ending 4/30/2014	Since Date of Liquidation Order
RECEIPTS		
Reinsurance recoveries	-	2,810,532
Agents balances	-	142,718
Salvage & subrogation recoveries	42,347	346,843
Recovery of taxes previously paid	-	283,221
Asset Recovery	-	1,500,000
Other receipts	200,000	566,537
Receipts Before Investment Activities	242,347	5,649,850
Investment receipts	553	1,501,192
Proceeds from sales & maturity	-	915,000
Receipts from Investment Activities	553	2,416,192
TOTAL CASH RECEIPTS	242,900	8,066,042
DISBURSEMENTS & DISTRIBUTIONS		
Claims processing expenses	-	506,948
Legal fees	57,639	3,447,371
Consulting fees	29,949	850,312
Salaries	123,002	2,887,486
Employee benefits	6,119	120,794
Payroll & other taxes	5,252	159,598
Rent & related expenses	7,030	280,313
Equipment expenses	1,357	139,030
Office expenses	5,014	188,655
Other disbursements	18,674	220,389
Disbursements	254,036	8,800,898
Early Access Distributions	-	6,000,000
Disbursements Before Investment Activities	254,036	14,800,898
Investment Expenses	1,281	28,051
Purchase of Investments	553	1,772,083
Disbursements for Investment Activities	1,834	1,800,133
TOTAL CASH DISBURSEMENTS & DISTRIBUTIONS	255,870	16,601,031
Net Cash Receipts over/(under) Disbursements	(12,970)	(8,534,990)
Cash at beginning of period	24,699	773,413
Net Cash Receipts over/(under) Disbursements	(12,970)	(8,534,990)
Cash transferred from/(to) ST investment	109,547	7,882,854
Cash at end of period	121,276	121,276

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Cascade National Insurance Company in Liquidation
Supplemental Claims Information
Claims and Adjusting Expenses Paid by Insurance Guaranty Funds
As of March 31, 2014

	Auto	Workers Compensation	Total
Alaska	754,382		754,382
California	879,568	10,753,344	11,632,912
Oregon	1,010,780		1,010,780
Washington	3,086,507		3,086,507
	<u>5,731,237</u>	<u>10,753,344</u>	<u>16,484,581</u>

Notes:

- The above amounts do not include reserves established by the insurance guaranty associations for outstanding claims nor the estate's residual liabilities on these claims.

Cascade National Insurance Company in Liquidation
Supplemental Claims Information
Claim Counts by Loss Event
As of March 31, 2014

	Auto (1)		Workers Compensation		Total	
	Transferred to IGF	Closed by IGF	Transferred to IGF	Closed by IGF	Transferred to IGF	Closed by IGF
Alaska	6	6	-	-	6	6
California	187	187	366	316	553	503
Oregon	66	66	-	-	66	66
Washington	178	176	-	-	178	176
	<u>437</u>	<u>435</u>	<u>366</u>	<u>316</u>	<u>803</u>	<u>751</u>

Note:

- (1) A substantial number of closed auto claims are claims closed by the insurance guaranty associations without loss payment. These claims may have been settled by the claimants' own insurance carrier. As a result, these insurance carriers may have recovery rights against the estate of Cascade.