

CAUSE NO. D-1-GN-18-001285

THE TEXAS DEPARTMENT OF INSURANCE, <i>Plaintiff,</i>	§ § § § § § § § §	IN THE DISTRICT COURT OF
v.		TRAVIS COUNTY, TEXAS
ACCESS INSURANCE COMPANY, <i>Defendant.</i>		261 <sup>ST</sup> JUDICIAL DISTRICT

**SPECIAL DEPUTY RECEIVER’S  
APPLICATION TO APPROVE PLAN TO DEEM CERTAIN CLAIMS  
AS DULY FILED AGAINST THE ESTATE**

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

CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Access Insurance Company (the “SDR” and “AIC,” respectively), files this Application to Approve Plan to Deem Certain Claims as Duly Filed Against the Estate (the “Application”).

**I. INTRODUCTION**

1.1 The SDR requests Court approval of its plan to deem certain proofs of claim (“POCs”) as duly filed against the estate. This Application seeks authority under TEX. INS. CODE § 443.251 (a), which provides, in part, “[t]he receivership court, only upon application of the liquidator, may allow alternative procedures and requirements for the filing of proofs of claim or for allowing or proving claims.

**II. AUTHORITY**

2.1 On March 13, 2018, the Court entered an *Agreed Order Appointing Liquidator, Permanent Injunction, and Notice of Automatic Stay* (the “Liquidation Order”), appointing the Texas Commissioner of Insurance as Liquidator of AIC. Effective March 13, 2018, the Texas Commissioner of Insurance, as Liquidator, appointed CANTILO & BENNETT, L.L.P. as SDR of AIC.

2.2 This Court has jurisdiction over the subject matter of this Application and the parties herein pursuant to TEX. INS. CODE § 443.005. The Court has exclusive jurisdiction over property of the estate pursuant to TEX. INS. CODE § 443.005(c) and personal jurisdiction over all parties affected herein because this is a civil proceeding arising under and related to a delinquency proceeding under the Texas Insurer Receivership Act, Chapter 443 of the Texas Insurance Code.

2.3 Travis County is the mandatory, sole, and exclusive venue for this proceeding. TEX. INS. CODE § 443.005.

2.4 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*.

### **III. PLAN TO DEEM CLAIMS**

3.1 On March 25, 2019, the Receivership Court entered its *Order Granting Special Deputy Receiver's Application for Approval of Claims Filing Deadline, Guidelines for Providing Notice, and Procedures for Processing Claims* (the "POC Order"). The order established September 13, 2019, as the deadline to file POCs. The POC Order authorized the SDR to deem certain POCs for consumers whose covered guaranty association claims were reduced by guaranty association deductibles or co-insurance as duly filed claims against the estate. Such claims if duly filed would have Class 2 priority under TEX. INS. CODE § 443.301 (b) and the SDR estimates that all such claims would be paid in full.

3.2 A number of the guaranty associations affected by the liquidation of AIC have statutory deductibles or minimum claim amounts on covered claims or claims for unearned premium ("UEP"). By way of example only, the South Carolina Property and Casualty Insurance Guaranty Association will only pay the excess of policy claims over \$250.00 (up to \$300,000.00) and the excess of UEP claims over \$100.00.

3.3 The SDR has obtained from the guaranty associations the names and addresses of claimants whose covered guaranty association claim award or UEP reimbursement was reduced by a statutory deductible or minimum claim amount. The SDR has not been able to identify certain claimants whose claims were completely denied because the guaranty associations did not keep records of such claims. The SDR will not deem a POC has been duly filed for these unidentified individuals, but will do so if the person is subsequently identified.

3.4 Most of the claimant addresses are more than five years old and were collected from submissions by the guaranty associations. The SDR has determined that it will not be an efficient use of estate resources to deem a POC has been duly filed for a Class 2 claim without confirming that the claimant can receive the distribution check. The SDR wants to avoid mailing thousands of small checks to potentially bad addresses, as researching, re-issuing and re-mailing distribution checks will not be an efficient use of estate resources and would result in unclaimed funds for thousands of claimants that must be transferred to the Commissioner at closing. Therefore, the SDR proposes to confirm the address of each potential deemed claimant for guaranty association deductibles or minimum claim amounts by mailing an address confirmation letter to the potential deemed claimant's last known address. The address confirmation letter will inform potential deemed claimants that they have a claim that will be deemed as duly filed against the estate if they respond affirmatively to the SDR and confirm their mailing address. The SDR proposes to only deem POCs as duly filed against the estate for those consumers who respond to the address confirmation letter. The SDR requests that the Court approve the requirement that each potential deemed claimant respond affirmatively to the SDR's address confirmation letter and confirm their mailing address, before the SDR is authorized to deem a POC as duly filed against the estate on their behalf.

3.5 The SDR has determined that out of 14,430 potential deemed claims for guaranty association deductibles or minimum claims amounts, there are more than 3,000 valued at \$25.00 or less. The SDR proposes setting a de minimis amount and only deem a POC as duly filed against the estate for such claims valued at \$25.00 or more. There are fixed expenses for each potential deemed claim, regardless of the amount, and the SDR expects many of the address confirmation letters will be returned, requiring additional expense. The SDR has observed in other estates that many people do not cash checks for small amounts. Therefore, the SDR requests the Court approve its plan to set a de minimis amount and only deem POCs as duly filed against the estate for consumer's claims for guaranty association deductibles or minimum claims valued at \$25.00 or more.

#### **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 applicable guaranty associations, in the manner shown on the Certificate of Service.

#### **V. OFFER OF PROOF AND VERIFICATION**

5.1 This Application is verified by the affidavit and certification pursuant to TEX. INS. CODE § 443.017(b) of Susan E. Salch, designated representative of CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Access Insurance Company.

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

6.1 All pleadings filed in response to this Application 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 SDR of AIC, respectfully requests this Court:

1. Grant the Application;
2. Approve the SDR's plan to deem POCs for consumers who had guaranty association payments reduced by deductibles or statutory minimum amounts;
3. Order that POCs can only be deemed as duly filed against the estate for those consumers who respond to the SDR's address confirmation letter by confirming their mailing address;
4. Approve \$25.00 as the de minimis amount and order that the SDR shall only deem POCs as duly filed against the estate for consumers whose claims for guaranty association deductibles or statutory minimums are valued at \$25.00 or more; and
5. Grant the SDR such further relief to which it may show itself to be justly entitled.

Respectfully submitted,

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**Attorney for CANTILO & BENNETT, L.L.P.,  
solely in its capacity as Special Deputy Receiver of  
Access Insurance Company**

## CERTIFICATE OF SERVICE

I certify that on October 22, 2024, 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:

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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 to Approve Plan to Deem Certain Claims as Duly Filed Against the Estate* is hereby set for written submission before the Special Master, Tom Collins, on **November 11, 2024**.

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, at [specialmasterclerk@tdi.texas.gov](mailto:specialmasterclerk@tdi.texas.gov);
  - (b) The undersigned counsel, Christopher Fuller at [cfuller@fullerlaw.org](mailto:cfuller@fullerlaw.org); and
  - (c) All interested parties, including those listed on the SDR's Certificate of Service.
3. The objecting party shall coordinate with the SDR's counsel and the Docket Clerk [(512) 676-6915] 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. **Please note that if an objection is not filed as described in the Notice of Submission, the Master may consider the Application without a hearing.**
6. **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.**
7. 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.

/s/ Christopher Fuller/  
\_\_\_\_\_  
Christopher Fuller

**SPECIAL DEPUTY RECEIVER'S VERIFICATION AND CERTIFICATION  
PURSUANT TO TEX. INS.CODE ANN. §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 of sound mind, capable of making this affidavit, and am competent to testify to the matters contained in this affidavit.
2. I am a partner in CANTILO & BENNETT, L.L.P., the Special Deputy Receiver of Access Insurance Company (the "SDR" and "AIC" respectively), I am duly authorized to make this Affidavit on behalf of the SDR.
3. I have reviewed the Application to Approve Plan to Deem Certain Claims as Duly Filed Against the Estate and the facts stated therein are true and correct based on my personal knowledge, my review of estate records and my consultation with the staff and subcontractors.
4. I certify that the exhibits, books, accounts, records, papers, correspondence, and/or other records and documents attached hereto, if any, were produced pursuant to TEX. INS. CODE § 443.017, are either true and correct copies of records of AIC and were received from the custody of AIC or found among its effects, or were created by and filed with the Receiver's office in connection with the receivership of this delinquent company, and are held by the Special Deputy Receiver in its official capacity."

By: *Susan E. Salch*  
Susan E. Salch

**SUBSCRIBED AND SWORN TO BEFORE ME** on October 21, 2024, by  
Susan E. Salch, Special Deputy Receiver of Access Insurance Company

*[Signature]*

Notary Public



THE TEXAS DEPARTMENT OF  
INSURANCE,  
*Plaintiff,*

v.

ACCESS INSURANCE COMPANY,  
*Defendant.*

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IN THE DISTRICT COURT OF  
  
TRAVIS COUNTY, TEXAS  
  
261<sup>ST</sup> JUDICIAL DISTRICT

**ORDER GRANTING SPECIAL DEPUTY RECEIVER'S  
APPLICATION TO APPROVE PLAN TO DEEM CERTAIN CLAIMS  
AS DULY FILED AGAINST THE ESTATE**

On this date, the Court heard the Application to Approve Plan to Deem Certain Claims as Duly Filed Against the Estate (the "Application") filed by CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Access Insurance Company (the "SDR" and "AIC," respectively). The SDR appeared by and through its counsel.

Having considered the Application, the Court finds as follows:

1. The *Order of Reference to Master* provides that motions filed pursuant to TEX. INS. CODE §§ 443.251 are referred to the Special Master appointed in this proceeding;
  2. Notice of the Application was provided in accordance with TEX. INS. CODE § 443.007 and the *Order of Reference to Master*;
  3. The Texas Property and Casualty Insurance Guaranty Association filed its acknowledgment and waiver;
  4. No objections to the Application were filed;
  5. The Court has jurisdiction over the Application and the parties affected hereunder;
- and
6. The SDR's 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 SDR's plan to deem POCs for consumers whose guaranty association payments were reduced by deductibles or statutory minimum amounts is APPROVED.
- 3) POCs shall only be deemed as duly filed against the estate for those consumers who respond to the SDR's address confirmation letter by confirming their mailing address;
- 4) The SDR shall only deem POCs as duly filed against the estate for consumers whose claims for guaranty association deductibles or statutory minimums are valued at \$25.00 or more;
- 5) This Order constitutes a final order 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.

Signed on \_\_\_\_\_, 2024.

\_\_\_\_\_  
JUDGE PRESIDING

## Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Christopher Fuller on behalf of Christopher Fuller

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Filing Code Description: Motion (No Fee)

Filing Description: SPECIAL DEPUTY RECEIVER'S APPLICATION TO APPROVE PLAN TO DEEM CERTAIN CLAIMS AS DULY FILED AGAINST THE ESTATE

Status as of 10/22/2024 1:53 PM CST

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