

NO. D-1-GV-08-001478

THE 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 SECOND CLAIMS REPORT
AND DISTRIBUTION OF ESCROW FUNDS TO APPROVED ESCROW CLAIMANTS**

TO THE HONORABLE DISTRICT COURT:

CANTILO & BENNETT, L.L.P., solely in its capacity as the Special Deputy Receiver of Guardian Fidelity Title Company, Ltd., *et al.*,¹ (the “SDR” and “Guardian” respectively), files this *Application for Approval of Second Claims Report and Distribution of Escrow Funds to Approved Escrow Claimants* (the “Application”).

I. INTRODUCTION

1.1 The SDR presents for approval its Second Report on the determination of certain escrow account claims and general creditor claims pursuant to TEX. INS. CODE § 443.258. The Second Report covers those POCs identified on the attached Exhibits 1 through 4 listing the claimant, the amount sought and/or approved, the proof of claim (“POC”) number and, if applicable,

¹ 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.

the Guardian guaranty file (“GF”) number. This Application does not seek any relief relating to any claim not listed on Exhibit 1 through 4.

1.2 The SDR is authorized to file this Application pursuant to TEX. INS. CODE § 443.151, which provides that the SDR is to conduct the business of the estate. 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 August 22, 2008.

II. BACKGROUND

2.1 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.

2.2 Guardian, as defined herein, consists of six entities in receivership, all of which operated as title insurance agents, as that term is defined in TEX. INS. CODE. § 2501.003(13), with offices in Webster, Houston, Spring, Katy, Friendswood, and Sugar Land, Texas. Guardian acted as an agent for several solvent title insurance companies; Southern Title Insurance Company (“Southern”) wrote the predominant share of these policies. The relevant title insurance companies continue to process and pay claims on title insurance policies issued by Guardian. As title insurance agents, the Guardian entities were not required to and did not maintain reserves or reinsurance. Initial administration of the receivership estate was financed through an operating account, which has been depleted. Further administration of the estate has been financed by loans by the Texas Department of Insurance from the Abandoned Property Fund in accordance with TEX. INS. CODE

§ 443.304(c) and by funds paid to the estate pursuant to a Consent Order with Southern Title Insurance Company.

2.3 Guardian, as a title agent, maintained a number of escrow accounts (the “Escrow Accounts”). The SDR believes that the Escrow Accounts are intact and correspond to an audit conducted by the Texas Department of Insurance prior to receivership and Guardian’s financial records. The SDR has confirmed the existence of the funds in the Escrow Accounts and safeguarded the accounts by notifying the financial institutions of the liquidation and freezing all such assets. The Escrow Accounts are not general assets of the estate under TEX. INS. CODE § 443.004(9)(a)(i).

2.4 On July 6, 2009, this Court entered its *Order Granting the Special Deputy Receiver Application to Provide Notice of Liquidation, Set Claims Filing Deadline, Resolve Escrow Accounts and Establish a Claims Processing Procedure* (the “POC Order”) establishing August 31, 2009, as the deadline to file all claims, including Escrow Account claims, and a deadline of September 30, 2009, for filing any late claims and for all contingent or unliquidated claims under TEX. INS. CODE § 443.255(c) to become final.

2.5 The POC Order required claimants to funds held in the Escrow Accounts to file claims with the SDR. On the date that the POC Order was entered, the SDR held approximately 650 escrow accounts, which ranged in size from over \$200,000 to \$.01 (One Cent). There were over 1300 known potential claimants to the escrow accounts. The Guardian estate lacked sufficient financial resources and business records to make any independent determination regarding the actual ownership of or right to possess the Escrow Funds. Accordingly, the SDR was authorized to require claimants to the escrow funds to file a claim establishing an entitlement to funds held in an Escrow

Account and further authority to process claims to the escrow accounts to efficiently conclude the administration of the receivership estate.

2.6 As of the date of this Application, the SDR has not identified any Escrow Account shortages. The Texas Title Insurance Guaranty Association has not been designated as an impaired agent under TEX. INS. CODE § 443.003 and no obligations under Chapter 2602 of the Code have been triggered.

2.7 A total of 160 Escrow Account proofs of claims (“Escrow Account POCs”) were filed in the Guardian estate by the claims filing deadline. The Court approved the SDR’s First Report of Claims regarding the determination of thirty-seven (37) Escrow Account POCs on April 14, 2010.

2.8 This Application seeks relief only as to those POCs identified in the attached exhibits and seeks no relief relating to any other POC.

III. RELIEF SOUGHT

A. Approval of Second Claims Reports

3.1 Section 443.258 of the Code requires the SDR to file reports with the Court regarding claims that have been settled or determined under TEX. INS. CODE § 443.253, and states as follows:

LIQUIDATOR’S RECOMMENDATIONS TO RECEIVERSHIP COURT. The liquidator shall present to the receivership court, for approval, reports of claims settled or determined by the liquidator under section 443.253. The reports must be presented from time to time as determined by the liquidator and must include information identifying the claim and the amount and priority class of the claim.

Section 443.258 applies to claims processed under TEX. INS. CODE § 443.253. The POC Order authorized the SDR to process escrow accounts claims pursuant to the provisions governing the processing of unsecured claims.

3.2 The SDR submits its Second Report of Claims regarding reflecting the SDR’s determination of the POCs identified in Exhibits 1 through 4, and requests that the Receivership

Court approve the report. Exhibit 1 identifies approved Escrow Claims, listing the claimant's name, amount approved and the POC and GF numbers. Exhibit 2 identifies Escrow Claims which have been approve in part and denied in part, listing the claimant's name, amount approved and the POC and GF numbers. Exhibit 3 identifies a single denied Escrow Claim, listing the claimant's name, amount sought and the POC and GF numbers. Exhibit 4 identifies Claims that have been determined to be general (non-escrow claims) with a priority below Class 1 of TEX. INS. CODE § 443.301, listing the claimant's name, amount claimed, the POC number, and, if applicable, the GF number. TEX. INS. CODE ANN. § 443.253 (k) and the POC Order provide that the SDR "is not required to process claims for any class until it appears reasonably likely that property will be available for a distribution to that class." Each of the claimants identified in this Second Report have been notified in writing of its determination of the amount and classification of their claims pursuant to TEX. INS. CODE § 443.253, and all deadlines to appeal the SDR's determination of these POCs have expired.

3.3 The relief sought in this Application does not include all claims filed for escrow accounts. The POC Order provided that, in the event of conflicting claims to the escrow funds and a failure of the claimants to agree to alternate arrangements, the SDR was authorized to interplead them into the registry of the Receivership Court. The SDR further reserves the right to hold payments to approved Escrow Claims and interplead such payments, in the event, in the SDR's sole and absolute discretion, that there are conflicting claims to any approved payment.

B. Application to Distribute Funds to Approved Escrow Claimants- Exhibits 1 and 2

3.4 The SDR requests authority from the Receivership Court to distribute escrow funds to approved escrow account claimants who are identified on Exhibits 1 and 2 in the amounts reflected on the exhibits. Distribution is authorized pursuant to TEX. INS. CODE. §§ 443.260 and 303. Distribution of the funds will reduce the costs to administer the estate.

IV. NO IMPAIRMENT AND NO WAIVER

4.1 Although Guardian is insolvent, no covered claims have been identified as of the date of this application and Texas Title Insurance Guaranty Association (“TTIGA”) has not been triggered. The SDR does not want to inadvertently trigger any obligation of TTIGA by the relief sought in this Application. The SDR requests that the Court order that, in the event any action by the SDR and/or Receivership Court results in a shortage to an escrow account, the shortage shall not be considered a covered claim as that term is defined in TEX. INS. CODE § 2602.252.

4.2 Nothing in this Application 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 relief sought herein shall not 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 Receivership Order remain in effect unless expressly modified herein.

V. NOTICE

5.1 Pursuant to TEX. INS. CODE § 443.007(d), this Application has been served on the entire service list for this proceeding and the Texas Title Insurance Guaranty Association in the manner shown on the Certificate of Service. SDR has posted all notices, claims filing information, POC forms and other relevant information relating to the POC process, including this Application, on the SDR’s web site at www.guardianfidelitysdr.com. The SDR reserves the right to issue additional notice if, in its sole discretion with approval from the Receiver, it finds there is need for additional notice.

VI. OFFER OF PROOF AND VERIFICATION

6.1 This Application has been verified as required by the Texas Rules of Civil

Procedure by the affidavit and certification pursuant to TEX. INS. CODE § 443.017(b) by Michael P. Marcin, Partner in CANTILO & BENNETT, L.L.P., solely in its capacity as the Special Deputy Receiver.

VII. NOTICE OF ELECTRONIC SERVICE REQUIREMENT

7.1 Pursuant to the *Order Granting SDR's Application to Use Electronic Service of Pleadings and Notices* entered on November 24, 2008, all pleadings filed in response to this Application or in regards to this estate shall be served by e-mail 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 Guardian Fidelity Title Company, Ltd., Guardian Fidelity Title Company CLR, LLP, Guardian Fidelity Title Company NWR, LLP, Guardian Fidelity Title Company KTB, Ltd., Guardian Fidelity Title Company SB, Ltd., and Guardian Fidelity Title Company DFT, Ltd. respectfully requests that this Court:

1. Grant this Application;
2. Approve the SDR's Second Report of Claims as identified on Exhibits 1 through 4;
3. Authorize the SDR to distribute the funds held in escrow to each escrow claimant whose claim is approved by the Receivership Court;
4. Authorize the SDR to hold payments to approved Escrow Claims and interplead such payments, in the event, in the SDR's sole and absolute discretion, that there are conflicting claims to any approved payment.
5. Discharge and release the Receiver, the SDR, and the receivership estate from any and all liability regarding the distributed Escrow Accounts and the approved paid Escrow

Account claims following distribution;

6. In the event that any action by the SDR and/or Receivership Court results in a shortage to an escrow account, the shortage shall not be considered a covered claim as that term is defined in TEX. INS. CODE § 2602.252;
7. Rule that approval of this Application 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 and further ruling that the Court's Order shall not 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;
8. Rule that the automatic stay and the provisions of the Receivership Order remain in effect unless expressly modified herein and further rule that the Order does not amend, modify, or in any manner change or affect the terms and provisions of the POC Order except as expressly set out herein; and
9. Grant the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

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Solely in its Capacity as the Special Deputy Receiver
of Guardian Fidelity Title Company, Ltd., *et al.*

CERTIFICATE OF SERVICE

I certify that on July 7, 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 SEC. 443.007(d) on the following by electronic mail, except as specifically noted.

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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 SDR's *Application for Approval of Second Claims Report and Distribution of Escrow Funds to Approved Escrow Claimants* (the "Application") is hereby set for written submission before the Special Master, Tom Collins, on July 19, 2010.

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 e-mail** 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 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

THE 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

ORDER GRANTING SPECIAL DEPUTY RECEIVER’S APPLICATION FOR APPROVAL OF SECOND CLAIMS REPORT AND DISTRIBUTION OF ESCROW FUNDS TO APPROVED ESCROW CLAIMANTS

On the undersigned date, the Court considered the SDR’s *Application for Approval of Second Claims Report and Distribution of Escrow Funds to Approved Escrow Claimants* (the “Application”). 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;

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 the Application is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court, as follows:

1. Approves the SDR's Second Report of Claims as identified in Exhibits 1 through 4;
2. Authorizes the SDR to distribute the funds held in escrow to each claimant whose claim is approved by the Receivership Court;
3. Authorizes the SDR to hold payments to approved Escrow Claims and interplead such payments, in the event, in the SDR's sole and absolute discretion, that there are conflicting claims to any approved payment;
4. Discharges and releases the Receiver, the SDR, and the receivership estate from any and all liability regarding the distributed Escrow Accounts;
5. In the event that any action by the SDR and/or Receivership Court results in a shortage to an escrow account, the shortage shall not be considered a covered claim as that term is defined in TEX. INS. CODE § 2602.252;
6. 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 ANN. Chapter 443. This Order shall not 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 Receivership Order remain in affect unless expressly modified herein. This Order does not amend, modify, or in any manner change or affect the terms and provisions of the *Agreed Order Appointing Liquidator and Permanent Injunction* and the POC Order except as expressly set out herein.

Signed on _____.

By: _____
JUDGE PRESIDING