

NO. D-1-GV-08-000050

STATE OF TEXAS, Plaintiff	§	IN THE DISTRICT COURT OF
VS.	§	
	§	TRAVIS COUNTY, TEXAS
	§	
WEBB COUNTY TITLE & ABSTRACT COMPANY, INC., Defendant	§	201st JUDICIAL DISTRICT

**SECOND AMENDED APPLICATION FOR APPROVAL OF FEES AND EXPENSES**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Cantilo & Bennett, L.L.P., solely in its capacity as the Special Deputy Receiver of Webb County Title & Abstract Company, Inc. (the “SDR” and “Webb County” respectively), and files this *Second Amended Application for Approval of Fees and Expenses* (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 a Permanent Injunction and Order Appointing Permanent Receiver 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.

**II. STATUTORY AUTHORITY**

2.1 The SDR is authorized to file this Application pursuant to TEX. INS. CODE § 443.015, which provides for the approval of the SDR’s expenses and compensation by the Court. Under TEX.

INS. CODE § 443.154 (a), the SDR has all the powers of the Receiver, unless specifically limited by the Receiver.

### **III. BASIS FOR APPLICATION**

3.1 TEX. INS. CODE § 443.015(c)(1) requires the Receiver to submit an application for the approval of the terms of compensation of an SDR or contractor when the Receiver reasonably expects that the total amount of compensation to be paid over the course of the proceeding will exceed Two Hundred and Fifty Thousand Dollars (\$250,000), or such another amount established by the Court. In addition, TEX. INS. CODE § 443.015 (d) permits the Receiver, at his discretion, to submit an application to approve any compensation, anticipated expenses, or incurred expenses not described by Subsection (c)(1).

3.2 The SDR files this second amended application to 1) revise the rate previously included in Exhibit A for the Primary Responsible Person (“PRP”), 2) to modify the fees to be charged by certain previously approved SDR staff and certain subcontractors, and 3) to identify an additional subcontractor and request approval of its fees. It is anticipated that the additional subcontractor will be paid less than \$250,000. The new PRP rate, the new subcontractor and its rates and the amended rates of previously approved SDR staff and certain subcontractors are identified in the revised Exhibit A, which is attached hereto and incorporated by reference. To ensure compliance with the provisions of Chapter 443 of the Code, the SDR requests the Court to approve all terms of compensation pursuant to TEX. INS. CODE § 443.015 (d). The new subcontractor and all rates have been approved by the Receiver in accordance with TEX. INS. CODE § 443.154(a).

3.3 The SDR requests that the Court modify the terms of its Order of July 22, 2008 approving the SDR’s original Application for Approval of Fees and Expense as described herein and on the attached Exhibit A.

3.4 The SDR's *First Amended Application for Approval of Fees and Expenses* is hereby withdrawn.

#### **IV. NOTICE**

4.1 Pursuant to TEX. INS. CODE § 443.007(d), this Application has been served on the entire service list for this proceeding, including TTIGA, in the manner shown on the Certificate of Service.

#### **V. OFFER OF PROOF**

5.1 This report is verified by the certificate pursuant to TEX. INS. CODE § 443.017(b) of Susan Salch, Partner in Cantilo & Bennett, L.L.P., solely in its capacity as the Special Deputy Receiver of Webb County Title & Abstract Company, Inc.

#### **VI. NOTICE OF ELECTRONIC SERVICE REQUIREMENT**

6.1 Pursuant to the *Order Granting SDR's Application to Use Electronic Service of Pleadings and Notices* entered on June 26, 2008, any pleading filed in response to this Application or in regards to this estate shall be served by email on the undersigned counsel and all parties shown in the attached Certificate of Service.

#### **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  
Christopher Fuller  
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[cfuller@fullerlaw.org](mailto: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  
Jo Ann Howard  
Texas Bar No. 10072310  
Jo Ann Howard & Associates, P.C.  
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Attorney for Cantilo & Bennett, L.L.P.,  
Special Deputy Receiver of Webb County Title &  
Abstract Company, Inc.

### **CERTIFICATE OF SERVICE**

I certify that on September 11, 2009, 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) on the following.

Christopher Fuller  
Christopher Fuller/Jo Ann Howard

Tom Collins, Special Master  
c/o Ms. Jean Sustaita  
P.O. Box 149104  
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Alamo Title Insurance  
ATTN: Betsy Thompson

10010 San Pedro, Suite 440  
San Antonio, TX 78216  
Tel (800)292-5320  
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Sally Vettters  
United General Title Insurance Company  
13750 San Pedro, Suite 715  
San Antonio, TX 78232  
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Webb County District Attorney  
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Webb County Tax Collector  
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Laredo, TX 78042  
Tel (956)523-4200  
Fax (956)523-5050

L.I.S.D. Tax Office  
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Laredo, TX 78040  
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Fax (956)795-3477

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Kazen, Meurer & Perez, LLP  
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Regulatory Enforcement Division  
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Austin, TX 78778-0001

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**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 *Second Amended Application for Approval of Fees and Expenses* is hereby set for written submission before the Special Master, Tom Collins, on September 28, 2009.

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 at [Jean.Sustaita@tdi.state.tx.us](mailto:Jean.Sustaita@tdi.state.tx.us);
  - (b) The undersigned counsel, Christopher Fuller at [cfuller@fullerlaw.org](mailto:cfuller@fullerlaw.org); and
  - (c) All interested parties, including 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  
Christopher Fuller

**EXHIBIT A  
WEBB COUNTY TITLE & ABSTRACT CO., INC.  
AMENDED FEE SCHEDULE**

NAME	POSITION	HOURLY RATE
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**Special Deputy Receiver**

**Cantilo & Bennett, L.L.P.**

Primary Responsible Person	\$150.00
Associate I (2)	\$125.00
Associate II (2*)	\$120.00
Receivership Specialist(s)	\$ 90.00
Administrative/Clerical	\$ 25.00

\*One associate is taking the July 2009 Texas State Bar Exam. The associate will be billed at the Receivership Specialist rate until licensed, at which time the Associate II rate will apply.

**Legal Subcontractors**

**Jo Ann Howard & Associates, P.C.**

Attorney I (2)	\$175.00
Investment Specialist	\$175.00
Administrative Manager/Records Technician	\$ 90.00
Administrative Assistant	\$ 90.00
Attorney II	\$150.00
Assistant(s)	\$ 90.00
Receiver Specialist	\$ 90.00

**Hohmann, Taube & Summers, L.L.P.**

Attorney I	Senior Partner Bankruptcy & Litigation	\$385.00
Attorney II	Senior Partner Litigation	\$365.00
Attorney III	Partner Litigation	\$250.00
Attorney IV	Associate	\$190.00
Attorney V	Associate	\$155.00
Paralegal(s)		\$ 90.00

**Accounting/Tax Subcontractors**

**Petrosewicz & Company, Inc.**

Principals (2)	\$150.00
Staff Accountant I	\$125.00
Staff Accountant II	\$120.00
Staff Accountant III	\$ 95.00
Staff Accountant IV	\$ 90.00
Staff Accountant V	\$ 80.00
Support Staff	\$ 70.00
Clerical	\$ 25.00

**The Warren Group**

Certified Public Accountant	\$150.00
Preparation of income tax return* (*excluding answering IRS correspondence, filing additional tax forms, and examination by the IRS).	\$1950.00
Accountant/Administrative Consultant	\$ 75.00

**Claims Services Subcontractor**

**EMKAY Associates, Inc.**

Claims management, consulting & reporting; adjusting and reviewing claims for reserve adequacy, reinsurance and reporting; securing company offices; assisting in takeover activities and site management.	\$ 85.00
Records management, takeover activities and site management.	\$ 45.00
Administration and POC database data entry.	\$ 35.00
Records inventory.	\$ 25.00
Software & Hardware technical support.	\$ 75.00
POC/Database administration & management; claims representative; UDS data creation; capture and report formatting; reinsurance database administration; reinsurance billing; takeover activities and site management.	\$ 65.00
Records management.	\$ 55.00
Claims representative; review of claims for reinsurance, reporting and reserve adequacy; assist in takeover activities and site management.	\$ 75.00

Claims representative; review of claims for reinsurance and reporting & reserve adequacy.	\$ 65.00
Records management; takeover activities and site management.	\$ 45.00
Records inventory.	\$ 25.00

**Information Technology Subcontractor**

**ABACI, Inc.**

Project Manager Business Analyst and Application Designer	\$ 85.00
Technical Managers (2)	\$ 80.00
Technical Analyst	\$ 80.00

**SPECIAL DEPUTY RECEIVER'S CERTIFICATION PURSUANT TO TEXAS  
INSURANCE CODE ANNOTATED SECTION 443.017(b)**

**AFFIDAVIT OF SUSAN E. SALCH**

State of Texas

County of Travis

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

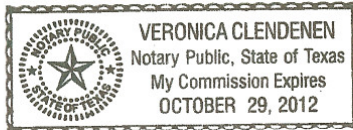
1. My name is Susan E. Salch. I am competent to make this affidavit. The statements of fact set forth herein are true and correct, and are within my personal knowledge.
2. I am a partner in CANTILO & BENNETT, L.L.P., solely in its capacity as the Special Deputy Receiver of Webb County Title & Abstract 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 Texas Insurance Code section 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.
4. 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.

Further affiant sayeth not.

By:

  
Susan E. Salch

SUBSCRIBED AND SWORN TO BEFORE ME on September 1, 2009, by Susan E. Salch, on behalf of CANTILO & BENNETT, L.L.P., solely in its capacity as the Special Deputy Receiver of Webb County Title & Abstract Company, Inc.



  
Notary Public

STATE OF TEXAS,  
Plaintiff

VS.

WEBB COUNTY TITLE  
& ABSTRACT COMPANY, INC.,  
Defendant

§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201st JUDICIAL DISTRICT

**ORDER APPROVING SPECIAL DEPUTY RECEIVER’S SECOND AMENDED APPLICATION FOR APPROVAL OF FEES AND EXPENSES**

On this day came on to be heard the *Second Amended Application for Approval of Fees and Expenses* (“Application”) filed by Cantilo & Bennett, L.L.P., Special Deputy Receiver of Webb County Title & Abstract Company, Inc. (the “SDR” and “Webb County” respectively), The Special Deputy Receiver appeared by and through its counsel. Having considered the Application, the Court finds as follows:

1. The *Order of Reference to Master* (“Order of Reference”) entered by this Court on April 10, 2008 provides that applications filed pursuant to TEX. INS. CODE § 443.007 are referred to the Special Master appointed in this proceeding;
2. The Application was submitted to the Special Master in accordance with the Order of Reference;
3. Notice of the Application was provided in accordance with TEX. INS. CODE §443.007 (d) and the Order of Reference, and no objections to the Application were filed;
4. The Texas Title Insurance Guaranty Association has filed an Acknowledgement of Notice and Waiver of Objection.
5. The Special Master has issued a recommendation that the Application should be granted pursuant to Rule 171 of the Texas Rules of Civil Procedure;
6. The Court has jurisdiction over the Application and the parties affected hereunder;

and

7. The Application should be GRANTED in all respects.

It is therefore ORDERED, ADJUDGED and DECREED as follows::

1. The Application is GRANTED in all respects.
2. The Court's Order Approving the SDR's Application for Approval of Fees and Expenses is MODIFIED to approve the subcontractors and the hourly rates and fees described in the SDR's Second Amended Application for Approval of Fees and Expenses and all other terms and provisions of the Court's order of July 22, 2008 remain in effect.
3. The SDR is authorized to take any action necessary to carry out this Order.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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JUDGE PRESIDING