

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

THE STATE OF TEXAS  
Plaintiff

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IN THE DISTRICT COURT

VS.

OF TRAVIS COUNTY, TEXAS

WEBB COUNTY TITLE  
& ABSTRACT COMPANY, INC.  
Defendant

201ST JUDICIAL DISTRICT

**OBJECTION TO FIDELITY NATIONAL TITLE INSURANCE COMPANY'S  
MOTION FOR RELIEF FROM INJUNCTION AND AUTOMATIC STAY**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW THE TEXAS TITLE INSURANCE GUARANTY ASSOCIATION (the "Guaranty Association") and files this its Objection to 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. The Guaranty Association would respectfully show the Court as follows:

**I. BACKGROUND**

1. On January 11, 2008, Webb County Title & Abstract Company, Inc. (hereinafter referred to as "Webb Title") was placed in liquidation by Order of this Court. Under the Liquidation Order, the Commissioner of the Texas Department of Insurance ("TDI") was appointed the Liquidator of Webb Title ("Liquidator"). The Commissioner subsequently appointed the law firm of Castillo & Bennett to act as Special Deputy Receiver ("SDR") of the estate.

2. The Guaranty Association is a statutorily created association of all title insurance companies licensed in Texas. One of its primary functions is to reimburse the public for losses

created by shortages in the escrow accounts of title insurance agents who become insolvent. Specifically, the Guaranty Association is authorized to investigate, adjust, compromise, settle, and pay “covered claims” pursuant to Section 2602.301 of the Texas Insurance Code. The Legislature has also given the Guaranty Association standing to appear before a court that has jurisdiction of an impaired title insurance company or agent. TEX. INS. CODE ANN. §2602.101(b) (West 2008).

3. On March 7, 2008, Fidelity National Title Insurance Company (“Fidelity National”) filed its Motion for Relief from Injunction and Automatic Stay as to Specific Claims to the Extent Such Claims are Covered by Liability Insurance (the “Motion”). Basically, Fidelity National has asked the Court to let it continue to prosecute a negligence lawsuit it filed against Webb Title prior to the Court’s entry of the Liquidation Order because it wants to obtain funds as a third-party claimant under Webb Title’s professional liability insurance policy.

## **II. OBJECTION TO MOTION TO LIFT STAY**

3. The Guaranty Association objects to Fidelity National’s Motion for the following reasons:

a. *Fidelity National Seeks to Collect Assets of the Estate.* The insured under the professional liability insurance policy is Webb Title, not Fidelity National, and the proceeds of any insurance recovery are an asset of the estate rather than that of any particular claimant. There are many potential claims under the professional liability policy but those claims belong to Webb Title, not Fidelity National. Any judgment Fidelity National secures will be a liability of the estate which may or may not be paid by the insurance proceeds. The Guaranty Association will have a claim against the estate for all of its administrative expenses as well as the claims it

pays; such claims are statutory claims, and at least one of them is the highest priority. The Guaranty Association wants all of the assets marshaled to pay all the claims, with no one creditor preferred over the others.

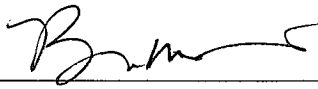
b. *Fidelity National's Lawsuit is Far from Resolution.* Fidelity National argues by analogy to bankruptcy law that it ought to be allowed to proceed with its lawsuit against Webb Title. While bankruptcy courts do occasionally allow previously-filed litigation to proceed against a debtor corporation for reasons of “judicial efficiency,” such litigation is typically much further along than the litigation at issue here. For example, Fidelity National cites Matter of Holtkamp, 669 F.2d 505 (7<sup>th</sup> Cir. 1982), in support of its Motion. But in Holtkamp, the debtor filed for bankruptcy only *five days before the trial* in a personal injury lawsuit against the debtor was scheduled to begin, and several witnesses had already been subpoenaed. In a somewhat similar case, a bankruptcy court in Illinois allowed previously filed litigation to continue where the only remaining issue was liquidation of damages owed by the defendant to the plaintiff and the defendant declared bankruptcy *the day before a hearing* on the matter. In re The Quay Corporation, 2006 WL 208704 (N.D.Ill. 2006). By contrast, Fidelity National's lawsuit was filed against Webb Title on October 30, 2007, only 72 days before the Court issued its order placing Fidelity National in liquidation. There is no indication that a trial date has been set in the Fidelity National lawsuit. It is unclear whether the parties have even conducted any discovery. There is thus no way for Fidelity National to argue that the stay in this case should be lifted for reasons of judicial efficiency. Fidelity National's remedy is to file a proof of claim like all other creditors in this matter.

c. *The Lawsuit Will Engage the SDR's Time and Resources.* It is difficult to see how a negligence lawsuit of the type brought by Fidelity National against Webb Title will not

involve the SDR's time and money, both of which are in short supply. First, Fidelity National assumes that because the insurer has hired lawyers to defend the suit, it will cover the costs of defending and paying for the claims brought by it against Webb Title. This is a big leap. It is unclear whether the insurer will assume liability for all of the claims brought by Fidelity National. If the estate ends up being liable for the costs of defense, estate resources will have been wasted. At the very least, the parties will doubtless engage in discovery, which will require the SDR—who controls the records in this matter—to locate and produce documents in the case, and necessarily cause him to expend significant time and money from the estate, both of which are naturally in short supply. This is not what the SDR was appointed for. The SDR's duty is to marshal of the assets of the estate for orderly distribution to all of the estate's creditors. Again, Fidelity National should file a proof of claim like all the other potential creditors of the estate and avail itself of the statutory process for establishing the validity and amount of its claim.

**WHEREFORE, PREMISES CONSIDERED,** the Guaranty Association joins the SDR in respectfully requesting that this Court deny Fidelity National's Motion to Lift Stay and grant the Guaranty Association such other and further relief to which it may be entitled.

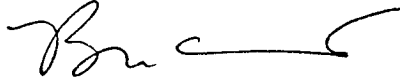
Respectfully submitted,

By:   
Burnie Burner, TBA No. 3425700  
Bruce McCandless III, TBA No. 00794254  
For the Firm

MITCHELL WILLIAMS LONG BURNER  
A Professional Corporation  
P.O. Box 2212  
Austin, Texas 78768-2212  
Telephone: (512) 474-1587  
Facsimile: (512) 322-0301

## CERTIFICATE OF SERVICE

Signature below is certification that a true and correct copy of the foregoing document has been served in accordance with Rule 21a, Tex. R. Civ. P., on this the 27<sup>th</sup> day of August, 2008.



Bruce McCandless III/Burnie Burner

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

Cantilo & Bennett, L.L.P.  
Special Deputy Receiver  
11401 Century Oaks Terrace, Ste. 300  
Austin, TX 78758  
sesalch@cb-firm.com

Karen Pettigrew  
Assistant Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548  
karen.pettigrew@oag.state.tx.us  
jennifer.jackson@oag.state.tx.us

R. Christopher Clark  
Glast Phillips & Murray, P.C.  
219 Houston St., Ste. 400  
San Antonio, TX 78205  
cclark@gpm-law.com

D. Ronald Reneker  
Munsch Hardt Kopf & Harr, P.C.  
500 N. Akard St., Ste. 3800  
Dallas, TX 75201-6659  
rreneker@munsch.com

Richard J. Riley  
Munsch Hardt Kopf & Harr, P.C.  
600 Congress Ave., Ste. 2900  
Austin, TX 78701-3057  
rriley@munsch.com

Kurt L. Lyn  
Lam, Lyn, Robinson & Philip, P.C.  
3555 Timmons Lane, Ste. 790  
Houston, TX 77027  
klyn@llrplaw.com

Albert F. Muller, III  
6911 Chevy Chase Drive  
Sugar Land, TX 77479  
albertmuller@comcast.net

Jon D. Lowe  
Martin & Drought, P.C.  
300 Convent St., 25th Floor  
San Antonio, TX 78205  
jlowe@mdtlaw.com

Law Firm of Roy Ibanez  
1410 Dove  
McAllen, TX 78504  
(956)686-1511  
Fax (956)686-1663  
ribanez@ribanez.com

Law Offices of Carl M. Barto  
611 Hidalgo  
Laredo, TX 78040  
cmblaw@netscorp.net

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

ATTN: Michael Dibb  
Alamo Title Insurance & Fidelity Title  
Insurance  
10010 San Pedro, Ste. 440  
San Antonio, TX 78216  
mdibb@fnf.com

Ricardo De Anda  
Plaza de San Agustin  
212 Flores Ave.  
Laredo, TX 78040  
Fax (956)726-0030

H.C. Hall III  
Hall, Quintanilla & Alarcon  
P.O. Box 207  
Laredo, TX 78042  
Fax (956)723-8168

Laredo FBI Field Office  
ATTN: Eddie Barbosa  
109 Shiloh Drive, Ste. 430  
Laredo, TX 78045  
Fax (956)717-6465

ATTN: Sally Veters  
United General Title Insurance Company  
13750 San Pedro, Ste. 715  
San Antonio, TX 78232

Javier Montemayor  
1814 Victoria Street  
Laredo, TX 78040

Mr. John Villarreal  
International Bank of Commerce  
P.O. Drawer 1359  
Laredo, TX 78042-1359

Kenneth A. Valls  
Wilson, Trevino, Freed, Valls & Trevino,  
L.L.P.  
600 San Bernardo, Ste. 800  
Laredo, TX 78040  
Fax (956) 791-0220

Christopher Fuller  
Fuller Law Group  
4612 Ridge Oak Dr.  
Austin, TX 78731  
cfuller@fullerlaw.org

Jo Ann Howard  
Jo Ann Howard & Associates, P.C.  
P.O. Box 160130  
Austin, TX 78716  
iamanrd3@aol.com