

EXPEDITE

No Hearing is Set
The Honorable Erik D. Price

**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

MIKE KREIDLER,
INSURANCE COMMISSIONER,

Petitioner,

v.

CASCADE NATIONAL INSURANCE
COMPANY,

Respondent.

NO. 04-2-02427-4

**THIRTY-FIRST
REPORT OF RECEIVER**

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

1. *Order of Liquidation.* On November 4, 2005, this Court declared Cascade insolvent and entered an Order of Liquidation and Approval of Plan of Liquidation ("Order of 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
5 October 31, 2015 Balance Sheet, and Statement of Receipts and Disbursements, and its
6 Supplemental Claims Information as of September 30, 2015. The financial figures are derived
7 from calculations made in accordance with the Receiver's Handbook for Insurance Company
8 Insolvencies 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 \$28,672,654 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, 2015. 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 categorized estimated Insurance Guaranty Association unallocated loss
25 adjustment expenses as Class 1 Liabilities.

1 As of October 31, 2015, known assets totaled \$17,065,668 with 58% 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 \$32,803,180 resulting in a deficiency of
9 assets over liabilities of \$15,737,512. For the period ending October 31, 2015, exclusive of the
10 early access distribution of \$6 million, cash disbursements exceeded cash receipts by
11 \$3,305,318. 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 September 30, 2015, a total of \$16,948,477 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
26

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. Marcel Matar and Statewide General Insurance
13 Agency filed Proof of Claim No. 2838 on September 12, 2014, which has been determined to
14 be a late filed claim. The Receiver has issued a final determination denying that claim and a
15 hearing is set for November 6, 2015

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

23 6. *Marshalling Assets.* The Receiver completed a global reconciliation of
24 accounts current for its former general agents, Kenneth I. Tobey, Inc. and the Statewide
25
26

1 General Insurance Agency Inc., and has billed them for closing amounts totaling over \$1
2 million. Both general agents dispute the global reconciliations presented by the Receiver.

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

10 In 2007, the Receiver initiated an adversarial claim for \$941,879.55 in wrongfully
11 withheld premiums against Statewide General Insurance Agency Inc.(Statewide) and Marcel
12 Matar, personal guarantor of amounts owed. Statewide was served, and its attorneys filed
13 notices of appearance. In 2008, an Answer was filed claiming lack of personal service against
14 Mr. Matar. The Receiver's counsel requested information regarding the financial status of Mr.
15 Matar and his business in order to determine whether resources exist to repay Cascade. The
16 information provided was limited and insufficient to determine the financial status of Mr.
17 Matar. Mr. Matar was personally served in Pasadena, California on January 28, 2010. Mr.
18 Matar and Statewide have had several different attorneys appear and withdraw. On November
19 9, 2012, the Receiver filed a Motion for Summary Judgment. On March 13, 2013, the Court
20 granted the Receiver's motion for summary judgment. Mr. Matar's Motion for
21 Reconsideration was denied. The Judgment for \$941,879.55 was entered on April 26, 2013.
22 Mr. Matar and Statewide filed a notice of appeal. Oral argument was held May 19, 2014. On
23 July 22, 2014, the Court of Appeals affirmed the decision of the lower court granting summary
24 judgment. In the meantime, on July 7, 2014, the Receiver filed a complaint in Superior Court
25 of California, County of Los Angeles, against Mr. Matar and Mrs. Matar to set aside fraudulent
26

1 transfer of personal property and similar relief. Mediation was held on December 1, 2014, but
2 that mediation was unsuccessful. A Mandatory Settlement Conference was held on September
3 25, 2015 and a settlement agreement between all parties was reached.

4 The Receiver is also pursuing amounts owed by Mainstay, one of Cascade's workers'
5 compensation accounts in California, which include payment for premium, paid claims, and
6 reserves. Cascade has requested payment and information required under the policy with
7 Mainstay for Cascade to conduct a premium audit. Mainstay has not provided payment, but an
8 agreement regarding the audit premiums due was reached. Cascade made a formal demand for
9 payment from Mainstay on November 19, 2009. On April 30, 2012, the Receiver filed a
10 Complaint in United States District Court, Eastern District of California, against Mainstay for
11 breach of contract and other remedies. On June 29, 2012, the Court issued a Default Judgment
12 in favor of the Receiver. On September 27, 2012, Mainstay filed a Motion to Vacate Default
13 Judgment. On February 11, 2013 the parties agreed to a Stipulation for Judgment and filed it
14 with the Superior Court of California, County of Sacramento. The signed approval of that
15 judgment has been received from the California court.

16 The Receiver filed a Complaint for Damages in King County Superior Court against
17 several defendants, including Danny Pixler, Anthony Huff, American Staff Resources of
18 California, Inc., Certified Services, Inc., and Midwest Merger Management, LLC. The case
19 was removed to U.S. District Court for the Western District of Washington, No. C06-697 RSL.
20 On May 21, 2010 the jury returned a \$19,310,744 verdict in favor of the Receiver on claims of
21 civil conspiracy, criminal profiteering, unfair trade practices/consumer protection,
22 misrepresentation and fraud. On January 3, 2011, the Court awarded \$2,031,925.75 in
23 attorney's fees and \$494,496.61 in litigation expenses under the Consumer Protection Act and
24 Criminal Profiteering Act. Defendants Anthony Huff, Sheri Huff, and Midwest Merger
25 Management, LLC filed an appeal to the U.S. Court of Appeals for the Ninth Circuit. Oral
26

1 argument was heard on April 9, 2012. On May 2, 2012, the Court issued an unpublished
2 opinion affirming the District Court's judgment, following a jury trial, in favor of the Receiver.

3 By way of additional background, the SEC initiated criminal proceedings against
4 defendant Danny Pixler in Florida. Defendant Pixler has entered into a plea agreement in those
5 proceedings, pleading guilty to conspiracy to commit wire fraud, and was sentenced to five
6 years of incarceration. The SEC initiated civil proceedings against Anthony Huff and a bench
7 trial was held beginning February 16, 2010. On September 30, 2010, the judge entered an
8 order in favor of the SEC, finding Huff violated federal securities laws and ordering him to
9 disgorge over \$10 million in ill-gotten gains. On January 3, 2012, the U.S. Court of Appeals
10 for the Eleventh Circuit affirmed that order. On October 1, 2012, the United States Attorney's
11 Office for the Southern District of New York announced the filing of a 13-Count Indictment
12 charging Huff with conspiracy to commit bank bribery, bank and insurance fraud, theft of \$2.3
13 million from a publicly traded company, tax evasion and other fraudulent schemes. On
14 December 23, 2014 Huff entered a guilty plea to the charges. Huff was subsequently sentenced
15 to a total term of 12 years imprisonment plus 3 years supervised release and is now
16 incarcerated.

17 After filing suit against the Defendants, the Receiver learned that Certified HR
18 Services, a subsidiary of Defendant Certified Services, Inc. ("Certified Services"), had entered
19 into bankruptcy proceeding in the U.S. District Court, Southern District of Florida, Case No.
20 05-22912-BKC-RBR. The Receiver ultimately entered into an agreement with the bankruptcy
21 trustee and obtained a Court order establishing that none of Cascade's claims against the
22 Defendants in the Washington litigation were affected by the Florida bankruptcy action, and
23 preserving the possibility of recovery against the consolidated Certified HR Services/Certified
24 Services bankruptcy estate. The Receiver subsequently filed a \$2 million claim against the
25
26

1 bankruptcy estate. A \$100,000 interim distribution was received in April 2011. A second, and
2 final distribution of \$200,000 was received on December 26, 2013.

3 //

4 //

5 //

6
7 The Receiver filed a civil action in King County Superior Court, No. 06-2-34413-8-
8 SEA, to recover damages for officer/director actions that harmed Cascade. A favorable
9 settlement has been reached and the action has been dismissed.

10
11 RESPECTFULLY SUBMITTED this 12th day of November, 2015

12
13 
14 MARSHALL MCGINNIS
15 *Deputy Receiver*

16 Presented by:

17 ROBERT W. FERGUSON
18 Attorney General


19 
20 MARTA U. DeLEON WSBA #35779
21 Assistant Attorney General
22 *Attorneys for the Insurance Commissioner*

EXHIBIT A

Cascade National Insurance Company in Liquidation
Balance Sheet
As of October 31, 2015

		10/31/2015	
ASSETS			
Operating cash		55,948	
ST investments		9,918,498	
Cash & ST Investments	(1)		9,974,446
Advances to Guaranty Associations		6,312,749	
Reinsurance recoverable (net)	(2)	776,473	
Deposits/advances		2,000	
Total Other Assets			7,091,222
TOTAL ASSETS	(3)	17,065,668	
 LIABILITIES			
Secured Claims		-	
Class 1	(4)	3,920,325	
Class 2	(5)	28,672,654	
Class 3		-	
Class 4		-	
Class 5		55,284	
Class 6		138,863	
Class 7		16,054	
Class 8		-	
Class 9		-	
TOTAL LIABILITIES			32,803,180
Excess (Deficiency) of Assets Over Liabilities			(15,737,512)
TOTAL		17,065,668	

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 \$134,151 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, 2015.

EXHIBIT B

Cascade National Insurance Company in Liquidation
Statement of Receipts and Disbursements
Period Ending October 31, 2015

	12 Months Ending 10/31/2015	Since Date of Liquidation Order
RECEIPTS		
Reinsurance recoveries	64,701	2,875,232
Agents balances	-	142,718
Salvage & subrogation recoveries	1,370	348,676
Recovery of taxes previously paid	-	283,221
Asset Recovery	-	1,500,000
Other receipts	215	567,002
Receipts Before Investment Activities	<u>66,286</u>	<u>5,716,849</u>
Investment receipts	1,139	1,502,930
Proceeds from sales & maturity	-	915,000
Receipts from Investment Activities	<u>1,139</u>	<u>2,417,930</u>
TOTAL CASH RECEIPTS	<u>67,425</u>	<u>8,134,779</u>
DISBURSEMENTS & DISTRIBUTIONS		
Claims processing expenses	-	506,948
Legal fees	239,324	3,804,993
Consulting fees	68,592	955,898
Salaries	207,434	3,181,074
Employee benefits	7,857	130,451
Payroll & other taxes	9,879	173,720
Rent & related expenses	17,035	305,700
Equipment expenses	6,386	149,079
Office expenses	7,294	200,697
Other disbursements	1,288	225,771
Disbursements	<u>565,089</u>	<u>9,634,332</u>
Early Access Distributions	-	6,000,000
Disbursements Before Investment Activities	<u>565,089</u>	<u>15,634,332</u>
Investment Expenses	2,631	31,944
Purchase of Investments	1,139	1,773,821
Disbursements for Investment Activities	<u>3,770</u>	<u>1,805,765</u>
TOTAL CASH DISBURSEMENTS & DISTRIBUTIONS	<u>568,859</u>	<u>17,440,097</u>
Net Cash Receipts over/(under) Disbursements	<u>(501,434)</u>	<u>(9,305,318)</u>
Cash at beginning of period	52,382	773,413
Net Cash Receipts over/(under) Disbursements	(501,434)	(9,305,318)
Cash transferred from/(to) ST investment	505,000	8,587,854
Cash at end of period	<u>55,948</u>	<u>55,948</u>

Note: The information contained in this report is prepared by the receiver from information available to or known 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.

**Cascade National Insurance Company in Liquidation
Supplemental Claims Information
Claims and Adjusting Expenses Paid by Insurance Guaranty Funds
As of September 30, 2015**

	Auto	Workers Compensation	Total
Alaska	754,382		754,382
California	879,568	11,202,314	12,081,882
Oregon	1,010,780		1,010,780
Washington	3,101,433		3,101,433
	<u>5,746,163</u>	<u>11,202,314</u>	<u>16,948,477</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.

EXHIBIT C

Cascade National Insurance Company in Liquidation
Supplemental Claims Information
Claim Counts by Loss Event
As of September 30, 2015

	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	326	553	513
Oregon	66	66	-	-	66	66
Washington	178	178	-	-	178	178
	<u>437</u>	<u>437</u>	<u>366</u>	<u>326</u>	<u>803</u>	<u>763</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.