

NO. D-1-GV-08-000050

STATE OF TEXAS,
Plaintiff

VS.

WEBB COUNTY TITLE
& ABSTRACT COMPANY, INC.,
Defendant

§
§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201st JUDICIAL DISTRICT

**APPLICATION FOR RECOVERY OF SURETY BOND PROCEEDS
[WESTERN SURETY COMPANY]**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Cantilo & Bennett, L.L.P., Special Deputy Receiver of Webb County Title & Abstract Company, Inc. (the "SDR" and "Webb County" respectively), and files this *Application for Recovery of Surety Bond Proceeds [Western Surety Company]* (the "Application"), and in support thereof would respectfully show the Court as follows:

I. BACKGROUND

1.1 Webb County was placed in receivership in this proceeding on January 11, 2008. The Court entered an Agreed Order Appointing Liquidator and Permanent Injunction on January 11, 2008 appointing the Texas Commissioner of Insurance as Permanent Receiver. The Receiver designated Cantilo & Bennett, L.L.P., as SDR of Webb County effective as of May 2, 2008.

1.2 The subject matter of this Application has been referred to the Special Master appointed in this proceeding in accordance with Paragraph III of the Order of Reference to Master entered on April 10, 2008.

1.3 The SDR seeks to recover the proceeds of a surety bond issued by respondent, Western Surety Company, to Webb County. The SDR will use the proceeds to administer the Webb County Receivership Estate for the benefit of all parties and claimants, including those who have suffered

any loss covered by the bond. Payment of the proceeds to the Webb County Receivership Estate will prevent any similarly situated creditors from obtaining a preference from the assets of the estate.

II. STATUTORY AUTHORITY

2.1 The SDR is authorized to file this Application pursuant to TEX. INS. CODE § 443.154 and TEX. INS. CODE § 2651.104. Under § 443.154(a), the SDR has all the powers of the Receiver, unless specifically limited by the Receiver.

2.2 Respondent Western Surety Company is a duly authorized insurance company in the State of Texas. By law it is required to and does maintain with the Texas Department of Insurance an "Attorney for Service," CT Corporation System, 350 North St. Paul Street, Dallas TX 75201.

III. BASIS FOR APPLICATION

3.1 Webb County was a title agency. It was required to and did maintain a surety bond pursuant to TEX. INS. CODE § 2651.101. Bond No. 69143743 was issued by Western Surety Company on April 18, 2001 (hereinafter referred to as the "Surety Bond"). A true and correct copy of the Surety Bond is attached as Exhibit 1.

3.2 The Surety Bond is payable to the Texas Department of Insurance by both its express terms and the provisions of TEX. INS. CODE § 2651.101, which provides as follows (emphasis added):

§ 2651.101. BOND REQUIRED. (a) Each licensed title insurance agent and direct operation shall make, file, and pay for a surety bond **payable to the department** and issued by a corporate surety company authorized to write surety bonds in this state. **The bond shall obligate the principal and surety to pay for any pecuniary loss sustained by:**

- (1) any participant in an insured real property transaction through an act of fraud, dishonesty, theft, embezzlement, or wilful misapplication by a title insurance agent or direct operation; or

(2) the department as a result of any administrative expense incurred in a receivership of a title insurance agent or direct operation.

3.3. On or about December 19, 2007, the Texas Department of Insurance determined that a loss covered by the Surety Bond had been sustained by claimant, Horace Hall, on behalf of Manuel Riverol, Manuel Riverol Meade, Inigno Riverol Meade and Joaquina Riverol Meade. The Department prepared a Statement of Loss and served it on the Office of the Attorney General pursuant to TEX. INS. CODE § 2651.104. A true and correct copy of the Department's Statement of Loss is attached as Exhibit 2. The loss described in the Statement of Loss is \$146,000-greatly in excess of the bond. Additional losses, which would be covered by the Surety Bond, have been discovered.

3.4 Webb County was placed in receivership in this proceeding on January 11, 2008. The Commissioner designated Webb County as an "Impaired Agent" under Texas Insurance Code Chapter 2602 on January 15, 2008. The Webb County Receivership Estate will incur administrative expenses in connection with the receivership in excess of \$100,000-the amount of the bond. In fact, \$200,000 from the Department's Abandoned Property Fund has been provided to the estate in order to cover initial expenses of administration as allowed by TEX. INS. CODE § 443.304.

3.5 The Department has designated the SDR to recover the proceeds of the Surety Bond for the benefit of all parties who have suffered any loss covered by the bond or deposit. Section 2651.104 of the Code provides that:

- (a) On receipt of a written statement under Section 2651.103, the attorney general shall investigate the charges and, on determining that a loss covered by the bond or deposit has occurred, shall enforce the liability by collecting against the deposited cash or securities or by filing suit on the bond.

(b) A suit brought under this section shall be filed in the name of the department in Travis County for the benefit of all parties who have suffered any loss covered by the bond or deposit.

3.6 This application is brought pursuant to the above referenced statute. Western Surety Company has been notified of the Statement of Loss and the receivership. See Exhibits 2 and 3.

IV. RELIEF SOUGHT

4.1 The SDR moves the Court, after notice and hearing, to order Western Surety Company to pay to the SDR the full proceeds of the Surety Bond and, after payment, discharge Western Surety Company from any and all additional liability on the Surety Bond and to any and all claimants, including, but not limited to, Horace Hall, on behalf of Manuel Riverol, Manuel Riverol Meade, Inigno Riverol Meade and Joaquina Riverol Meade.

V. NOTICE

5.1 Pursuant to §443.007(d), this Application has been served on the designated Attorney for Service for Western Surety Company, the claims representative of Western Surety Company, Leanne Niebuhr, and the entire service list for this proceeding, including without limitation, all IGAs, in the manner shown on the Certificate of Service. Service of the Application and the Notice of Submission complies with §443.303(e).

VI. OFFER OF PROOF

6.1 Cantilo & Bennett, L.L.P., as Special Deputy Receiver, through its authorized representative, Susan E. Salch, submits its certificate pursuant to §443.017(b) verifying the statements in this Application and authenticating the attached exhibits.

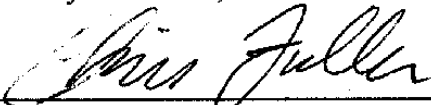
VII. CONCLUSION

7.1 In conclusion, the SDR urges the Court to grant this Application. Payment of the proceeds of the Surety Bond will enable the SDR to continue to administer the estate, prevent creditors from obtaining preferences in violation of the priority of payment provisions of the Insurer Receivership Act, and reduce the claim by Western Surety Company in the estate by eliminating the expense of attorney's fees and costs of litigation.

PRAYER

WHEREFORE PREMISES CONSIDERED, the SDR respectfully requests this Court to grant this Application, and grant such further relief to which it may show itself to be justly entitled.

Respectfully submitted,

By: 

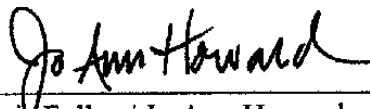
Christopher Fuller
Texas Bar No. 07515500
4612 Ridge Oak Drive
Austin, Texas 78731
Tel. (512) 470-9544
Fax. (512) 374-0957
cfuller@fullerlaw.org
Attorney for Cantilo & Bennett, L.L.P.,
Special Deputy Receiver of Webb County Title & Abstract
Company, Inc.

And
By: 

Jo Ann Howard
Texas Bar No. 10072310
Jo Ann Howard & Associates, P.C.
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Austin, Texas 78716
Tel. (512) 791-0911
Fax (512) 329-6612
lamanrd3@aol.com
Attorney for Cantilo & Bennett, L.L.P.,
Special Deputy Receiver of Webb County Title & Abstract
Company, Inc.

CERTIFICATE OF SERVICE

I certify that on July 7, 2008, a true and correct copy of this Application was served pursuant to the Order of Reference, the Texas Rules of Civil Procedure, and TEX. INS. CODE ANN. §§ 443.007 (d) and 443.303(e) on the following.



Chris Fuller / Jo Ann Howard

Tom Collins, Special Master
c/o Ms. Jean Sustaita
P.O. Box 149104
Mail Code 305-1D
Austin, TX 78701
Jean.Sustaita@tdi.state.tx.us

Kurt L. Lyn
Attorney for Xerox
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3555 Timmons Lane, Ste. 790
Houston, TX 77027
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klyn@llrplaw.com

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Attorney for Riverol claimants
Hall, Quintanilla & Alarcon
P.O. Box 207
Laredo, TX 78042
Fax: 956-723-8168
Tel: 956-723-5527
hchall@sbcglobal.net

Albert F. Muller, III
Attorney for A. F. Muller Company & La Bota Development Co, Inc.
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Attorney for IBC Bank
Martin & Drought, P.C.

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jlowe@mdflaw.com

D. Ronald Reneker
Attorney for Fidelity National Title Insurance Company
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3800 Lincoln Plaza
500 N Akard Street
Dallas, TX 75201-6659
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rreneker@munsch.com

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Plaza de San Agustin
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cclark@gpm-law.com

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Attorney for Raquel Gonzalez
Law Offices of Carl M. Barto
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Laredo, TX 78040
Fax: 956-722-6739
cmblaw@netscorp.net

Javier Montemayor
1814 Victoria Street
Laredo, TX 78040
lawjm@sbcglobal.net

Texas Title Insurance Guaranty Association
Burnie Burner
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.
P.O. Box 2212
106 E. Sixth Street, Suite 300
Austin, TX 78768-2212
bburner@mws gw.com

CNA Surety/ Western Surety Company
Leann Niebuhr
P.O. Box 5077
Sioux Falls, SD 57117-5077
lea.niebuhr@cnaSurety.com

Jenny Jackson
Assistant Attorney General
Financial Litigation Division
P.O. Box 12548
Austin, TX 78711-2548
jennifer.jackson@oag.state.tx.us

Alamo Title Insurance
ATTN: Betsy Thompson
10010 San Pedro, Suite 440
San Antonio, TX 78216
Tel: 800-292-5320
betsy.thompson@fnf.com

United General Title Insurance Company
ATTN: Sally Vettters
13750 San Pedro, Suite 715
San Antonio, TX 78232
Fax: 800 -204-6614
svettters@ugtic.com

Laredo FBI Field Office
ATTN. Aaron Ackland
109 Shiloh Drive, Suite 430
Laredo, TX 78045
aaron.ackland@ic.fbi.gov

Webb County District Attorney
ATTN: Veronica Molina
110 Victoria St. Suite 401
Laredo, TX 78040
(956)523-4900

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Law Firm of Roy Ibanez
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Armbrust & Brown, LLP
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ilerner@abaustin.com

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Fax: 301-434-0157
danielmyers@verizon.net

Internal Revenue Service
P.O. Box 145595, MC 8420G
Cincinnati, OH 45250-5595

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Attorney for General Electric
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Austin, TX 78701

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Assistant City Attorney
City of Laredo
1110 Houston
Laredo, TX 78040
Tel: (956)791-7318
Fax: (956) 791-7494
amcgettric@ci.laredo.tx.us

Webb County Tax Collector
1110 Victoria St., Suite 107
P.O. Box 420128
Laredo, TX 78042

L.I.S.D. Tax Office
820 Main Ave.
Laredo, TX 78040

Texas Workforce Commission
Regulatory Enforcement Division
101 E. 15th Street
Austin, TX 78778-0001

Angel Garrett
Texas Department of Insurance
Financial/Rehabilitation & Liquidation Oversight Division

333 Guadalupe, Mail Code 305-1D
Austin, TX 78701
Angel.Garrett@tdi.state.tx.us

Rachel Giani
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Financial/Rehabilitation & Liquidation Oversight Division
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Austin, TX 78716
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**SPECIAL DEPUTY RECEIVER'S CERTIFICATION PURSUANT TO TEX. INS.CODE ANN.
§443.017(b)
AFFIDAVIT OF SUSAN SALCH**

State of Texas

County of Travis

BEFORE ME, the undersigned authority appeared Susan Salch, who after being by me duly sworn, stated the following under oath:

1. "My name is Susan E. Salch. I am competent to make this affidavit. The statements of fact set forth herein are true and correct, and are within my personal knowledge.

2. "I am a partner in Cantilo & Bennett, L.L.P., Special Deputy Receiver of Webb County Title & Abstract Company, Inc. (the "SDR" and "Webb County"). I am duly authorized to make this Certification and Affidavit on behalf of the SDR.

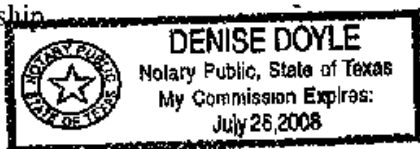
3. I certify that the exhibits, books, accounts, records, papers, correspondence, and/or other records and documents attached hereto were produced pursuant to TEX. INS. CODE ANN. §443.017(b), are true and correct copies of records created by and filed with the Receiver's office in connection with the receivership of this delinquent insurer, and are held by the Special Deputy Receiver in its official capacity.

3. I further state that I have read the statements contained in the attached Application and that they are true and correct based on my personal knowledge, my review of estate records and my consultation with my staff and sub-contractors.

4. Further affiant sayeth not.

By: *Susan Salch*
Susan E. Salch

SUBSCRIBED AND SWORN TO BEFORE ME on July 7, 2008, by Susan E. Salch, on behalf of Cantilo & Bennett, L.L.P., Special Deputy Receiver of Webb County Title & Abstract Company, Inc. in receivership.



Denise Doyle
Notary Public

APPLICANT'S NOTICE OF SUBMISSION

Pursuant to the terms of the Order of Reference to Master entered by the District Court in this cause, the SDR's *Application for Recovery of Surety Bond Proceeds* is hereby set for written submission before the Special Master, Tom Collins, on July 21, 2008.

The Special Master has asked that the following rules be provided you:

1. Any objection must be filed with the Travis County District Clerk at least three (3) calendar days before the submission date.
2. A copy of any objection shall be served by such date on:
 - (a) The Special Master's Docket Clerk, Ms. Jean Sustaita, Texas Department of Insurance, **(Hand Delivery)** 333 Guadalupe, Hobby Tower 3, Room 550, Austin, Texas; or **(Mail To)** P. O. Box 149104, Austin, Texas 78714-9104
 - (b) All interested parties, including the undersigned counsel and those listed on the Applicant's Certificate of Service.
3. The written objection must specifically list all reasons for objection with supporting references to and discussion of statutory and case authorities. Reasons not stated in writing will not be considered orally.
4. If a matter is set for submission, an objecting party shall expeditiously coordinate with Applicant's counsel and the master's docket clerk [(512) 463-6450] to obtain an oral hearing, unless the master determines that an oral hearing is not necessary. The objecting party shall serve a Notice of Oral Hearing on applicant's counsel and all interested parties, including those listed on the Applicant's Certificate of Service.
5. Failure to file timely a written objection before the Special Master constitutes a waiver of the right to object to the Special Master's recommendation to the District Court.
6. Any Acknowledgment of Notice and Waiver to be filed by the Guaranty Association or other interested party should be filed at least three (3) calendar days before the submission or hearing date.



Christopher Fuller

Exhibit 1 - Surety Bond

JAN-29-08 10:50

FROM-WEBB COUNTY TITLE

2107268328

T-874 P.08/13 F-618

Duplicate

TEXAS TITLE INSURANCE AGENT'S/DIRECT OPERATION'S BOND

KNOW ALL PERSONS BY THESE PRESENTS:

Bond No.: 69143743

THAT WE Webb County Title and Abstract Co., Inc.

As Principal, whose address is 1620 Santa Ursula, Laredo, Texas 78041

and WESTERN SURETY COMPANY

as Surety, being a surety company authorized to do business in the State of Texas, are held and firmly bound unto the Texas Department of Insurance in the sum of One Hundred Thousand and 00/100

\$100,000.00

(bond amount determined by Article 9.38 of the Texas Insurance Code) payable to said Department for the use and benefit of any injured party, lawful money of the United States for the payment of which well and truly to be made, we, jointly and severally by these presents, do firmly bind ourselves, our heirs, executors, administrators, successors and assigns.

The conditions of the above obligations are such that:

WHEREAS the above named Principal has made application to the Texas Department of Insurance for a license as a Title Insurance Agent/Direct Operation to engage in or continue in the business of a Title Insurance Agent/Direct Operation, in accordance with the provisions of "The Texas Title Insurance Act" of The State of Texas.

NOW, THEREFORE, if the Principal shall pay to the Texas Department of Insurance such pecuniary losses as may result to any participant in an insured real estate transaction which shall be sustained through acts of fraud, dishonesty, theft, embezzlement, or willful misapplication on the part of said Principal then this obligation shall be void, otherwise to remain in full force and effect, subject to the following conditions:

- 1. It is agreed that as of April 18, 2001, this bond shall be in full force and effect indefinitely and that a continuation or renewal certificate is unnecessary.
2. The surety may at any time cancel this bond by giving thirty days written notice to the Texas Department of Insurance, the surety, however, remaining liable for any defaults under this bond committed prior to the expiration of such thirty-day period.
3. In no event shall the aggregate liability of the Surety under this bond for any and all damages to one or more claimants exceed the penal sum of this bond.

IN WITNESS WHEREOF said Principal and Surety have executed this bond this 18th day of April, 2001 to be effective on the 18th day of April, 2001



Principal

By:

Address:

Surety

By:

WESTERN SURETY COMPANY

Signature of Stephen T. Late, President

INSCORP INC. BY: Olga Flores Local Recording Agent

TDI 000001



Western Surety Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: **DUPLICATE**

That WESTERN SURETY COMPANY, a corporation organized and existing under the laws of the State of South Dakota, and authorized and licensed to do business in the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the United States of America, does hereby make, constitute and appoint

..... Stephen T. Pate of Sioux Falls
State of South Dakota its regularly elected Executive Vice President
as Attorney-in-Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, all of the following classes of documents to-wit:

Indemnity, Surety and Undertakings that may be desired by contract, or may be given in any action or proceeding in any court of law or equity, policies indemnifying employers against loss or damage caused by the misconduct of their employees; official, bail, and surety and fidelity policies; indemnity in all cases where indemnity may be lawfully given; and with full power and authority to execute consents and waivers, liability of change or extend any bond or document executed for this Company, and to compromise and settle any and all claims or demands made or existing against said Company.

Western Surety Company further certifies that the following is a true and exact copy of Section 7 of the by-laws of Western Surety Company duly adopted and now in force, to-wit:

Section 7: All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys-in-Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

In Witness Whereof, the said WESTERN SURETY COMPANY has caused these presents to be executed by Executive Vice President with the corporate seal affixed this 18th day of April, 2001.

ATTEST

L. Nelson
Assistant Secretary

WESTERN SURETY COMPANY
By *Stephen T. Pate*
Stephen T. Pate, Executive Vice President

STATE OF SOUTH DAKOTA }
COUNTY OF MINNEHAHA } ss

On this 18th day of April, 2001, before me, a Notary Public, personally appeared Stephen T. Pate and L. Nelson

who, being by me duly sworn, acknowledged that they signed the above Power of Attorney as Executive Vice President and Assistant Secretary, respectively, of the said WESTERN SURETY COMPANY, and acknowledged said instrument to be the voluntary act and deed of said Corporation.



D. Krell
Notary Public

 **Western Surety Company**

- **IMPORTANT NOTICE**

To obtain information or make a complaint:

- You may call Western Surety Company's toll-free telephone number for information or to make a complaint at

1-800-293-8800

- You may also write to Western Surety Company at

P.O. Box 655908

Dallas, TX 75265-5908

or

P.O. Box 5077

Sioux Falls, SD 57117-5077

- You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at

1-800-252-3439

- You may write the Texas Department of Insurance

P.O. Box 149104

Austin, TX 78714-9104

FAX # (512) 475-1771

- **PREMIUM OR CLAIM DISPUTES:**

Should you have a dispute concerning your premium or about a claim, you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

- **ATTACH THIS NOTICE TO YOUR POLICY OR BOND:**

This notice is for information only and does not become a part or condition of the attached document.

STATE OF TEXAS
County of Dallas

} SS

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Dallas, Texas, the day and year last above written.

DUPLICATE

On this 18th day of April, 2001, before me, a Notary Public is

Stephen T. Pate, President

and for said County, personally appeared Stephen T. Pate, President personally known to me, who being by me duly sworn, did say that he is the aforesaid officer of WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that the said instrument was signed, sealed and executed on behalf of said corporation by authority of its Board of Directors, and further acknowledge that the said instrument and the execution thereof to be the voluntary act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Dallas, Texas, the day and year last above written.

My commission expires

NOV 06 2001

Kristi Melch

Notary Public

Exhibit 2 - Statement of Loss

JAN-29-08 10:48

FROM-WEBB COUNTY TITLE

2107288328

T-874 P.02/13 F-618



101 S. Phillips Avenue, Sioux Falls, SD 57104-6703
P.O. Box 5077, Sioux Falls, SD 57117-5077

Leann Niebuhr
Claim Consultant
Telephone 605-330-2601
Facsimile 605-977-7724
lea.niebuhr@cnasurety.com

January 24, 2008

Webb County Title And Abstract Co., Inc.
1620 Santa Ursula
Laredo, TX 78041

Bond / surety
company

RE: Principal: Webb County Title And Abstract Co., Inc.
Surety: Western Surety Company
Bond No.: 69143743
Claim No.: 9a315970

As your bonding company, we have received the enclosed demand from Texas Department of Insurance.

If this Company is required to make any payment on your behalf or if we incur any expense, including attorney fees, we will be entitled to reimbursement from you under the terms of the indemnity agreement. By copy of this letter, we remind the indemnitor, Raquel Gonzalez, that should payment be made under the bond, we will look to her for reimbursement under the terms of the indemnity agreement.

You are required to have the full amount of this bond in order to maintain your license to do business. We are required to notify the State of Texas if any payments are made from the bond; this will reduce the amount below the limit necessary to maintain your license.

If you do not have a defense, you should immediately resolve this claim. If you have a defense to the claim, please furnish a full explanation and any documentation to support your position. We may be able to deny liability if you have a valid defense.

Since we are under an obligation to furnish the claimant with a prompt response, we must hear from you prior to February 13, 2008, or we may need to assume the correctness of this claim, arrange a settlement to the extent of our liability, and then look to you under the terms of the indemnity agreement for full and immediate reimbursement.

Please note that if the bond or any other bond is currently in force and you fail to respond to this matter, such non-responsiveness may result in cancellation and/or non-renewal of this bond and any other bonds. We urge you to promptly respond in writing using the enclosed, self-addressed envelope or via fax at 605-977-7724.

Sincerely,

Leann Niebuhr
Authorized Representative
of Western Surety Company

Enclosures

cc: Laredo Insurance Agency, Inc. by Fax
Raquel Gonzalez

RECEIVED

JAN 11 2008

SURETY CLAIMS



Texas Department of Insurance

Enforcement Division, Mail Code 110-1A
333 Guadalupe • P. O. Box 149104, Austin, Texas 78714-9104
512-475-1821 telephone • www.tdi.state.tx.us

COPY

69143743

January 8, 2008

Western Surety Company
P.O. Box 5077
101 South Phillips Avenue
Sioux Falls, South Dakota 57117-5077

VIA CERTIFIED AND REGULAR MAIL
CERTIFIED MAIL NO. 7005 0390 0000 8968 3273
RETURN RECEIPT REQUESTED

RE: Notice of loss covered by Texas Title Insurance Agent's Bond, Bond No. Webb
Court Title & Abstract Co., Inc., provided pursuant to TEX. INS. CODE ANN. §§
2651.103(c).

To Whom It May Concern:

This letter is to advise you that the Texas Department of Insurance is of the opinion that Manuel Riverol, Manuel Riverol Meade, Inigno Riverol Meade, and Joaquina Riverol Meade have suffered a loss covered by Webb Court Title & Abstract Co., Inc.'s Texas Title Insurance Agent's Bond, Bond No. 69143743, which was issued by your company on April 18, 2001. This notice is provided to you as required by TEX. INS. CODE ANN. § 2651.103(c). For your reference, the Department's findings, described in the Statement of Loss Covered by Bond or Deposit, and supporting documentation are also attached.

The Department has referred this matter to the Office of the Attorney General for further investigation pursuant to TEX. INS. CODE ANN. § 2651.104. If enforcement of the liability is warranted, the Office of the Attorney General will file a suit on the bond in Travis County District Court. Should you have any questions about this notice or the enclosed documents, please contact me directly at 512-475-2023.

Sincerely,

Cass Burton, Staff Attorney
Enforcement Division, Mail Code 110-1A
Texas Department of Insurance
333 Guadalupe
Austin, Texas 78701
(512) 475-2023
(512) 475-1772 (fax)
State Bar Number: 24040613

Enclosures

STATEMENT OF LOSS COVERED BY BOND OR DEPOSIT

To: The Office of the Attorney General
From: Cass Burton, Staff Attorney, Enforcement Division, Texas Department of Insurance

Bond No.: 69143743
Principal: Webb County Title & Abstract Co., Inc.
Surety: Western Surety Company

Claimant: Horace Hall, on behalf of Manuel Riverol, Manuel Riverol Meade, Inigno Riverol Meade, and Joaquina Riverol Meade

The Department has determined that a loss covered by a title insurance agent's bond or deposit has occurred. This written statement of the facts of the loss is prepared for the Office of Attorney General as required by TEX. INS. CODE ANN. §§ 2651.103 - 2651.104. The Department would show the following:

I. The loss occurred during a period of time that the bond was in effect.

1. Each licensed title insurance agent and direct operation shall make, file, and pay for a surety bond payable to the Department and issued by a corporate surety company authorized to write surety bonds in this state.¹
2. As required by law, Webb County Title & Abstract Co., Inc. ("Webb Title") purchased a \$100,000 Texas Title Insurance Agent's Bond from Western Surety Company.²
3. The term of the bond, which began on April, 18, 2001, is indefinite. It can only be cancelled by giving written notice to the Department.
4. Manuel Riverol, Manuel Riverol Meade, Inigno Riverol Meade, and Joaquina Riverol Meade (collectively the "Riverol-Meade's" or the "complainants") complain that Webb Title defrauded the family of \$146,000 between June and November of 2006.³
5. The activity occurred after the bond was executed in 2001, and there is no evidence that the bond was cancelled in 2006. Therefore, the loss occurred during a period of time that the bond was in effect.

II. The title insurance agent or direct operation was responsible for the loss.

6. A Texas Title Insurance Agent's Bond obligates the principal and surety to pay for any pecuniary loss sustained by any participant in an insured real property transaction through an act of fraud, dishonesty, theft, embezzlement, or willful misapplication by a title insurance agent or direct operation.⁴

¹ See TEX. INS. CODE ANN. § 2651.101(a) (Vernon 2007).

² See Exhibit A, TDI 000001; a copy of the surety bond issued to Webb Title.

³ See Exhibit B, TDI 000010 and TDI 000016; a copy of complaint filed by the Riverol-Meade's which includes dated HUD-1 settlement statements.

⁴ See TEX. INS. CODE ANN. § 2651.101(a)(1) (Vernon 2007).

STATEMENT OF LOSS

Webb County Title & Abstract Co., Inc.

Page 2 of 4

7. Here, the Riverol-Meade's, participants in two insured real property transactions closed by Webb Title, sustained a combined loss of \$146,000 as a result of acts of embezzlement and fraud by Webb Title's employees.

A. Embezzlement - GF No. 05002693 / Hector Hall Developments, L.C. Sale

8. On or around June 13, 2006, the Riverol-Meade's sold property in Laredo, Texas worth \$700,000 to Hector Hall Developments, L.C. ("Hall Developments").
9. The transaction closed at Webb Title. The settlement statement identifies Webb Title as the settlement agent.⁵
10. The transaction was insured by Fidelity National Title Insurance Company.⁶ The Owner Policy of Title Insurance and Mortgagee Policy of Title Insurance were issued on June 20, 2006. The policy numbers associated with this insured real estate transaction are Policy Numbers 1343-88293 and 1493-389730, respectively.
11. At the time of the closing, Webb Title withheld 10% of the closing price or \$70,000.⁷
12. Webb Title was instructed to disburse these funds to the Internal Revenue Service on behalf of the Riverol-Meade's. The payment was for capital gains tax on the sale of the property to Hall Developments.⁸
13. Webb Title did not pay the \$70,000 to the IRS as instructed, nor did it reimburse the funds to the Riverol-Meade's. There is no record of any disbursements to the IRS or the Riverol-Meade's for \$70,000 in Guaranty File 05002693 because the guaranty file has been lost or destroyed.⁹
14. Webb Title admits that the funds were not paid as instructed, but were instead embezzled by Edward J. Hinojosa, one of the title insurance agent's employees.¹⁰
15. Webb Title is responsible for its employees' action based on the legal doctrine of *respondeat superior* (i.e. an employer is liable for the employee's wrongful acts committed within the scope of employment).

⁵ See Exhibit B, TDI 000010; a copy of the HUD-1 settlement statement for the Riverol-Meade/Hall Developments transaction.

⁶ See Exhibit E, TDI 000025; a copy of the title insurance policies issued in connection with the Riverol-Meade/Hall Developments transaction.

⁷ See Exhibit C, TDI 000018; a copy of Webb Title's response to a Department § 38.001 inquiry. A copy of the Department's original inquiry is attached to provide context and is labeled as Exhibit D. The respondent admits that \$70,000 was withheld to pay capital gains tax owed by the complainants.

⁸ See generally Exhibit C, TDI 000018.

⁹ See Exhibit C, TDI 000018. The respondent claims that the guaranty file was stolen.

¹⁰ See Exhibit D, TDI 000018 and 000020. The respondent admits that its employee embezzled the money and provides a copy of the check Mr. Hinojosa made out to himself for \$70,000.

STATEMENT OF LOSS

Webb County Title & Abstract Co., Inc.

Page 3 of 4

16. Based on the evidence identified in this examination and for the reasons stated above, the Department has determined that Webb Title embezzled \$70,000 from the Riverol-Meade's.

B. Embezzlement - GF No. 05003602 / VA Properties, Ltd. Sale

17. On or around November 20, 2006, the Riverol-Meade's sold property in Laredo, Texas worth \$760,000 to VA Properties, Ltd. ("VA Properties").
18. The transaction closed at Webb Title. The settlement statement identifies Webb Title as the settlement agent.¹¹
19. The transaction was insured by Fidelity National Title Insurance Company.¹² The Owner Policy of Title Insurance and Mortgagee Policy of Title Insurance were issued on December 13, 2006. The policy numbers associated with this insured real estate transaction are Policy Numbers 1343-89187 and 1493-140628, respectively.
20. At the time of the closing, Webb Title withheld 10% of the closing price or \$76,000.¹³
21. Webb Title was instructed to disburse these funds to the Internal Revenue Service on behalf of the Riverol-Meade's.¹⁴ The payment was for capital gains tax on the sale of the property to VA Properties.
22. Webb Title did not pay the \$76,000 to the IRS as instructed, nor did it reimburse the funds to the Riverol-Meade's. There is no record of any disbursements to the IRS or the Riverol-Meade's for \$76,000 in Guaranty File 05002693 because the file has been lost or destroyed.¹⁵
23. Webb Title admits that the funds were not paid as instructed, but were instead embezzled by Edward J. Hinojosa, one of the title insurance agent's employees.¹⁶
24. Webb Title is responsible for its employees' action based on the legal doctrine of *respondent superior* (i.e. an employer is liable for the employee's wrongful acts committed within the scope of employment).
25. Based on the evidence identified in this examination and for the reasons stated above, the Department has determined that Webb Title embezzled \$76,000 from the Riverol-Meade's.

¹¹ See Exhibit B, TDI 000016; a copy of the HUD-1 settlement statement for the Riverol-Meade/VA Properties, Ltd. transaction.

¹² See Exhibit F, TDI 000035; a copy of the title insurance policies issued in connection with the Riverol-Meade/VA Properties, Ltd. transaction.

¹³ See Exhibit C, TDI 000019. The respondent admits that \$76,000 was withheld to pay capital gains tax owed by the complainants.

¹⁴ See generally Exhibit C, TDI 000019.

¹⁵ See Exhibit C, TDI 000018.

¹⁶ See Exhibit D, TDI 000019 and 000021. The respondent admits that its employee embezzled the money and provides a copy of the check Mr. Hinojosa made out to himself for \$76,000.

STATEMENT OF LOSS
Webb County Title & Abstract Co., Inc.
Page 4 of 4

C. Fraud - GF Nos. 05002693 and 05003602

26. Webb Title's conduct, as described more specifically above, is fraudulent.
27. A title insurance agent holds money in escrow for parties to the title insurance and real estate transaction. In this position, the title insurance agent serves as an escrow agent and represents to the parties that the funds will only be disbursed in accordance with the buyer's, seller's, or lender's written instructions.
28. In its capacity as an escrow agent and based on its representation that funds would only be disbursed as instructed, the Riverol-Meade's deposited money into Webb County's escrow accounts.
29. But, these funds were not disbursed as instructed. Eddie Hinojosa and Raul Labrada, both employees of Webb Title, embezzled the money.
30. Webb Title is responsible for its employees' action based on the legal doctrine of *respondent superior* (i.e. an employer is liable for the employee's wrongful acts committed within the scope of employment).
31. As a result of the Riverol-Meade's reliance on Webb Title's misrepresentations, the complainants incurred \$146,000 in losses.
32. Based on the evidence identified in this examination and for the reasons stated above, the Department has determined that Webb Title's fraudulent conduct resulted in a \$146,000 loss to the Riverol-Meade's.

III. The loss is covered by the bond or deposit.

33. Based on the examination conducted by the Department and for the reasons stated above, the Department has determined that the Riverol-Meade's have suffered \$146,000 in losses as a result of acts of embezzlement and fraud conducted by Webb County Title & Abstract Co., Inc. These losses are covered by Bond No. 69143743, a bond issued by Western Surety Company to Webb County Title & Abstract Co., Inc.

Respectfully submitted on the 19th day of December 2007,

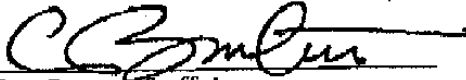

Cass Burton, Staff Attorney
Texas Department of Insurance
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Exhibit 3



Texas Department of Insurance

Legal Services, Mail Code 110-1A
333 Guadalupe, P.O. Box 149104, Austin, Texas 78714-9104
512-475-1621 telephone, 512-475-1843 facsimile, www.tdi.state.tx.us

February 12, 2008

CNA Surety/ Western Surety Co.
Leann Niebuhr
PO Box 5077
Sioux Falls, SD 57117-5077

VIA FACSIMILE:
605-977-7724

RE: Webb County Title & Abstract Company, Inc. in Liquidation

Dear Ms. Niebuhr:

This letter is in response to your January 24, 2008 letter to Webb County Title & Abstract Company. On January 11, 2008, Webb County Title & Abstract Company, Inc. ("WCTA") was placed in liquidation pursuant to an Agreed Order of Liquidation and Permanent Injunction ("Agreed Order"). Under the terms of the Agreed Order, the Commissioner of Insurance was named as Liquidator of WCTA and vested by operation of law with title to all of WCTA's property in order to carry out the Liquidation. The Liquidator, his staff, and his appointees are the only parties authorized under the Agreed Order to conduct WCTA's Business, to communicate on behalf of WCTA, to make any decisions on WCTA's behalf, or to bind the company.

In addition, the entry of the Liquidation Order stayed all actions pending against WCTA and prohibits the entry of new actions. A formal notice of the Liquidation will be issued shortly, and I will ensure that you are placed on the notice list, kept informed as the receivership progresses, and provided with information on filing a claim against the receivership estate. If you have any questions, feel free to contact me at 512-305-7194.

Thank you for your help in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. Giani".

Rachel Giani
Attorney for the Receiver

C: Angel Garrett