

THE STATE OF TEXAS,

Plaintiff,

V.

WEBB COUNTY TITLE
& ABSTRACT COMPANY, INC.,

Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201ST JUDICIAL DISTRICT

MAR -7 2008
108

**FIDELITY NATIONAL TITLE INSURANCE COMPANY'S MOTION
FOR RELIEF FROM INJUNCTION AND AUTOMATIC STAY AS TO SPECIFIC CLAIMS,
TO THE EXTENT SUCH CLAIMS ARE COVERED BY LIABILITY INSURANCE**

TO THE HONORABLE JUDGE OF SAID COURT:

FIDELITY NATIONAL TITLE INSURANCE COMPANY, Movant, submits its Motion for Relief from Injunction and Automatic Stay as to Specific Claims, to the Extent Such Claims are Covered by Liability Insurance.

Factual Background

1. Movant Fidelity National Title Insurance Company ("Fidelity") and Defendant Webb County Title & Abstract Company, Inc. ("Webb County") were the parties to a Texas Issuing Agency Agreement dated March 1, 1996 (the "Agency Agreement"). Under the Agency Agreement, Fidelity served as a title insurance underwriter, and Webb County served as a title insurance agent, for the purpose of issuing title insurance policies in Webb County, Texas. The Agency Agreement expressly provided that Webb County would reimburse Fidelity for any "Loss" (as defined in the Agency Agreement) suffered by Fidelity as a result of Webb County's negligence in, among other things, "handling of funds." The Agency Agreement required Webb County to carry liability insurance with specified limits of liability from which claims by Fidelity and others against Webb County based on negligence could be satisfied. The Agency Agreement was in effect at all material times, until it was cancelled by Fidelity in late 2007. A true and correct copy of the Agency Agreement is attached hereto as Exhibit A.

2. In October 2007, Fidelity filed suit against Webb County in Cause No. 2007 CVF 001908 02, styled *Fidelity National Title Insurance Company v. Webb County Title & Abstract Company*, in the 111th District Court, Webb County, Texas (the "Lawsuit"). In the Lawsuit, Fidelity alleges that Webb County was negligent in the handling of funds in transactions involving policyholders named Naverette, Aguirre and Garcia, and seeks to recover damages from Webb County in connection with those matters. A true and correct copy of Plaintiff's Original Petition in the Lawsuit is attached hereto as Exhibit B.

3. On information and belief, after reasonable inquiry, the claims by Fidelity that are the subject of the Lawsuit are covered by a policy of professional liability insurance that was issued to Webb County by Media Professional Insurance Company ("Media Pro"). In this connection, Fidelity's attorneys have been in contact with Media Pro about the Lawsuit, Media Pro has acknowledged the existence of a pertinent insurance policy, and Media Pro has engaged attorneys to represent and defend Webb County in the Lawsuit. Those attorneys have appeared on behalf of Webb County in the Lawsuit.

4. On January 11, 2008, The State of Texas filed suit against Webb County in this action. On the same day, this Court entered an Agreed Order Appointing Liquidator and Permanent Injunction (the "Liquidation Order"). The Liquidation Order places Webb County into liquidation under Chapter 443 of the Texas Insurance Code and appoints the Commissioner of Insurance as Liquidator of Webb County. The Liquidation Order also contains a permanent injunction which, by its terms, enjoins Fidelity from, among other things, making any claim or prosecuting any action against Webb County. The injunction, therefore, has the effect of enjoining Fidelity from pursuing the Lawsuit. The Liquidation Order further confirms the existence of an automatic stay which prohibits actions against Webb County or its property. Thus, the automatic stay also has the effect of staying the prosecution of the lawsuit by Fidelity.

Relief Sought

5. Fidelity moves the Court to lift the permanent injunction and the automatic stay provided in the Liquidation Order, for the sole purpose of allowing Fidelity to pursue the claims it has asserted in the Lawsuit, to the extent (and only to the extent) that such claims are covered by liability insurance. In this connection, Fidelity acknowledges that it will not be entitled to pursue collection of any judgment it might obtain in the Lawsuit from the assets of Webb County and that it must look exclusively to insurance coverage, if any, to satisfy any such judgment.

Grounds for Relief

6. The granting of this Motion will potentially allow Fidelity to satisfy the subject claims from the insurance coverage that it required Webb County to carry under the Agency Agreement. The granting of this Motion, however, will not interfere with the orderly liquidation of Webb County under the Liquidation Order and will not cause the Liquidator to incur any expenditures of time, money or other resources that he would not otherwise incur.

7. Chapter 7 bankruptcy under the United States Bankruptcy Code is analogous to a liquidation proceeding under Chapter 443 of the Texas Insurance Code. Bankruptcy courts routinely entertain and grant motions for the type of relief that is sought by Fidelity in this Motion. See, e.g., *Matter of Holtkamp*, 669 F.2d 505, 508-509 (7th Cir. 1982).

Prayer

WHEREFORE, PREMISES CONSIDERED, Fidelity prays that this Motion be granted and that an appropriate order be entered.

Respectfully submitted,

MUNSCH HARDT KOPF & HARR, P.C.

By: 

D. Ronald Reneker
State Bar No. 16770000

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Fax: (512) 391-6149

ATTORNEYS FOR PLAINTIFF

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Motion have been sent via facsimile and First Class Mail, postage prepaid, on this 7th day of March, 2008, to the following counsel of record:

Karen Pettigrew
Assistant Attorney General
Financial Litigation Division
P.O. Box 12548
Austin, Texas 78711-2548
Attorney for Plaintiff The State of Texas in this action

R. Christopher Clark
Glast Phillips & Murray P.C.
219 Houston Street, Suite 400
San Antonio, Texas 78205
Attorney for Defendant Webb County Title & Abstract Company,
Inc. in this action.

Kenneth A. Valls
Wilson, Trevino, Freed, Valls & Trevino, L.L.P.
LNB Plaza Tower Building
600 San Bernardo, Suite 800
Laredo, Texas 78040
Attorneys for Defendant Webb County Title & Abstract Company,
Inc. in the "Lawsuit," as defined above



D. Ronald Reneker

TEXAS ISSUING AGENCY AGREEMENT

This Agreement is made this 1st day of March, 1996, by and between FIDELITY NATIONAL TITLE INSURANCE COMPANY, an Arizona corporation (the "Company") and Webb County Title & Abstract Co., Inc., a Texas corporation (the "Agent") (collectively, the "Parties"). In consideration of the mutual benefits accruing, and subject to the terms and conditions hereof, Company appoints Agent as a non-exclusive title insurance agent for the sole and limited purpose of issuing the Company's: (i) title insurance commitments, interim construction binders, endorsements and title insurance policies, each being in the form promulgated by the Texas Department of Insurance; and (ii) other Texas Department of Insurance promulgated forms whereby Company assumes liability to an insured or proposed insured (items "I" and "ii" are hereinafter collectively referred to as the "Title Assurances"). The Title Assurances shall be issued only in Agent's Territory as follows:

Webb County(ies)

On any Title Assurance which has liability in excess of \$2,000,000.00 (the "Risk Limit"), Agent shall first obtain Company's written approval prior to issuing the Title Assurance.

1. RESPONSIBILITY OF AGENT

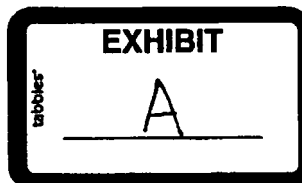
A. Affirmative Covenants

1. Agent shall receive and process applications for Title Assurances: (i) in compliance with the Basic Manual; (ii) in conformity with usual and customary Texas practices and procedures; (iii) in accordance with generally accepted prudent underwriting principles; and (iv) in compliance with the manuals, instructions, and bulletins of Company from time to time given to Agent.

2. With respect to a Title Assurance to be issued by Agent, the Agent shall promptly notify Company if Agent becomes aware of any: (i) limits imposed on Company's policy liability retention; (ii) requirement for reinsurance or coinsurance; and/or (iii) specific instructions concerning reinsurance.

3. Agent shall maintain a Policy Register (the "Policy Register") evidencing: (i) the disposition of all premium bearing Title Assurances; and (ii) the Agent's file number, policy number, date of issue, name of insured, amount of policy, premium charged, and short reference to the description of land insured. A legible copy of the Policy Register shall be tendered to Company upon termination of this Agreement or at any time as requested by Company.

4. Agent shall, at all times and in all aspects of this Agreement, comply with all federal, state and local: (i) laws; (ii) statutes; (iii) ordinances; (iv) rules; and/or (v) regulations.



5. Agent shall maintain its license, and any applicable permits, and shall submit to Company evidence of renewal of the Agent license under Article 9.36 of the Code.

6. Agent shall obtain Company's prior approval where funds are to be held under an escrow and/or indemnity agreement in order to facilitate the issuance of a Title Assurance: (i) without exception to a specific defect, lien or encumbrance; or, (ii) with express insurance under Procedural Rule P-39 of the Basic Manual; or (iii) to insure around pursuant to Procedural Rule P-11 of the Basic Manual. The funds and property held under any such escrow and/or indemnity agreement, together with the original documents evidencing the escrow/indemnity, shall be transferred to Company on request of Company.

7. Agent shall keep safely and segregated, in an FDIC insured escrow/trust account, all monies that may be entrusted to Agent by Company, or others, in the course of: (i) Agent's business operations; and (ii) the issuance of Company's Title Assurances hereunder. Agent shall exercise a fiduciary duty with respect to the owners of the funds so deposited. Agent shall be solely liable for any and all losses arising by reason of Agent's improper, unauthorized, reckless or premature disbursement of any escrowed funds.

B. Negative Covenants

1. Agent is not, and shall not be, an agent of Company other than: (i) as a Title Insurance Agent as defined in Article 9.02.(f) of the Code; and (ii) for the limited purposes set forth herein.

2. Agent shall not, without the prior written approval of Company's corporate underwriting department:

- a. Accept service of process on behalf of Company.
- b. Incur debts in the name of Company.
- c. Issue any Title Assurance in a liability amount in excess of the stated Risk Limit.
- d. Commit Company to insure:
 - (1). Any risk involving a title where Agent has knowledge: (i) that a dispute exists; or (ii) of risks, adverse claims, or questions of title known in the community.
 - (2). Any Extra Hazardous Risk as set forth in: (i) this agreement; or (ii) the Company's bulletins and instructions provided to Agent; or (iii) other manuals in common usage. A Title Assurance shall not be construed as insuring an Extra Hazardous Risk if an exception for the Extra Hazardous risk is contained in the Title Assurance.
- e. Receive any funds, or receipt for funds, in the name of Company including, but not limited to: escrow funds, settlement funds or closing funds (Agent shall receive funds solely in Agent's own name).
- f. Use Company's name in any manner inconsistent with the terms and conditions of this Agreement.

- g. Issue any Title Assurance on land in which Agent, or any Agent Affiliates, have an interest.

2. RESPONSIBILITY OF COMPANY

A. Company shall furnish to Agent, without cost, the currently promulgated forms of Title Assurances which Agent is authorized to issue hereunder.

B. Company shall provide Agent with any relevant Company manuals, underwriting bulletins, and/or instructions which may now or hereafter be issued by Company.

C. Company shall be responsible for remitting payment of all premium taxes in accordance with Article 9.59 of the Code and maintenance fees in accordance with Article 9.46 of the Code.

D. Company shall determine all title insurance risk assumption questions submitted by Agent.

E. Company shall arrange for reinsurance when necessary but only to the extent such reinsurance is reasonably available.

F. In accordance with the Basic Manual and Code, Company shall furnish its Insured Closing Service Letter to each of Agent's qualified customers requesting insured closing coverage.

3. COMPENSATION

A. Agent shall remit to Company a percentage of the gross premiums as set forth in Procedural Rule P.23 of the Basic Manual. Agent shall hold Company's percentage of gross premiums in trust, as a fiduciary for Company, until such time as such remittances are received by Company.

B. No later than the fifteenth (15th) day of the second month, following the month in which the premium is collected, Agent shall: (i) submit to Company copies, with premium charged set forth thereon, of all premium bearing Title Assurances issued by Agent during that calendar month; (ii) remit in accordance with Rate Rule R-2 of the Basic Manual; and (iii) return all spoiled, obsolete or canceled Title Assurances accumulated during that calendar month.

4. ALLOCATION OF LOSSES

A. In the event that a Loss sustained or incurred for a matter arising under this Agreement resulted or arose from the negligent or willful or reckless conduct of Agent or Agent Affiliates, then Agent shall reimburse Company for the Loss. The instances where Agent shall be liable to Company under this subparagraph shall include, without limitation, the following:

1. Failure of Agent to comply: (i) with the terms and conditions of this Agreement; or (ii) with the manuals, underwriting bulletins, and/or instructions given to Agent by Company.

2. Issuance of Title Assurances which contain errors or omissions which could reasonably have been detected by Agent from the: commitment, examiner's report, title search packet, or abstract.

3. Loss arising from escrow or Non-Title Assurance operations of Agent or Agent Affiliates, including, but not limited to: (i) preparation of documents or instruments; (ii) providing abstracting services; (iii) providing accommodation services; (iv) Closing the Transaction as defined by Procedural Rule P-1.f. of the Basic Manual; and/or (v) handling of funds.

4. Any Loss arising out of the issuance of an insured closing service letter naming Agent.

5. Fraud, conspiracy, aiding and abetting, dishonesty, misrepresentation or defalcation committed by Agent, or Agent Affiliates.

6. Any act, or failure to act, of Agent or Agent Affiliates, which results in Company sustaining Loss for bad faith, deceptive trade practices, unfair claim practices, consumer protection violations or punitive damages.

C. Agent shall be liable to Company for any Loss resulting to the Company by reason of the loss or improper safeguarding of any Title Assurance.

D. In the event Agent has not submitted a Title Assurance for approval prior to issuance, when such approval is required under the terms of this Agreement, such Title Assurance shall be considered an unsanctioned Title Assurance and Agent shall be liable to Company for any Loss which would have been avoided had the unsanctioned Title Assurance been submitted for approval by Company prior to issuance.

E. Recovery of Loss under a claim will first be applied to reimbursement of Company's Loss, then the balance, if any, to reimburse Agent's loss. However, if Agent renders material assistance in achieving recovery of a Loss, then the recovered funds will be applied: (i) first, to reimburse Company's recovery related expenses; (ii) second, to Agent's recovery related expenses; and (iii) third, to Company and Agent in accordance with the percentage of loss paid by each party.

5. CLAIMS, LITIGATION AND ADMINISTRATIVE PROCEEDINGS

A. Agent shall immediately notify the Company if Agent becomes aware of:

1. Any claim, or threatened claim, under any Title Assurance issued hereunder; and/or,

2. Any judicial action or proceeding affecting or purporting to affect: (i) Company's interest; or (ii) the rights of an insured or proposed insured under a Title Assurance issued by Agent; and/or,

3. Any administrative proceeding, including any written complaints or inquiries, by any insurance department or regulatory agency involving: (i) one or both of the Parties; or (ii) a Title Assurance issued by Agent.

Agent shall provide an initial notification to Company describing the allegations and basic known facts. This initial notification shall be provided, at the addresses and telephone numbers set forth herein, by: (i) telephone advice; and (ii) overnight courier; or (iii) facsimile transmission. Initial notification shall be provided to Company within 3 (three) business days of Agent becoming aware of any of the matters described in this subparagraph 5.A. Following this initial notification Agent shall forward, as soon as reasonably possible, the Guaranty File and all other relevant documents to Company by overnight courier or certified or registered mail. Agent agrees to keep Company fully advised and to promptly forward all relevant communications and other writings or documents. Agent shall acknowledge receipt of any notice in the manner set forth by the Company.

B. Agent agrees that Company shall be fully authorized and empowered, in its absolute discretion, to control, defend, prosecute, settle, compromise, and/or dispose of any claim, litigation or proceeding for which: (i) Company may be liable; and/or (ii) an Insured under a Title Assurance may be liable. Company shall have the right to select and approve any counsel representing Company or an Insured under a Title Assurance. Unless specifically authorized by Company in writing, Agent shall have no right to defend, deny, settle, compromise, or dispose of any action against Company or an Insured. Company shall have no obligation to provide a defense to Agent.

C. Agent agrees to cooperate with Company, in a timely manner, in the handling of any action brought under or in connection with any of the matters described in paragraph 5.A. of this Agreement. Agent will provide copies, and other information, reasonably requested by Company. Agent also agrees to provide reasonable assistance in the settlement or disposition of any such matter whenever requested by Company.

6. PRESERVATION AND EXAMINATION OF BOOKS AND RECORDS

A. Agent will retain, for the statutory time period, an original or legible copy of the Guaranty File to evidence the determination of Insurability made in accordance with Article 9.34 of the Code.

B. Agent agrees that at any time during normal business hours, and with reasonable prior notice from Company during the term of this Agreement, Agent will make available for examination by Company all: (i) Guaranty Files; and (ii) financial records subject to audit under Article 9.40 of the Code.

C. In compliance with Article 9.39 of the Code, Agent shall provide to Company copies of any audit and any unaudited financial reports or data submitted to any regulatory agencies with jurisdiction over Agent.

D. Notwithstanding the above, Company and its examiners, auditors, and/or independent certified public accounts, are authorized pursuant to Article 9.40 of the Code, to enter Agent's business premises for the purpose of inspecting same, or performing a financial, procedural, technical or forms audit.

7. EVENTS OF DEFAULT

A. Each of the events specified below shall constitute an "Event of Default" under this Agreement:

1. Agent fails to: (i) promptly make any payment when due under this Agreement; or (ii) observe and/or perform any of Agent's covenants, conditions, agreements or obligations under this Agreement.
2. A material default occurs under any document, agreement or instrument between Agent and Company.
3. Any representation or warranty, document, statement or report made or delivered by or on behalf of Agent to Company shall not have been true and correct in all material aspects as of the date thereof.
4. Deficiencies in Agent's Trust Account(s).

B. Upon the occurrence of an Event of Default Company may, without notice or demand, take such action as it deems necessary or advisable to protect and enforce its rights and remedies hereunder including, without limitation: (i) declaring all monies owed to it by Agent immediately due and payable; and/or (ii) suspending Company's obligations to perform under this Agreement.

C. The rights and remedies granted to Company under this section are cumulative and Company shall have the right to exercise any one or more of such rights and remedies alternatively, successively, or concurrently, as Company at its sole discretion deems advisable.

8. TERMINATION OF AGREEMENT

A. This Agreement may be voluntarily terminated by either Party, without cause, upon thirty (30) days' written notice to the other Party.

B. Except as otherwise stated in this Paragraph 8, upon the occurrence of an Event of Default as defined in Paragraph 7 above, this Agreement may be terminated by Company upon ten (10) days' prior written notice to Agent; except in the event of breaches of this Agreement which may be cured within ten (10) days of such notice. This Agreement shall not terminate if the defaulting party fully cures such default within such time.

C. Notwithstanding Paragraph 8.B. above this Agreement may be terminated immediately, at the sole discretion of the Company, in the event of: (i) an occurrence of an Event of Default as set forth in Paragraph 7.A.4 herein; or (ii) disclosure of financial irregularities as a result of an audit or examination conducted pursuant to Paragraph 6 hereof. Termination shall be effective immediately upon delivery of notice to Agent by personal delivery or by overnight express courier.

D. Company may terminate this Agreement upon ten (10) days' prior written notice, in the event that Agent is a corporation or partnership and there is a

change in the controlling interest in said corporation or partnership. A change in the controlling interest shall be deemed to occur: (i) when an owner of more than fifty percent (50%) of the capital stock of said corporation ceases to own more than fifty percent (50%) of said stock; or (ii) when there is a sale of substantially all of Agent's assets; or, (iii) when there is a change in more than fifty percent (50%) ownership of the interest(s) in the partnership.

E. Company may immediately terminate this Agreement upon written notice to Agent if: (i) Agent should apply for, consent to, admit to, or become subject to a voluntary or involuntary case seeking liquidation, conservatorship, receivership or bankruptcy; (ii) Agent has a conservator, receiver, trustee or rehabilitator appointed; (iii) Agent's license is suspended or canceled; (iv) Agent becomes the subject of a legal proceeding which, if successful, could result in the cancellation of Agent's license; and/or (v) an Agent Affiliate becomes the subject of a legal proceeding which, if successful, could result in the loss of a law license, escrow license, or other real estate related license.

F. Upon termination of this Agreement, Agent shall promptly furnish to Company: (i) all funds, property and documents, held under indemnity and/or escrow agreements as described in paragraph 1.A.6 of this Agreement; (ii) a complete account and timely payment of all premiums owing Company in accordance with Rate Rule R-2; and, (iii) all manuals, bulletins and instructional materials furnished by Company to Agent.

G. Any right of termination as set out in this Agreement shall be in addition to, and not exclusive of, any remedy provided by law.

9. GENERAL PROVISIONS

A. **Assignment.** This Agreement is not assignable by either party hereto without the prior written consent of the other. This Agreement is binding on any successors or assigns of the Parties. This Agreement may be enforced by a successor or assign of Company without the consent of Agent.

B. **Counterparts.** This Agreement may be executed in as many counterparts as may be required and it shall not be necessary that the signature of, or in behalf of, each party appear on more than one counterpart. All counterparts shall collectively constitute a single agreement.

C. **Waiver.** By exercising or failing to exercise any of its rights, options or elections hereunder, Company shall not be deemed to have waived any breach or default on the part of Agent or to have released Agent from any of its obligations hereunder. The waiver by either Party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or another provision of this Agreement.

D. **Severability.** If any one or more of the terms of this Agreement shall to any extent be adjudged invalid, unenforceable, void, or voidable for any reason, each

and all of the remaining terms of this Agreement shall not be affected thereby and shall be valid and enforceable to the full extent permitted by law.

E. **Continuing Obligations.** If this Agreement is terminated the following obligations shall continue to be binding upon Agent, and shall further be binding upon any subsequent purchaser or transferee of the assets or stock of Agent or any corporate successor of Agent, to-wit: (i) to make any payments; (ii) to provide original documents reasonably necessary to Company under any Title Assurance; (iii) to provide notice of claims or legal proceedings; (iv) to provide access to Guaranty Files and other relevant records; and (v) to cooperate in accordance with subparagraph "H" of this section. This provision is supported by a separate \$10.00 consideration, the receipt of which Agent hereby acknowledges.

F. **Headings.** The subject headings of the paragraphs and subparagraphs of this Agreement are included for the purpose of convenience only, and shall not affect the construction or interpretation of any of their provisions.

G. **Time of the Essence.** Time shall be of the essence with respect to each and every term of this Agreement.

H. **Further Cooperation.** Each of the Parties hereto, in order to carry out the intent of the Parties, shall: (i) execute and deliver any and all additional papers, documents, and other assurances; and (ii) do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder. All cooperation and assistance of the Agent to Company, such as providing copies or rendering assistance under paragraphs 5 and 6 of this Agreement, shall be at no charge to the Company.

I. **Tense.** Where the context requires, the singular shall include the plural and the plural shall include the singular.

J. **General Terms.** The use of specific terms shall not be construed to limit the construction or meaning of general terms.

K. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, understandings or agreements. This Agreement shall not be amended or modified except by a subsequent written agreement executed by the Parties.

L. **Construction.** This Agreement, and any ambiguities contained herein, shall be construed in favor of the Company.

M. **Attorney Fees.** If either Party shall institute an action against the other for breach of this Agreement, the unsuccessful party shall pay charges, expenses, fees, court costs and actual reasonable attorney fees to the successful party.

N. **Term.** This appointment shall be effective for a period of ten (10) years from the date hereof and shall be automatically renewed for additional consecutive terms of one (1) year each unless: (i) written notice of intent not to

renew has been given by Company or Agent no later than sixty (60) days prior to the next date of expiration; or (ii) an event of default has occurred which Company has not waived in writing.

O. **Governing Law.** This agreement is to be construed, enforced, and governed according to and by the laws of the State of Texas in all respects.

10. **DEFINITION OF TERMS**

A. **Loss.** Loss shall mean sums paid or to be paid by Company, in cash or otherwise, to settle or compromise: (i) claims under any of Company's Title Assurances issued by Agent; or (ii) liability, or perceived liability, of Company for actions of Agent within, or outside of, the scope of authority granted under this Agreement. Loss shall include, but not be limited to, expenses, costs and attorneys' fees actually paid or incurred in connection with investigation, negotiation, litigation, or settlement. Loss, as defined herein, shall be reduced by the value of any recoveries actually realized by Company.

B. **Extra Hazardous Risks.** Extra Hazardous Risks shall mean all items described in Company's manuals, instructions and bulletins provided to Agent and which result in a liability not normally assumed by the Company. Extra Hazardous Risks include items which may now or hereafter be identified by the Company as Extra Hazardous Risks. Extra Hazardous Risks also include, without limitation, the issuance of a Title Assurance without a Schedule "B" exception for any of the following: (i) the invalidity or unenforceability of an insured deed of trust, or other insured lien, which is not properly lienable against homestead; (ii) Indian land or restricted Indian title; (iii) pending litigation involving title; and (iv) unfilled mechanic liens where Agent is aware that the owner or general contractor or a subcontractor may not be paying its bills.

D. **Guaranty File.** In connection with a Title Assurance issued by Agent, Guaranty File shall mean the record containing the: (i) evidence of insurability retained in accordance with Article 9.34 of the Code; and (ii) documents generated in connection with "Closing the Transaction" as defined by Procedural Rule P-1.f. of the Basic Manual.

E. **Basic Manual.** Basic Manual shall mean the BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS, as amended, which is promulgated by the Texas Department of Insurance in accordance with Chapter 9 of the Code.

F. **Code.** Code shall mean the Texas Insurance Code, as amended.

G. **Agent Affiliates.** Agent Affiliates shall include, without limitation, Agent's: employees, officers, directors, stockholders, partners, attorneys, parent organization, sister organization, and/or subsidiary organization.

11. **NOTICES**

All notices permitted or required to be given under this Agreement shall be in writing, addressed as shown below, and may be: (i) personally delivered; or (ii) delivered by express courier service; or (iii) mailed by certified or registered United States Mail. The effective date of notice shall be: (i) the date of delivery for personal or express courier deliveries; (ii) the date shown on the "return card" for certified or registered mail if delivery is by certified or registered mail. Said notices shall be addressed as follows:

Original To Company: Fidelity National Title Insurance Company
15770 North Dallas Parkway, Suite 1200
Dallas, TX 75248
Attention: Winfred Myers
Vice President/Regional Agency Manager
Telephone # 800-654-7041
Telefax # 214-774-2197

With a Copy to: Fidelity National Title Insurance Company
17911 Von Karman Avenue, Suite 500
Irvine, California 92714
Attention: Frank P. Willey
Executive Vice President/General Counsel
Telephone # 800-421-8111
Telefax # 714-622-4165

Original To Agent: Webb County Title & Abstract Co., Inc.
1620 Santa Ursula
Laredo, TX 78040
Attention: Laura McPartland
Telephone #: 1-210-724-7104
Telefax #: 1-210-724-7757

With a Copy to:

Attention:
Telephone #:
Telefax #:

The person and/or address for notice may be changed by written notice. Telephone and telefax numbers are shown for purposes of preliminary claim and/or legal proceedings notice under paragraph 5 of this Agreement.

The Parties hereto have caused this Agreement to be properly executed by their respective representatives, having full authority so to do, to be effective as of the day and year first above written.

AGENT:

Webb County Title & Abstract Co., Inc.
1620 Santa Ursula
Laredo, TX 78040

By: Raquel Gonzalez

Printed Name: Raquel Gonzalez

Title: President

COMPANY:

FIDELITY NATIONAL TITLE INSURANCE COMPANY
15770 North Dallas Parkway
Suite 1200 LB21
Dallas, TX 75248

By: Michael Myers

Printed Name: Michael Myers

Title: Vice President

Facts

A. Relationship Between Fidelity and Webb County.

6. Fidelity is a title insurance underwriter. Webb County is a title insurance agent.

7. Fidelity and Webb County are parties to a Texas Issuing Agency Agreement dated March 1, 1996 (the "Agency Agreement"). The Agency Agreement expressly provides that Webb County will reimburse Fidelity for any "Loss" (as defined in the Agency Agreement) suffered by Fidelity as a result of Webb County's negligence in, among other things, "handling of funds." The Agency Agreement was in effect at all times material to this action.

B. The Aguirre and Navarrete Transactions.

8. The Hayden & Hunter Group, LLC ("Hayden & Hunter") was the developer/seller of the properties involved in both of the subject transactions. South Texas National Bank of Laredo ("STNB") held a first deed of trust lien on both of the properties to secure a debt of Hayden & Hunter. In November 2007, Hayden & Hunter sold one of the properties to Ruben and Ruby Aguirre (the "Aguirres") and the other to Carlos Navarrete ("Navarrete"). Webb County acted as the title and escrow agent in both transactions. In connection with the closings of both transactions, Webb County issued to the respective buyers owner's title insurance policies underwritten by Fidelity, but failed to pay the STNB debt secured by the properties from the proceeds of the sale or to obtain releases of STNB's lien with respect to the properties.

9. STNB was unaware of the sales of the properties until it conducted an inspection and determined that the properties were occupied. In the meantime, Hayden & Hunter defaulted on its debt to STNB, and STNB posted the properties for foreclosure. As a result, in July 2007, the Aguirres and Navarrete made claims against Fidelity under their respective title insurance policies. In August 2007, Fidelity was forced to pay the STNB debt in order to avoid the threatened foreclosures. The payoff amounts were \$111,085.40 with respect to the Aguirres' policy and \$151,199.58 with respect to Navarrete's policy.

C. The Garcia Transaction.

10. The United States Government (the "Government") acquired certain property in connection with a criminal action against Juan Cavazos ("Cavazos"). International Bank of Commerce ("IBC") had a first deed of trust lien on the property to secure a debt owed by Cavazos. In October 2006, the Government sold the property to Luis Garcia and Angelica Garcia (the "Garcias"). Webb County acted as the title and escrow agent in the transaction. In connection with the closing of the transaction, Webb County issued to the Garcias an owner's title insurance policy underwritten by Fidelity, but failed to pay the IBC debt secured by the property from the proceeds of the sale or to obtain a release of IBC's lien with respect to the properties.

11. IBC was unaware of the sale of the property when it occurred. In the meantime, Cavazos defaulted on his debt to IBC, and IBC posted the property for foreclosure. As a result, in July 2007, the Garcias made a claim against Fidelity under their title insurance policy. In August 2007, Fidelity was forced to pay the IBC debt in order to avoid the threatened foreclosure. The payoff amount was \$67,120.97 with respect to the Garcias' policy.

First Claim for Relief

12. Webb County's conduct in failing to pay the STNB debt from the proceeds of the sales to the Aguirre and Navarrete transactions, in failing to pay the IBC debt from the proceeds of the Garcia transaction and in failing to obtain releases of the liens held by STNB and IBC on the subject properties constituted negligence. Such negligence was a proximate cause of damages to Fidelity. Such damages are measured by the amounts that Fidelity had to pay to STNB and IBC under the respective title insurance policies in connection with the Aguirre, Navarrete and Garcia transactions, such amount being \$329,405.95. Fidelity is entitled to recover such damages from Webb County.

Second Claim for Relief

13. The amounts paid by Fidelity to STNB on the Aguirre and Navarrete claims, the amount paid by Fidelity to IBC on the Garcia claim and the expenses incurred by Fidelity in connection with those claims are "Loss" suffered by Fidelity as a result of negligence of Webb County in "handling of funds," within the meaning of the Agency Agreement. Accordingly, pursuant to the Agency Agreement, Webb County is obligated to reimburse Fidelity for such amounts. Webb County, however, has failed and refused, and still fails and refuses to reimburse Fidelity for such amounts. Such failure and refusal constitutes a breach of the Agency Agreement by Webb County, and Fidelity has been damaged as a result. Such damages are measured by the amounts that Fidelity had to pay to STNB and IBC under the respective title insurance policies in connection with the Aguirre, Navarrete and Garcia transactions, such amount being \$329,405.95.. Fidelity is entitled to recover such damages from Webb County.

14. Fidelity has presented its claims for breach of contract to Webb County. More than thirty days have elapsed since the claim was presented to Webb County, and Webb County has not tendered the just amount that is owed. Accordingly, Fidelity is entitled to recover reasonable attorneys fees from Webb County for proceedings in this Court and in the appellate courts, if applicable.

Conditions Precedent

15. All conditions precedent to Fidelity's right to initiate and maintain this action have been performed or have occurred.

Prayer

WHEREFORE, PREMISES CONSIDERED, Fidelity prays that Webb County be served with citation and required to appear in this action, and that Fidelity recover damages, prejudgment interest to the extent allowed by law, attorneys fees, costs, post-judgment interest and such other relief as may be appropriate under the circumstances.

Respectfully submitted,

MUNSCH/HARDT KOPF & HARR, P.C.

By:



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ATTORNEYS FOR PLAINTIFF

LM APR 24 2008

At 2:08p. M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. D-1-GV-08-000050

THE STATE OF TEXAS
Plaintiff

VS.

WEBB COUNTY TITLE
& ABSTRACT COMPANY, INC.
Defendant

§
§
§
§
§
§
§

IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

201ST JUDICIAL DISTRICT

**ORDER GRANTING AMENDED APPLICATION FOR TRANSFER OF ESCROW
FUNDS AND REQUEST FOR CLAIMS FILING DEADLINE**

On this day, the Court considered the *Amended Application for Transfer of Escrow Funds and Request for Claims Filing Deadline* (the "Application") filed by the Texas Title Guaranty Association (the "Guaranty Association"). The Guaranty Association appeared by and through its counsel of record. No objection to the Application was filed by any party in interest. Based on the argument of counsel and the evidence presented, the Court finds that the Application should be granted.

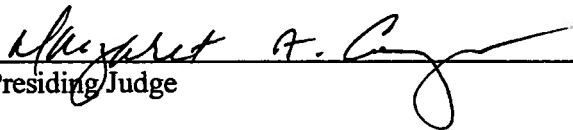
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. The Application is GRANTED in all respects;
2. The Guaranty Association is authorized to accept from the Liquidator the escrow accounts of Webb County Title & Abstract Company, Inc. (the "Escrow Accounts" and "Webb Title");
3. The Guaranty Association may transfer any Escrow Account to another bank or banks, and may hold all Escrow Account funds in a consolidated escrow account for the purpose of paying claims;
4. The Guaranty Association is authorized to proceed and to distribute the funds in the Escrow Accounts in accordance with the applicable escrow agreements and the Claim Payment Plan attached hereto as Exhibit B;



5. The Guaranty Association shall return any unclaimed funds in the Trust Account to the Liquidator for handling in accordance with TEX. INS. CODE § 443.304;
6. The Guaranty Association is entitled to any records of Webb Title necessary to fulfill its obligations; and
7. A claims filing deadline of October 14, 2008 is established for "covered claims" against Webb Title.

SIGNED and ENTERED on this 24 day of April, 2008.



Presiding Judge

I, AMALIA RODRIGUEZ-MENDOZA, District Clerk,
Travis County, Texas, do hereby certify that this is
a true and correct copy as same appears of
record in my office. Witness my hand and seal of
office on 4-24-08.

AMALIA RODRIGUEZ-MENDOZA



DISTRICT CLERK

By Deput

