

NO. D-1-GV-08-000050

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

**SPECIAL DEPUTY RECEIVER’S EXPEDITED APPLICATION TO RESOLVE
CLAIMS AND DISTRIBUTE RESTRICTED PROCEEDS**

NOTICE OF EXPEDITED SUBMISSION

**THIS APPLICATION HAS BEEN SET FOR EXPEDITED SUBMISSION ON
NOVEMBER 22, 2010. ANY OBJECTION MUST BE FILED AND SERVED BY
NOVEMBER 19, 2010.**

TO THE HONORABLE DISTRICT COURT:

CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Webb County Title & Abstract Company, Inc., in Liquidation (the “SDR” or “WCTA,” respectively), files this *Expedited Application to Resolve Claims and Distribute Restricted Proceeds* (the “Application”).

I. INTRODUCTION AND SUMMARY

1.1 The SDR requests authority from this Court to resolve all disputes and claims between the SDR and the International Bank of Commerce (“IBC”). The Application is filed pursuant to TEX. INS. CODE § 443.154 authorizing the SDR to settle certain claims with Court approval. In summary, the proposed settlement provides that IBC will be paid \$902,500 (the “Settlement Funds”) from the restricted Treasury account containing the proceeds of the sales of the WCTA office building and title plant, that the remainder of the funds shall be declared general assets

of the receivership estate without further restrictions on their use, that IBC shall withdraw its Proof of Claim in the delinquency proceeding with prejudice and that the parties shall, upon entry of an order granting this Application and the payment to IBC, fully release any and all claims by and between themselves.

1.2 The Receiver has approved the terms of the proposed sale and the filing of this Application. The Texas Title Insurance Guaranty Association (“TTIGA”) supports the Application.

II. JURISDICTION

2.1 This Court has jurisdiction over this matter, the property in question and all affected parties pursuant to TEX. INS. CODE § 443.005. The subject matter of the Application was referred to the Special Master appointed in this proceeding in accordance with Paragraph III of the *Order of Reference to Master*.

III. APPLICABLE FACTS

3.1 WCTA was placed in receivership in this proceeding on January 11, 2008, when the Court entered the *Permanent Injunction and Order Appointing Permanent Receiver* (the “Permanent Injunction”) appointing the Texas Commissioner of Insurance as Permanent Receiver. The Receiver designated Cantilo & Bennett, L.L.P., as SDR of WCTA effective as of May 2, 2008.

3.2 WCTA owned and occupied an office building located at 1620 Santa Ursula, Laredo, Texas 78040 (the “WCTA Building”), which was the headquarters of the business before receivership. The legal description of the property is “Lot 7-A, Block 311, Western Division, City of Laredo, Webb County, Texas, being a plat of Lot 1 in the So. 1/3 of Lot 3 of said Block 311.” WCTA owned and operated a title and abstract plant, which consisted of all closed files in the possession/control of the SDR and electronic records, stored in a computer which runs the AIMs and

TP3 systems, and as to land, are subject to retrieval by reference to the description of the property under search (the records and data are collectively referred to in this Application as the “Title Plant”).

3.3 IBC claims to possess a first lien security interest in the WCTA Building pursuant to a certain Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement between WCTA and IBC, dated October 29, 2003, which was recorded in the Real Property Records for Webb County Texas. IBC claims to possess a first lien security interest in the Title Plant pursuant to a certain Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement between WCTA and IBC, dated October 29, 2003. Although recorded in the Real Property Records for Webb County Texas, no evidence of the instrument was filed with the Secretary of State for the State of Texas. It is the SDR’s position that IBC’s alleged security interest in the Title Plant is void pursuant to, *inter alia*, TEX. INS. CODE § 443.204 and § 443.206.

3.4 As of the date of the receivership and at all times subsequent thereto, there are no other liens of record claiming an interest in the WCTA Building or Title Plant.

3.5 On or about June 9, 2009, IBC filed its Motion for Relief from Automatic Stay Pursuant to Tex. Ins. Code § 443.008 (the “Motion”), requesting that this Court lift the automatic stay to allow the bank to foreclose its alleged lien against the WCTA Building. The Special Master appointed in this proceeding, following an evidentiary hearing, recommended that the motion be denied. IBC appealed the recommendation and, after another evidentiary hearing on December 14, 2009, the bank’s motion to lift stay was denied by the Receivership Court.

3.6 IBC timely filed a Proof of Claim (No. 10) with the SDR. On October 8, 2009, the SDR rejected IBC’s proof of claim asserting offset rights against IBC arising out of IBC’s alleged

liability relating to a pre-receivership embezzlement from WCTA escrow and operating bank accounts. Although IBC timely objected to the determination, no other action has occurred in connection with the claim. Upon the entry of an order granting this Application and the payment to IBC of the Settlement Funds, the Proof of Claim filed by IBC in this delinquency proceeding shall be moot and withdrawn with prejudice to refiling same and with prejudice to any right to appeal.

3.7 On March 1, 2010, the Receivership Court entered its Order Granting Special Deputy Receiver's Application to Sell Real Property Free and Clear of All Liens (the "Building Sale Order"). See Exhibit 1. The Building Sale Order provided, inter alia, that sale was free and clear of all liens, claims, interests and encumbrances, with the exception of IBC's claims and that the proceeds of the sale were to be placed into a restricted account and not spent except upon prior notice and hearing and approval from the Court. On or about September 17, 2010, the sale of the WCTA Building closed resulting in a net recovery of \$1,150,527.

3.8 On April 2, 2010, the Receivership Court entered its Order Granting Special Deputy Receiver's Application to Sell Title and Abstract Plant Free and Clear of All Liens (the "Title Plant Order"), which resulted in a recovery of \$65,000. See Exhibit 2.

3.9 All of the proceeds from the sale of the WCTA Building and Title Plant were deposited into a restricted account at the Texas Treasury, the balance of which (at October 31, 2010) is \$1,215,776. The proceeds, along with any accrued interest, are referred to as the "Restricted Funds." By prior orders, the Receivership Court has determined that, with the exception of IBC, there are no liens, claims, interests and encumbrances on the proceeds.

IV. THE TERMS OF THE SETTLEMENT

4.1 Upon approval by this Court, the settlement terms are as follows:

A. IBC shall be paid \$902,500 from the restricted Treasury account containing the proceeds of the sales of the WCTA Building and Title Plant;

B. The remainder of the funds shall be declared general assets of the receivership estate without further restrictions on their use;

C. IBC shall, upon payment, shall be deemed to have withdrawn its Proof of Claim in the delinquency proceeding with prejudice; and

D. The parties shall, upon entry of an order granting this Application and the payment to IBC, be fully released of any and all claims by and between themselves.

4.2 Nothing in this Application, the relief sought herein, or any related proceeding or filing shall affect, in any way, the Receiver's or the SDR's immunities from suit and shall not give rise to any right to sue or create any causes of action against the Receiver or the SDR. The automatic stay and the provisions of the Permanent Injunction remain in affect unless expressly modified herein. The Receivership Court shall retain exclusive jurisdiction to resolve any and all disputes relating to this Application, the settlement agreement, and the disposition of the proceeds from the sale.

V. LEGAL AUTHORITY

5.1 The SDR is authorized to enter into the proposed settlement pursuant to the terms of the Permanent Injunction and the provisions of TEX. INS. CODE § 443.154. Specifically, TEX. INS. CODE § 443.154(y) provides:

- (y) The liquidator may hypothecate, encumber, lease, sell, transfer, abandon or otherwise dispose of or deal with any property of the insurer, settle or resolve any claim brought by the liquidator on behalf of the insurer, or commute or settle any claim of reinsurance under any contract or reinsurance, as follows:
 - (1) if the property or claim has a market or settlement value that does not exceed the lesser of \$1 million or 10 percent of the general assets of the estate as shown on the receivership's financial statements, the liquidator may take action at the liquidator's

- discretion, provided that the receivership court may, upon petition of the liquidator, increase the threshold upon a showing that compliance with this requirement is burdensome to the liquidator in administering the estate and is unnecessary to protect the material interests of creditors;
- (2) in all instances other than those described in Subdivision (1), the liquidator may take the action only after obtaining approval of the receivership court as provided by Section 443.007;
 - (3) the liquidator may, at the liquidator's discretion, request the receivership court to approve a proposed action as provided by Section 443.007 if the value of the property or claim appears to be less than the threshold provided by Subdivision (1) but cannot be ascertained with certainty, or for any other reason as determined by the liquidator; and
 - (4) after obtaining approval of the receivership court as provided in Section 443.007, the liquidator may, subject to Subsection (z), transfer rights to payment under ceding reinsurance agreements covering policies to a third-party transferee.

5.2 The SDR asserts that, in its business judgment, the proposed settlement is in the best interests of the estate and its creditors because, among other reasons, it resolves disputes with a secured creditor, provides for the recovery of the estate's expenses for maintaining the collateral, and provides for a recovery of disputed claims by the SDR against IBC. The settlement will reduce the expenses associated with continued litigation with IBC and additional administration as well as the uncertainty and delay of litigation.

VI. NOTICE

6.1 Pursuant to TEX. INS. CODE ANN. § 443.007(d), this Application has been served on the entire service list for this proceeding, including IBC and the taxing authorities. The SDR has requested expedited consideration of the Application. The SDR and IBC are the only claimants to the proceeds.

VII. OFFER OF PROOF

7.1 CANTILO & BENNETT, L.L.P., solely in its capacity as the Special Deputy Receiver, through its authorized representative, Susan E. Salch, submits its certificate pursuant to TEX. INS.

CODE ANN. § 443.017(b) verifying the statements in this pleading.

VIII. NOTICE OF ELECTRONIC SERVICE REQUIREMENT

8.1 Pursuant to the *Order Granting SDR's Application to Use Electronic Service of Pleadings and Notices*, all pleadings 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, CANTILO & BENNETT, L.L.P., solely in its capacity as the Special Deputy Receiver of Webb County Title & Abstract Company, Inc., in Liquidation, respectfully requests this Court to

1. Grant the Application;
2. Order that the SDR distribute to IBC the sum of \$902,500.00 from the Restricted Funds;
3. Order that all funds remaining in the Restricted Funds Account following the distribution to IBC shall be unrestricted general funds of the receivership estate and shall be transferred to an unrestricted receivership estate account;
4. Order that IBC's Proof of Claim (No. 10) in this delinquency proceeding is moot and withdrawn or dismissed with prejudice to refiling same and/or appeal upon payment to IBC of the Settlement Funds;
5. Order that, by entry of this Order and the distribution of Settlement Funds to IBC as set out above, all liens, claims, interests and encumbrances on the WCTA Building and its proceeds are extinguished as a matter of law;

6. Order that, by entry of this Order and the satisfaction of the terms and conditions of the distribution of Settlement Funds to IBC as set out above, all liens, claims, interests and encumbrances on the Title Plant and its proceeds are extinguished as a matter of law;
7. Order that, by entry of this Order and the completion of its terms, all claims by and between WCTA, the SDR and the Receiver, on one hand, and IBC, on the other hand, are dismissed with prejudice and fully released;
8. Order that the terms and conditions of the agreement may be waived, modified, amended or supplemented by the written and signed agreement of the SDR and IBC without further action of the Court, provided that any such waiver, modification, amendment or supplement is not material or is not adverse to the SDR.
9. Authorize the SDR to enter such other and further documents as may be necessary to effectuate the transaction;
10. Order that this Court retains exclusive jurisdiction to enforce the provisions of its Order granting this Application and approving the settlement agreement, all amendments thereto, any waivers and consents thereunder, to resolve any dispute concerning this Order, the settlement agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to this Order; and
11. Grant the SDR such further relief to which it is entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 16, 2010, a true and correct copy of this Application was served pursuant to the Order of Reference, the Court's order on e-service, the Texas Rules of Civil Procedure and TEX. INS. CODE ANN. SEC. 443.007(d) on the following by electronic mail, except as specifically noted.

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WCTA-SDR App to Resolve Claims
And Distribute Restricted Proceeds

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WCTA-SDR App to Resolve Claims
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