

JAN 11 2008

At 1:52p. M.
Amalia Rodriguez-Mendoza, Clerk

Cause No. D-1-GV-08-000050

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
WEBB COUNTY TITLE	§	
& ABSTRACT COMPANY, INC.	§	
Defendant	§	<u>201ST</u> JUDICIAL DISTRICT

**AGREED ORDER APPOINTING LIQUIDATOR AND
PERMANENT INJUNCTION**

On this day, the Court heard the *Application for Order Appointing Liquidator and Request for Injunctive Relief* (“Application”) filed by the State of Texas. The Application requests an order placing Webb County Title and Abstract Company, Inc. (“Defendant”) into liquidation pursuant to TEX. INS. CODE § 443.151 *et seq*, and appointing the Commissioner of Insurance for the State of Texas (“Commissioner of Insurance”) as Liquidator of Defendant. This Application is also brought to obtain a Permanent Injunction pursuant to TEX. INS. CODE § 443.008(a), restraining Defendant and its agents from conducting Defendant’s business, and restraining other parties from taking any actions against Defendant or its property. The State of Texas appeared by and through the Office of the Attorney General.

I. FINDINGS

Having considered Plaintiff’s verified petition, the evidence and arguments of counsel, the Court finds as follows:

- 1.1 The Court has jurisdiction over the parties and the subject matter of this action.
- 1.2 Defendant is insolvent as defined in TEX. INS. CODE §§ 443.004(a)(13).

- 1.3 Grounds exist to place Defendant into liquidation under TEX. INS. CODE § 443.057, and Plaintiff is entitled to an Order of Liquidation and Permanent Injunction as requested in its the Application pursuant to TEX. INS. CODE § 443.058.
- 1.4 The Commissioner of Insurance must be appointed as Liquidator of Defendant pursuant to TEX. INS. CODE § 443.151, and vested by operation of law with title to all of Defendant's property as defined in TEX. INS. CODE § 443.004(a)(20). Such property shall include property of any kind or nature, whether real, personal, or mixed, including but not limited to money, funds, cash, stock, bonds, account deposits, statutory deposits, special deposits, contents of safe deposit boxes, funds held in share accounts or trust accounts, retainages and retainers, letters of credit, real estate, fixtures, furniture, equipment, books, records, documents and insurance policies, intellectual property, computer software and systems, information technology, internet domain names, patents and intangible assets, whether owned individually, jointly, or severally, wherever located, and all rights, claims or causes of action belonging to Defendant, whether asserted or not, including, but not limited to, accounts receivable, notes, premiums, subrogation, insurance and reinsurance proceeds, and all licenses held by Defendant (collectively, "Defendant's Property"). The Liquidator's title to Defendant's Property shall extend to all items owned by Defendant, regardless of the name in which such items are held. Pursuant to TEX. INS. CODE § 443.151(a), the Liquidator is directed to take possession of the Defendant's Property, wherever located.
- 1.5 The Liquidator may take action as he deems necessary or appropriate to perform his duties pursuant to TEX. INS. CODE § 443.151. The Liquidator shall have all the powers of Defendant's directors, officers and managers, and the authority of such persons is

suspended except as specifically permitted by the Liquidator or his designees. Further, Defendant and Defendant's agents shall be required to cooperate with the Liquidator pursuant to TEX. INS. CODE § 443.010.

1.6 It is necessary for this Court to issue a permanent injunction pursuant to TEX. INS. CODE § 443.008(a) to carry out the provisions of TEX. INS. CODE Chapter 443, and prevent irreparable injury, loss and damage to the general public and Defendant's creditors. A necessity exists to enjoin Defendant and Defendant's agents from conducting Defendant's business; to enjoin financial institutions or depositories from taking any actions in connection with Defendant's property, except as authorized by the Liquidator; and to enjoin all claimants or creditors from asserting claims or causes of action against Defendant, except as permitted by TEX. INS. CODE Chapter 443.

1.7 Pursuant to TEX. INS. CODE § 443.008, an automatic stay is in effect upon the commencement of the delinquency proceeding.

1.8 Defendant has waived citation and service of process, and has consented to the entry of this order.

II. APPOINTMENT OF LIQUIDATOR

IT IS ORDERED that the Commissioner of Insurance is appointed as Liquidator of Defendant, and granted the following duties and powers:

2.1 The Liquidator is granted and given all powers and authority under TEX. INS. CODE § 443.151 *et seq.*, and any and all other powers and authority under applicable statutes and the common law of this State.

- 2.2 Pursuant to TEX. INS. CODE § 443.151(a), title to all of Defendant's Property, including, but not limited to, all the assets and rights described in this *Agreed Order Appointing Liquidator and Permanent Injunction*, is vested in the Liquidator.
- 2.3 The Liquidator is authorized to take control and/or possession of Defendant's Property, wherever located, and remove all such property from Defendant's premises.
- 2.4 The Liquidator is authorized to withdraw Defendant's Property from any banks, financial institutions and other depositories, agencies of any state or the federal government, and any other entities, or continue the operation of any accounts of Defendant, at his discretion.
- 2.5 The Liquidator is authorized to appoint a special deputy and retain any other professional, administrative, and clerical services as he deems necessary pursuant to TEX. INS. CODE § 443.154(a). The Liquidator is further authorized to set the compensation of such persons, and pay for such services from Defendant's funds pursuant to TEX. INS. CODE § 443.015(e).
- 2.6 The Liquidator is authorized to conduct Defendant's business, administer Defendant's operations, and enter into any contracts necessary to perform the Liquidator's duties, at his discretion pursuant to TEX. INS. CODE § 443.154.
- 2.7 The Liquidator is authorized to supervise, suspend, terminate, or dismiss any or all of the agents, employees, officers, and/or directors of Defendant's or retain such persons at his discretion, and compensate them as he deems necessary from Defendant's funds.
- 2.8 The Liquidator is authorized to receive, collect, control, open and review all mail addressed to or intended for Defendant, or arriving at Defendant's address.

- 2.9 The Liquidator is authorized to file, prosecute, defend, or settle any action as he deems necessary, including any action to enforce the provisions of this order.
- 2.10 The Liquidator is authorized to exclude any person from any property owned, leased or occupied by Defendant, at his discretion.
- 2.11 The Liquidator is authorized to assume or reject pre-receivership contracts with Defendant at his discretion pursuant to TEX. INS. CODE § 443.013.
- 2.12 Pursuant to TEX. INS. CODE § 443.008(m), the Commissioner of Insurance is not required to file a bond.
- 2.13 In the event a successor is appointed to be the Commissioner of Insurance, the successor shall become the Liquidator upon his appointment as Commissioner, and the former Commissioner shall be discharged as Liquidator as a matter of law.
- 2.14 The Liquidator's designees and any Special Deputy appointed under TEX. INS. CODE § 443.154(a) shall have all the rights and powers of the Liquidator, subject to any limitations imposed by the Liquidator.

III. PERMANENT INJUNCTION

It is FURTHER ORDERED that the Clerk of this Court shall issue a Permanent Injunction against the persons and entities named below, with the following force and effect:

TO: Defendant and its agents, including but not limited to:

Defendant and its current and former officers, trustees and directors (including, but not limited to, Raquel Gonzalez), owners (including, but not limited to, Raquel Gonzalez, Richard Haynes, Nick Hernandez, Irene Hernandez, Salinas Investments, and Ada Cronfel), underwriters (including, but not limited to, Alamo Title Insurance, United General Title Insurance Company, and Old Republic National Title Insurance Company), affiliates, managers,

employees, agents, servants, representatives, attorneys, adjusters and other persons or entities acting on behalf of Defendant;

Financial institutions, including but not limited to:

any and all banks, savings and loan associations; trust companies; credit unions; welfare trusts; or any other financial or depository institutions in the possession of any of Defendant's Property; and

All other parties, including but not limited to:

policyholders, creditors, claimants, reinsurers, intermediaries, attorneys and all other persons, associations, corporations, or any other legal entities asserting claims or causes of action against Defendant, or in possession of any of Defendant's Property, and the United States Postmaster.

Each of you are hereby RESTRAINED and ENJOINED from taking any and all of the following actions:

- 3.1 Doing, operating, or conducting Defendant's business under any charter, certificate of authority, license, permit, power or privilege belonging to or issued to Defendant, or exercising any direction, control, or influence over Defendant's business, except through the authority of the Liquidator or his designees;
- 3.2 Transacting any business of Defendant's in any manner except through the authority of the Liquidator or his designees;
- 3.3 Wasting, disposing of, converting, dissipating, using, releasing, transferring, selling, assigning, canceling, hypothecating, withdrawing, allowing to be withdrawn, offsetting, concealing, in any manner, or removing from this Court's jurisdiction or from Defendant's place of business, any of Defendant's Property, or any other items purchased by Defendant, or any items into which such property has been transferred, deposited or placed, or any other items owned by Defendant's, wherever located, except through the authority of the Liquidator or his designees;

- 3.4 Releasing, transferring, selling, assigning or asserting ownership of, in any manner, any claims, accounts receivable, or causes of action belonging to Defendant, whether asserted or not, except through the authority of the Liquidator or his designees;
- 3.5 Doing anything, directly or indirectly, to prevent the Liquidator or his designees from gaining access to, acquiring, examining, or investigating any of Defendant's Property or any other property, books, documents, records, or other materials concerning Defendant's business, under whatever name they may be found;
- 3.6 Interfering with these proceedings or with the lawful acts of the Liquidator or his designees in any way;
- 3.7 Intervening in this proceeding for the purpose of obtaining a payment from the receivership estate of Defendant as prohibited by TEX. INS. CODE § 443.005(i);
- 3.8 Making any claim, charge or offset, or commencing or prosecuting any action, appeal, or arbitration, including administrative proceedings, or obtaining any preference, judgment, attachment, garnishment, or other lien, or making any levy against Defendant, Defendant's Property or any part thereof, or against the Liquidator, except as permitted by TEX. INS. CODE Chapter 443, Subchapter F.

EACH OF YOU ARE FURTHER SPECIFICALLY ORDERED to make available and disclose to the Liquidator or his designees the nature, amount, and location of any and all of the items listed above, including but not limited to Defendant's Property, and immediately surrender all such property to the Liquidator or his designees. The Court further specifically finds and orders that the Liquidator is vested by operation of law with title to the rights of Defendant as the customer of any financial institution.

IV. AUTOMATIC STAY

- 4.1 An automatic stay is in effect with respect to actions against Defendant or its property as provided by TEX. INS. CODE § 443.008(c). In accordance with TEX. INS. CODE § 443.008(f), such stay of actions against Defendant is in effect for the duration of this proceeding, and the stay of actions against Defendant's property is in effect for as long as the property belongs to the receivership estate.
- 4.2 The stays in effect pursuant to TEX. INS. CODE § 443.008 shall be applicable to any actions described therein commenced either before or after the entry of this order.

V. OTHER ORDERS

- 5.1 This *Agreed Order Appointing Liquidator and Permanent Injunction* shall issue and become effective immediately, and shall continue in full force and effect until the entry of an order by this Court terminating liquidation entered under TEX. INS. CODE § 443.352.
- 5.2 Pursuant to TEX. INS. CODE § 443.055(b), this *Agreed Order Appointing Liquidator and Permanent Injunction* constitutes a final judgment, provided that this Court shall retain jurisdiction to issue further orders pursuant to TEX. INS. CODE Chapter 443.
- 5.3 The State of Texas and the Attorney General of Texas shall have a claim for reasonable attorneys' fees and court costs pursuant to TEX. CIV. PRAC. & REM. CODE §§ 64.051 and 66.003 and TEX. GOV'T CODE § 402.006, and the amount and payment of such claim are subject to the provisions of TEX. INS. CODE Chapter 443.
- 5.4 Notice of the Plaintiff's petition and this order shall be provided to the insurance Commissioners and insurance guaranty associations in the states in which Defendants did

business by first class mail or electronic communication pursuant to TEX. INS. CODE § 443.052(b).

5.5 Anyone over the age of 18 whom is not a party to nor interested in the outcome of this suit may serve all citations, writs and notices in this cause.

5.6 All of the foregoing is subject to further orders of this Court.

SIGNED at Austin, Travis County, Texas, on this the 11th day of January, 2008, at 1:48 o'clock p.m.

Musk O 2
DISTRICT JUDGE PRESIDING

AGREED AS TO FORM AND SUBSTANCE:

By: Karen Pettigrew
Karen Pettigrew
State Bar No. 01529500
Assistant Attorney General
Financial Litigation Division
P.O. Box 12548
Austin, TX 78711-2548
Phone: 512-475-2952
Fax: 512-477-2348

ATTORNEYS FOR PLAINTIFF THE STATE OF TEXAS

By: R. Christopher Clark
R. Christopher Clark
State Bar No. 04294505
Glast, Phillips & Murray, P.C.
219 E. Houston Street, Suite 400
San Antonio, TX 78205
Phone: 210-244-4100
Fax: 210-244-4199

ATTORNEY FOR DEFENDANT WEBB COUNTY TITLE & ABSTRACT CO., INC.