

CAUSE NO. D-1-GV-13-000204

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
	§	
SANTA FE AUTO INSURANCE	§	
COMPANY	§	
<i>Defendant.</i>	§	419 th JUDICIAL DISTRICT

APPLICATION TO SUPPLEMENT CLAIMS FILING PROCEDURE

TO THE HONORABLE JUDGE OF SAID COURT:

CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Santa Fe Auto Insurance Company (the “SDR” and “SFAIC” respectively), files this *Application to Supplement Claims Filing Procedure* (the “Application”).

I. INTRODUCTION

1.1 The SDR files this Application for authority under TEX. INS. CODE § 443.251(a), to supplement the existing claims filing procedure to allow an alternative process for the filing of certain categories of claims as described below.

II. BACKGROUND

2.1 On March 8, 2013, the Court entered an *Order Appointing Rehabilitator and Permanent Injunction*, appointing the Texas Commissioner of Insurance as Rehabilitator of SFAIC. Effective March 8, 2013, the Rehabilitator appointed CANTILO & BENNETT, L.L.P., as Special Deputy Receiver of SFAIC.

2.2 On April 5, 2013, the Court entered an *Order Appointing Liquidator and Permanent Injunction*, placing SFAIC into liquidation and appointing the Commissioner as Liquidator of SFAIC.

III. JURISDICTION AND STATUTORY AUTHORITY

3.1 The SDR is authorized to file this Application pursuant to TEX. INS. CODE § 443.251, which provides requirements for the filing of claims.

3.2 This Court has exclusive jurisdiction over the subject matter of this Application pursuant to TEX. INS. CODE § 443.005.

3.3 This Application has been referred to the Master appointed in this proceeding in accordance with the *Amended Order of Reference to Master* entered on April 5, 2013.

IV. RELIEF SOUGHT

Authority to File, or Deem as Filed, Certain Categories of Claims

4.1 On July 19, 2013, this court entered its *Order Granting Application to Approve Notice and Set Claims Filing Deadline* (the “POC Order”), which established October 5, 2014, as the deadline to file a proof of claim (“POC”) with the SDR. Since that time, the SDR has determined that there are certain categories of claims against the estate that are not, in whole or in part, being filed. It is in the best interests of the estate and its creditors for such claims to be filed. For the reasons described below, the SDR requests that it be authorized 1) to deem as filed a certain category of claims; and 2) to file claims falling in specific categories of claims. None of the claims will be deemed automatically allowed and each would be subject to the SDR’s subsequent adjudication. If allowed after the SDR’s adjudication, all of the claims at issue would be classified as Class 5 claims under TEX. INS. CODE § 443.301.

4.2 The Insurer Receivership Act expressly authorizes alternative claims filing

procedures. Section 443.251(a) provides that:

The 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. Upon application, if the receivership court dispenses with the requirements of filing a proof of claim by a person or a class or group of persons, a proof of claim for the person, class, or group is deemed to have been filed for all purposes, except that the receivership court's waiver of proof of claim requirements does not impact guaranty association proof of claim filing requirements or coverage determinations to the extent the guaranty fund statute or filing requirements are inconsistent with the receivership court's waiver of proof.

4.3 The first category of claims subject to this Application is unclaimed property or escheat claims (the "Unclaimed Property Claims"). In 2012, SFAIC did not file its annual unclaimed property report, which identifies funds owed to consumers by the insurance company and deposits the money with the Comptroller's Office. No unclaimed property reports have been filed since receivership. Unclaimed funds do not appear to have been segregated by Santa Fe prior to receivership, and the SDR has only recently been able to identify the individuals who may be owed unclaimed funds. Therefore, notice of the deadline and need to file a POC was not provided to these consumers. The SDR proposes that it be authorized to deem all consumers for whom SFAIC held unclaimed funds that had not been escheated to the Comptroller as of the date of receivership as having a timely and properly filed POC in the amount reflected on the estate's books and records.

4.4 The second category of claims subject to this Application are those claims against SFAIC insureds that have been denied by insurance guaranty associations ("IGAs") due to exceptions to coverage enumerated in the association's enabling statute (the "No IGA Coverage Claims"). Based on a review of known SFAIC claims, guaranty association reporting, and POCs filed to date, the SDR has determined that there are a significant number of No IGA Coverage Claims that have not been filed with the SDR. Although the SDR does not know precisely why many of the claims have not been filed, it appears that some claimants are not

aware of the opportunity and need to file a POC and other claimants, such as insurance companies owed subrogation, are not filing because the claims would be classified as Class 5 claims under section 443.301. Almost every claim under a policy of insurance issued by SFAIC before January 1, 2013 is partially reinsured. In order to recover on the reinsurance agreements, the SDR must be able to accurately track and then report the claims. Therefore, absence of POCs for these claims may prejudice the SDR's recovery of reinsurance. The SDR proposes to file POCs for an unliquidated amount for each known SFAIC claim for which a guaranty association has not reported and for which a POC has not been filed. Such claims will be deemed timely and properly filed but will not be deemed automatically allowed in any amount. The SDR will then adjudicate the claims pursuant to sections 443.253 and 443.258, and report the claims to reinsurers.

4.5 The final category of claims subject to this Application involves excess of policy limits or other bad faith claims against SFAIC or SFAIC insureds for which SFAIC held Errors and Omissions ("E&O") coverage (now property of the estate) which might be liable for such claims (the "E&O Claims"). This category includes claims for attorney malpractice by the in-house attorneys employed by SFAIC who provided the defense for most of SFAIC's insureds. E&O Claims would also include claims against SFAIC arising from violations of state statutes or regulations. The SDR is aware of at least five such claims but only one POC has been filed in this category. Additionally, certain excess of policy limits claims may be subject to reinsurance. The SDR proposes to file specific POCs in an unliquidated amount for the E&O Claims, including, but not limited to, known excess of policy limits claims, bad faith claims, legal malpractice claims, and claims for violations of marketing or claims handling statutes or regulations for which no POC has been filed.

Extension of Deadline to File or Deem as Filed POCs

4.6 The SDR requests that the deadline to file, or deem as filed, the claims described above be set for thirty (30) days after the October 5, 2014 POC filing deadline. This time will enable the SDR to review the timely filed POCs, prevent unnecessary effort and expense preparing claims that have already been filed, and ensure there will be no duplicate claims. The SDR further requests that if the order granting this Application is entered after October 5, 2014, the SDR be authorized to act under the relief sought in this Application for up to thirty (30) days after entry of the order.

No Waiver and Release of Claims against SFAIC Insureds

4.7 TEX. INS. CODE § 443.256(h) provides that by filing a POC, a claimant who asserts a third party claim against a SFAIC policyholder shall be deemed to have released and waived such claim up to the amount of policy limits of the SFAIC insured's policy. The POC form and instructions contain the notice of this election of remedies as required by TEX. INS. CODE § 443.256(h)(4). The SDR requests that no such waiver and release shall be deemed from any POC filed, or deemed filed, by the SDR.

No Implied Modifications to the POC Order

4.8 Except as expressly requested herein, the SDR proposes no other supplementations or modifications to the POC Order.

V. NOTICE

5.1 The SDR has served this Application to all known parties at interest and all individuals and entities identified by the SDR in the Certificate of Service by e-mail and, as noted, by mail or overnight delivery to certain state and federal agencies.

VI. OFFER OF PROOF AND VERIFICATION

6.1 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 Santa Fe Auto Insurance Company.

VII. NOTICE OF ELECTRONIC SERVICE REQUIREMENT

7.1 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 Special Deputy Receiver of Santa Fe Auto Insurance Company, prays that this Court

1. Grant this Application;
2. Authorize the SDR to deem as timely and properly filed Unclaimed Property Claims as described herein;
3. Authorize the SDR to file No IGA Coverage Claims, as described herein;
4. Authorize the SDR to file the E&O Claims as described herein;
5. Set November 4, 2014, as the deadline for the SDR to file, or deem as filed, the categories of claims described herein if the order granting this Application is entered on or before October 5, 2014;
6. If the order granting this Application is entered after October 5, 2014, set the deadline for the SDR to file, or deem as filed, the categories of claims described herein for thirty (30) days after entry of the order;
7. Find that all claimants who assert a third party claim against a SFAIC policyholder shall not be deemed to have released and waived any claim against the SFAIC

policyholder as a result of any POC filed by or deemed filed by the SDR;

8. Order that the POC Order is not modified or supplemented except as expressly requested herein; and
9. Grant the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

FULLER LAW GROUP

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**Attorney for Cantilo & Bennett, LLP,
Special Deputy Receiver of Santa Fe Auto
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CERTIFICATE OF SERVICE

I certify that on September 16, 2014, a true and correct copy of this Application was served pursuant to the Texas Rules of Civil Procedure and TEX. INS. CODE ANN. SEC. 443.007(d) on the following by email, except as specifically otherwise noted.

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/s/Christopher Fuller

Christopher Fuller

APPLICANT'S NOTICE OF SUBMISSION

Pursuant to the terms of the Amended Order of Reference to Master entered by the District Court in this cause, the SDR's *Application to Supplement Claims Filing Procedure Order* is hereby set for written submission before the Special Master, Tom Collins, on September 29, 2014.

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, Deona Sokol, SpecialMasterclerk@tdi.texas.gov;
 - (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 the SDR's 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 any 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

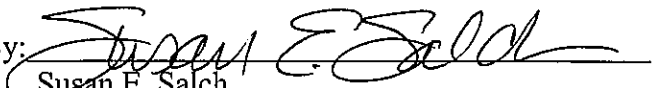
**SPECIAL DEPUTY RECEIVER'S CERTIFICATION PURSUANT TO
TEX. INS. CODE ANN. § 443.017(b)
AFFIDAVIT OF SUSAN E. SALCH**

State of Texas

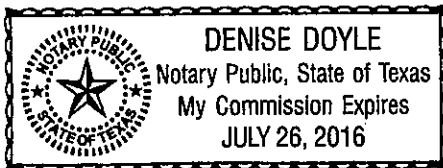
County of Travis


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 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 Special Deputy Receiver of Santa Fe Auto Insurance Company (the "SDR" and "SFAIC" respectively). I am duly authorized to make this Certification and Affidavit on behalf of the SDR.
3. I have read the foregoing Application and the facts stated therein are true and correct based on my personal knowledge, my review of estate records and my consultation with my staff and subcontractors.

By: 
Susan E. Salch

SUBSCRIBED AND SWORN TO BEFORE ME on September 16, 2014, by Susan E. Salch, on behalf of CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Santa Fe Auto Insurance Company.




Notary Public