

NO. D-1-GV-08-001478

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
v.	§	
	§	
Guardian Fidelity Title Company, Ltd.,	§	TRAVIS COUNTY, TEXAS
Guardian Fidelity Title CLR, LLP,	§	
Guardian Fidelity Title NWR, LLP	§	
Guardian Fidelity Title KTB, Ltd.,	§	
Guardian Fidelity Title SB Ltd., and	§	
Guardian Fidelity Title DFT, Ltd.	§	
Defendants	§	419th JUDICIAL DISTRICT

**APPLICATION FOR APPROVAL OF FEES AND EXPENSES**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Cantilo & Bennett, L.L.P., Special Deputy Receiver of Guardian Fidelity Title Company, Ltd., et al,<sup>1</sup> (the “SDR” and “Guardian” respectively), and files this *Application for Approval of Fees and Expenses* (the “Application”), and in support thereof would respectfully show the Court as follows:

**1. BACKGROUND**

1.1. Guardian was placed in receivership in this proceeding on July 11, 2008. The Court entered an Agreed Order Appointing Liquidator and Permanent Injunction (“Receivership Order”) on July 11, 2008 appointing the Commissioner of Insurance for the State of Texas as Liquidator and Permanent Receiver (“Receiver”). The Receiver designated Cantilo & Bennett, L.L.P., as SDR of Guardian through a Notice of Designation of Special Deputy Receiver filed on October 2, 2008 and made effective as of September 15, 2008.

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<sup>1</sup> Guardian Fidelity Title Company, Ltd., Guardian Fidelity Title CLR, LLP, Guardian Fidelity Title NWR, LLP, Guardian Fidelity Title KTB, Ltd., Guardian Fidelity Title SB Ltd., and Guardian Fidelity Title DFT, Ltd., each and collectively in liquidation.

1.2. The subject matter of this Application has been referred to the Special Master appointed in this proceeding in accordance with Section III Paragraph 5 of the Order of Reference to Master entered on August 22, 2008.

## **2. 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 § 443.154(a), the SDR has all the powers of the Receiver, unless specifically limited by the Receiver.

## **3. 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 other 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 in Subsection (c)(1).

3.2. Given the uncertainties associated with the future administration of this proceeding, it is difficult to state with certainty whether or not the total compensation for the SDR or any contractor will exceed \$250,000. It is anticipated that a number of the SDR's subcontractors will be paid less than \$250,000. To insure 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 rates for compensation for the SDR and its contractors are shown on Exhibit A, which is attached hereto and incorporated by reference.

These rates have been approved by the Receiver in accordance with TEX. INS CODE § 443.154(a).

3.3. TEX. INS. CODE § 443.015(c)(2), also requires the Receiver to submit an application for the approval of any anticipated expenses not otherwise covered under § 443.015(c)(1), that are in excess of Twenty-Five Thousand Dollars (\$25,000), or another amount established by the Court. The SDR does not anticipate any single cost that is likely to exceed \$25,000.

3.4. TEX. INS. CODE § 443.015(g) provides that on a quarterly basis, or as otherwise provided by this Court, the Receiver shall submit to the Court a summary of expenses incurred during the period. The SDR requests the Court to confirm quarterly reporting periods that coincide with the State of Texas fiscal year. The SDR further requests that such reports be filed by the 15th day of the month following the end of the quarterly reporting period. The SDR has filed Quarterly Reports since December 15, 2008.

#### **4. PRAYER**

4.1. 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/  
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Attorney for Cantilo & Bennett, L.L.P.,  
Special Deputy Receiver of Guardian Fidelity  
Title Company, Ltd., et al

And

By: /Jo Ann Howard/

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Attorney for Cantilo & Bennett, L.L.P., Special  
Deputy Receiver of Guardian Fidelity Title  
Company, Ltd., et al

**CERTIFICATE OF SERVICE**

I certify that on June 19, 2009, a true and correct copy of this Application was served pursuant to the Court's Order requiring electronic service, the Texas Rules of Civil Procedure, and TEX. INS. CODE § 443.007 (d) on the following.

By: /Christopher Fuller/

Christopher Fuller

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

**AFFIDAVIT OF MICHAEL P. MARCIN**

State of Texas  
County of Travis

BEFORE ME, the undersigned authority, appeared Michael P. Marcin, who after being by me duly sworn, stated the following under oath:

1. My name is Michael P. Marcin. 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 Guardian Fidelity Title Company, Ltd., *et al.*,<sup>1</sup> (the "SDR" and "Guardian" respectively). I am duly authorized to make this Certification and Affidavit on behalf of the SDR.

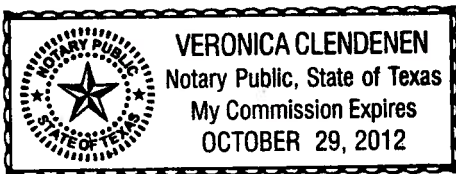
3. I certify that the exhibits, books, accounts, records, papers, correspondence, and/or other records and documents, if any, attached hereto were produced pursuant to Texas Insurance Code section 443.017(b), are true and correct copies of records created by and filed with the Receiver's office in connection 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.

5. Further affiant sayeth not.

By:   
Michael P. Marcin

**SUBSCRIBED AND SWORN TO BEFORE ME** on June 19, 2009, by Michael P. Marcin, on behalf of CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Guardian Fidelity Title Company, Ltd., *et al.*, in receivership.



  
Notary Public

<sup>1</sup> Guardian Fidelity Title Company, Ltd., Guardian Fidelity Title CLR, LLP, Guardian Fidelity Title NWR, LLP, Guardian Fidelity Title KTB, Ltd., Guardian Fidelity Title SB Ltd., and Guardian Fidelity Title DFT, Ltd., each and collectively in liquidation.

## 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 Special Deputy Receiver's Application is set for written submission before the Special Master, Tom Collins, on July 6, 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 email by such date on:
  - (a) The Special Master's Docket Clerk, Ms. Jean Sustaita at Jean.Sustaita@tdi.state.tx.us;
  - (b) The undersigned counsel, Christopher Fuller at cfuller@fullerlaw.org; and
  - (c) All interested parties, including those listed on the Applicant's Certificate of Service.
3. The objecting party shall coordinate with opposing counsel and the Docket Clerk (512) 463-6450) to obtain an oral hearing setting for argument on the Application and Objection, and complete and attach an "Objecting Party's Notice of Oral Hearing" to the objection.
4. 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.
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**  
**GUARDIAN FIDELITY TITLE COMPANY, LTD., ET AL.**

**FEE SCHEDULE**

<b>NAME</b>	<b>POSITION</b>	<b>HOURLY RATE</b>
<b><u>Special Deputy Receiver</u></b>		
<b>Cantilo &amp; Bennett, L.L.P.</b>		
	Primary Responsible Person	\$150.00
	Partners (2)	\$150.00
	Associate I (2)	\$125.00
	Associate II (2*)	\$120.00
	Senior Receivership Specialist	\$100.00
	Receivership Specialist(s)	\$ 90.00
	Administrative/Clerical	\$ 30.00

\*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.**

Senior Legal Specialist (2)	\$200.00
Junior Legal Specialist	\$175.00
Investment Specialist	\$175.00
Paralegal	\$ 90.00
Administrative Manager/Records Technician	\$ 90.00
Receivership Administrative Assistant	\$ 90.00
Legal Assistant & Records Specialist	\$ 90.00
Receivership Specialist	\$ 90.00

**Law Office of Hubert Bell, Jr.**

Attorneys (3)	\$165.00
Paralegal	\$ 60.00
Support Staff	\$ 35.00

**Accounting/Tax Subcontractors**

**Petrosewicz & Company, Inc.**

Principals (2)	\$150.00
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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

**Portia Haggerty, P.C.**

Certified Public Accountant/Certified Valuation Analyst	\$ 75.00
Certified Public Accountant	\$ 75.00
Accountant I (2)	\$ 55.00
Accountant II	\$ 35.00

**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.  
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 representatives; 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
Data Analyst	\$ 80.00
Network Security Specialist	\$ 80.00

NO. D-1-GV-08-001478

<b>STATE OF TEXAS,</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>Guardian Fidelity Title Company, Ltd.,</b>	§	<b>TRAVIS COUNTY, TEXAS</b>
<b>Guardian Fidelity Title CLR, LLP,</b>	§	
<b>Guardian Fidelity Title NWR, LLP</b>	§	
<b>Guardian Fidelity Title KTB, Ltd.,</b>	§	
<b>Guardian Fidelity Title SB Ltd., and</b>	§	
<b>Guardian Fidelity Title DFT, Ltd.</b>	§	
<b>Defendants</b>	§	<b>419th JUDICIAL DISTRICT</b>

**ORDER APPROVING APPLICATION FOR APPROVAL OF FEES AND EXPENSES**

The Court considered the *Application for Approval of Fees and Expenses* (the “Application”), filed by Cantilo & Bennett, L.L.P., Special Deputy Receiver of Guardian Fidelity Title Company, Ltd., et al,<sup>1</sup> (the “SDR” and “Guardian” respectively), Having considered the Application, the Court finds as follows:

1. The *Order of Reference to Master* (“Order of Reference”) entered by this Court on August 22, 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;

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<sup>1</sup> Guardian Fidelity Title Company, Ltd., Guardian Fidelity Title CLR, LLP, Guardian Fidelity Title NWR, LLP, Guardian Fidelity Title KTB, Ltd., Guardian Fidelity Title SB Ltd., and Guardian Fidelity Title DFT, Ltd., each and collectively in liquidation.

4. The Special Master has issued a recommendation that the Application should be granted pursuant to Rule 171 of the Texas Rules of Civil Procedure;

5. The Court has jurisdiction over the Application and the parties affected hereunder; and

6. The Application should be GRANTED in all respects.

IT IS ORDERED ADJUDGED AND DECREED that:

1. The Application is GRANTED;
2. The terms of compensation for the Special Deputy Receiver and the contractors listed on Exhibit A to the application are approved;
3. The limitation on anticipated expenses described in the Application is confirmed; and
4. The Special Deputy Receiver shall continue to file with this Court a summary of expenses incurred pursuant to TEX. INS. CODE § 443.015(g) on a quarterly basis as described in the Application.
5. This Order constitutes a final judgment fully resolving all issues relating to the Application, provided that this Court shall retain jurisdiction to issue further orders pursuant to TEX. INS. CODE Chapter 443. This Order does not modify any of the terms or provisions of this Court's *Agreed Order Appointing Liquidator and Permanent Injunction*, dated July 11, 2008.

Signed \_\_\_\_\_, 2009.

\_\_\_\_\_  
Judge Presiding