

NO. D-1-GN-15-000799

CANTILO & BENNETT, L.L.P.,	§	IN THE DISTRICT COURT OF
SPECIAL DEPUTY RECEIVER OF	§	
SANTA FE AUTO INSURANCE	§	
COMPANY, INC.,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
BAILEY, CROWE, KUGLER & ARNOLD,	§	
L.L.P., F/K/A BAILEY, CROWE &	§	
KUGLER, L.L.P., ALAN RICH,	§	
JAMES DOUGLAS MAXWELL,	§	
JAMES THORNTON MAXWELL,	§	
U.S. AUTO INSURANCE SERVICES, INC.,	§	
GAMMA GROUP, INC., ALPHA	§	
PARTNERS, LTD., CSI AGENCY	§	
SERVICES, INC., AND FROST BANK,	§	
<i>Defendants.</i>	§	<u>98TH</u> JUDICIAL DISTRICT

**SPECIAL DEPUTY RECEIVER’S ORIGINAL PETITION,  
REQUEST FOR JURY TRIAL, AND REQUEST FOR DISCLOSURE**

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

CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Santa Fe Auto Insurance Company (the “SDR” and “Santa Fe,” respectively), files this Original Petition and in support thereof, would show the following:

**I. RULE 190 CLASSIFICATION**

1.1 This case is governed by the Level Two discovery control plan pursuant to TEX. R. Civ. P. 190.

**II. STATUTORY AUTHORITY**

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

Santa Fe. Effective March 8, 2013, the Rehabilitator appointed CANTILO & BENNETT, L.L.P., as Special Deputy Receiver of Santa Fe.

2.2 On April 5, 2013, the Court entered an *Order Appointing Liquidator and Permanent Injunction* (the “Permanent Injunction”), placing Santa Fe in liquidation and appointing the Commissioner as Liquidator of Santa Fe. The SDR is authorized to pursue claims on behalf of policyholders and creditors pursuant to TEX. INS. CODE ANN. § 443.154(m). As a matter of law, the SDR succeeds to all legal and equitable interests formerly held by Santa Fe including, but not limited to, attorney-client relationships. The *Order Appointing Liquidator and Permanent Injunction* (the “Liquidation Order”) and the provisions of Chapter 443 of the Texas Insurance Code vest title, both legal and equitable, in the SDR to all of Santa Fe’s property, including its affairs, business, assets, books, records, and all other property of any kind or nature.

### **III. JURISDICTION AND VENUE**

3.1 This Court has jurisdiction over the parties and causes of action asserted herein because the amount in controversy exceeds \$1,000, and pursuant to the provisions of the *Insurer Receivership Act*, including, but not limited to, Section 443.005. Pursuant to TEX. R. CIV. P. 47, Plaintiff seeks monetary relief of more than \$1,000,000.

3.2 This Court has jurisdiction over the parties herein pursuant to TEX. INS. CODE ANN. § 443.005. Specifically, this Court has personal jurisdiction over the Defendants because this is a civil proceeding arising under, and related to, the Santa Fe delinquency proceeding under Chapter 443 of the Texas Insurance Code; all of the transactions and occurrences which form the basis for this petition occurred, in whole or in part, in this state; Defendants reside and/or conduct business in this state that is directly related to the subject matter of this suit; Defendants fall under the Court’s statutory personal jurisdiction set out in TEX. INS. CODE ANN.

§ 443.005(d) and Texas Civil Practice & Remedies Code Chapter 17; and Defendants, individually and/or collectively, contracted with a Texas resident and performance of the agreements, in whole or in part, was to occur in Texas.

3.3 Exclusive and mandatory venue for this proceeding is in Travis County, Texas, pursuant to TEX. INS. CODE ANN. § 443.005(g).

#### **IV. CONDITIONS PRECEDENT**

4.1 All conditions precedent to jurisdiction have occurred or been complied with; alternatively, conditions precedent have been waived. Defendants were fiduciaries or the affiliates of fiduciaries, which had a legal obligation to disclose the conduct described below but failed to do so. Defendants sought to and did conceal their conduct.

#### **V. RESPONDEAT SUPERIOR AND RATIFICATION**

5.1 Whenever this Petition alleges that the Defendants did any act or thing, it means: (1) the individual Defendant and/or that Defendant's attorneys, officers, agents, servants, employees, or representatives did such act; (2) at that time such act was done, it was done with the full authorization or ratification of the Defendant(s); and/or (3) it was done in the normal and routine course and scope of employment of Defendants' attorneys, officers, agents, servants, employees, or representatives.

#### **VI. THE PARTIES**

6.1 The SDR is the duly appointed Special Deputy Receiver of Santa Fe appointed by the Commissioner of Insurance as Receiver.

6.2 Defendant BAILEY, CROWE, KUGLER & ARNOLD, L.L.P., F/K/A BAILEY, CROWE & KUGLER, L.L.P. ("Bailey Crowe"), is a Texas domestic limited liability partnership

and may be served by serving John W. Arnold, partner of Bailey Crowe, at 901 Main Street, Suite 6550, Dallas, Texas 75202.

6.3 Defendant, ALAN B. RICH D/B/A LAW OFFICE OF ALAN B. RICH (“Rich”) is an individual who may be served with citation at 1201 Elm Street, Suite 4244, Dallas, Texas 75270.

6.4 Defendant JAMES DOUGLAS MAXWELL (“Doug Maxwell”) is an individual and former President and director of Santa Fe who may be served with citation at his residence located at 3017 Hanover Street, Dallas, Texas 75225.

6.5 Defendant JAMES THORNTON MAXWELL (“Jim Maxwell”) is an individual and former director of Santa Fe who may be served with citation at his residence located at 6263 Preston Creek Drive, Dallas, Texas 75240.

6.6 Defendant U.S. AUTO INSURANCE SERVICES, INC. (“US Auto”) is a Texas domestic for-profit corporation and may be served by serving its registered agent for service of process, Todd H. Ridley, at 13703 Neutron Road, Dallas, Texas 75244.

6.7 Defendant GAMMA GROUP, INC. (“Gamma Group”) is a Texas domestic for-profit corporation and may be served by serving its registered agent for service of process, Todd Ridley, at 13703 Neutron Road, Dallas, Texas 75244.

6.8 Defendant ALPHA PARTNERS, LTD. (“Alpha Partners”) is a Texas domestic limited partnership and may be served by serving its registered agent for service of process, ZVN, Inc. (“ZVN”), at 13703 Neutron Road, Dallas, Texas 75244.

6.9 Defendant CSi AGENCY SERVICES, INC. (“CSi”) is a Texas domestic for-profit corporation and may be served by serving its registered agent for service of process, James T. Maxwell, at 13703 Neutron Road, Dallas, Texas 75244.

6.10 Defendant FROST BANK (“Frost”) is a Texas state financial institution and may be served by serving its registered agent for service of process, Stanley E. McCormick, Jr., at 100 West Houston Street, San Antonio, Texas 78205.

## **VII. FACTUAL BACKGROUND**

7.1 Santa Fe was a Texas-domiciled insurance company operating under Chapter 822 of the Texas Insurance Code. Santa Fe wrote private passenger nonstandard automobile liability and physical damage policies. As a Texas-domiciled insurance company, Santa Fe was required to file Annual Statements of its financial condition, and its owners were required to file annual Form B statements setting out, among other items, transactions and transfers involving affiliates.

7.2 On April 19, 2007, the Texas Department of Insurance (“Department”) approved a Certificate of Authority (“COA”) for Santa Fe to engage in the business of insurance in Texas. The company entered into a consent order with the Department and, among other things, agreed to submit an application to redomesticate to Texas within sixty (60) days. In May of 2007, Santa Fe began writing policies in Texas, and on October 2, 2007, the Department approved the company’s application to redomesticate to Texas. At all relevant times, Santa Fe’s COA contained the following conditions:

- maintain at least \$6 million in policyholder surplus (“PHS”);
- limit gross written premium (“GWP”) to 600% of PHS;
- limit net written premium (“NWP”) to 250% of PHS;
- maintain a deposit of \$2 million for the protection of Texas policyholders;
- conduct business in compliance with the business plan filed on May 23, 2006, and revised on February 23, 2007; and
- obtain prior approval from the Commissioner of Insurance before acquiring reinsurance.

7.3 Santa Fe was part of an insurance holding company system that was ultimately controlled by Defendants Jim Maxwell (father) and Doug Maxwell (son). Defendant Alpha Partners owns all stock in Santa Fe. Jim Maxwell and Doug Maxwell are limited partners of Alpha Partners with Jim Maxwell owning 59.4% and Doug Maxwell owning 39.6%. The remaining 1% was owned by Defendant CSi but is now, upon information and belief, owned by ZVN as general partner of Alpha Partners. CSi was and, upon information and belief, ZVN is now, the general partner of Alpha Partners. At all relevant times, Defendants Jim Maxwell and Doug Maxwell were officers and/or directors of Santa Fe and owed Santa Fe a fiduciary duty.

7.4 Defendants Alpha Partners, CSi, US Auto, and Gamma Group, along with ZVN, were part of the holding company group but none are subsidiaries of Santa Fe. Jim Maxwell owns 60% of CSi, and Doug Maxwell owns the remaining 40%. ZVN is currently the general partner for Alpha Partners. Upon information and belief, Jim Maxwell is the ultimate controlling person of ZVN.

7.5 Defendant US Auto was a licensed managing general agent in Texas from April 3, 2000, until July 25, 2008, when it voluntarily surrendered its license. Defendant Gamma Group was incorporated effective January 1, 1995, and was a licensed agency in Texas from 1995 until July 25, 2008.

7.6 On March 12, 2012, the Commissioner of Insurance entered Order No. 12-0195 placing Santa Fe in supervision (the "Supervision Order"). The Supervision Order found that, as of December 31, 2011:

- Santa Fe's unassigned surplus deficit was 213.91%;
- Santa Fe's GWP was 1,302.9% of PHS, in violation of Santa Fe's COA;
- Santa Fe's NWP was 754.7% of its PHS, in violation of Santa Fe's COA;

- Santa Fe had nine ratios outside the acceptable ranges as established by the National Association of Insurance Commissioners (“NAIC”) in the Insurance Regulatory Information System;
- Santa Fe’s risk-based capital ratio was 74% of its authorized control level; and
- the difference between Santa Fe’s carried reserves and the high end of the appointed actuary’s range of reasonable reserve estimates was approximately \$8 million, while total PHS was approximately \$6.7 million. Thus, Santa Fe’s PHS was insufficient to cover all claim liabilities if it experienced losses of the magnitude indicated at the high end of the appointed actuary’s range.

7.7 In 2007, Lincoln General Insurance Company (“Lincoln General”) filed suit against US Auto, Gamma Group, CSi, Alpha Partners, Santa Fe, Doug Maxwell, and Jim Maxwell in the United States District Court for the Northern District of Texas. The Lincoln General lawsuit was dismissed in 2009 and then re-filed upon the failure of the parties to that lawsuit to conclude the terms of a settlement. The Lincoln General litigation was based on a reinsurance program involving US Auto. Santa Fe was not a party to any contracts with Lincoln General. Defendants Jim Maxwell and Doug Maxwell were sued personally for their alleged conduct relating to the US Auto/Lincoln General reinsurance program. They were not sued for any conduct involving Santa Fe. Nevertheless, the Maxwells, the persons ultimately controlling Santa Fe, caused Santa Fe to pay the legal fees and expenses of all defendants in the Lincoln General litigation. They also caused Santa Fe to pay the legal fees and expenses for matters involving affiliate Gamma Group. The payments on behalf of the directors and affiliates, spanning more than five years, were not disclosed in filings with the Texas Department of Insurance. The Board of Directors of Santa Fe did not expressly authorize the payments.

7.8 Beginning in 2008, Defendant Bailey Crowe represented Santa Fe, along with all other Defendants, in the lawsuit filed by Lincoln General. Subsequently, it withdrew from representing Santa Fe and others but continued to represent US Auto in the same lawsuit and the

successor lawsuit. However, Bailey Crowe continued to bill and be paid for legal services and expenses by Santa Fe. Santa Fe paid Bailey Crowe more than \$590,000 to represent US Auto in the Lincoln General litigation. In the months leading up to Santa Fe's receivership, Bailey Crowe demanded, and was paid, its invoices for legal fees and expenses on a weekly basis.

7.9 Defendant Alan Rich began representing Santa Fe in the Lincoln General litigation in 2008. At the same time, he represented Jim Maxwell, Doug Maxwell, CSi, Alpha Partners, and Gamma Group. However, Rich billed only Santa Fe and was paid for all of his legal services and expenses only by Santa Fe. He billed and was paid by Santa Fe for legal services he provided solely to Gamma Group. He continued to bill and be paid by Santa Fe for work on the Lincoln General litigation even after Santa Fe was dismissed from the suit. In the months leading up to Santa Fe's receivership, Rich demanded, and was paid, his invoices for legal fees and expenses on a weekly basis. Both before and after Santa Fe's receivership, Rich acted on behalf of the owners and controlling principals of Santa Fe to the detriment of Santa Fe. After receivership, he purported to represent Jim Maxwell against the SDR in a matter directly related to his prior representation of Santa Fe. He withdrew only after being threatened with suit.

7.10 Santa Fe paid the legal fees and expenses of Defendants Jim Maxwell, Doug Maxwell, CSi, Alpha Partners, and Gamma Group. As such, the payments were transfers of Santa Fe property for, or on behalf of, officers, directors, and affiliates.

7.11 As a result of discovery in the Lincoln General litigation, at all relevant times, Defendants Bailey Crowe and Rich were intimately familiar with the financial condition of the Maxwells, Santa Fe, and its affiliates. Their knowledge of the continually deteriorating financial condition of Santa Fe is reflected in their demand for weekly payments of legal fees and expenses beginning in 2012 and their refusal to front litigation expenses.



7.12 Defendant Alpha Partners issued a surplus debenture (Bond Number 10) to Santa Fe. Santa Fe could only make payment on the instrument if it had policyholder surplus in excess of the greater of \$6 million or 250% of NAIC-authorized control level risk-based capital. In January of 2012, a debenture payment in the amount of \$465,667.17 was made to Alpha Partners despite the fact that Santa Fe did not meet the 250% test at the time. Alpha Partners immediately up-streamed the payment to Defendant Frost Bank, as Frost had loaned Alpha Partners the money for the debenture, and the Frost Bank loan's repayment was keyed to debenture payments. At all relevant times, Defendant Frost closely monitored Santa Fe's financial condition. The bank was in possession of the internal financial records of the company.

## VIII. CAUSES OF ACTION

### BAILEY, CROWE, KUGLER & ARNOLD, L.L.P.

8.1 Plaintiff incorporates, by reference, the allegations set out above into each cause of action below:

#### A. **Section 443.205 Fraudulent Transfers**

8.2 Bailey Crowe was paid more than \$590,000 by Santa Fe to represent US Auto in the Lincoln General litigation. Santa Fe received less than a reasonably equivalent value in exchange for the payments. The SDR prays for an award of all transfers to Bailey Crowe avoidable under Section 443.205.

#### B. **Section 443.204 Voidable Preferences**

8.3 The legal fees and expenses paid to Bailey Crowe in the two years prior to receivership enabled Bailey Crowe to receive more than it would have received if Santa Fe was liquidated under the Receivership Act. The payments are recoverable because they were made to attorneys and, pleading alternatively: Santa Fe was insolvent at the time of the transfer; the

transfers were made within 120 days before the date of filing of the petition commencing delinquency proceedings; or, at the time the transfer was made, Bailey Crowe had reasonable cause to believe that Santa Fe was insolvent or was about to become insolvent. The SDR prays for an award of all transfers to Bailey Crowe that are avoidable under Section 443.204.

**C. Texas Uniform Fraudulent Transfer Act, Tex. Bus. & Com. Code Ch. 24**

8.4 The SDR is deemed a creditor without knowledge for purposes of pursuing claims under the Texas Uniform Fraudulent Conveyance Act (“TUFTA”). The SDR may avoid any transfer of the property of an insurer that the insurer or a policyholder, creditor, member, or stockholder of the insurer may have avoided without regard to any knowledge of the receiver, the commissioner, the insurer, or any policyholder, creditor, member, or stockholder of the insurer regardless of whether such a policyholder, creditor, member, or stockholder exists.

8.5 Santa Fe’s transfers to Bailey Crowe were fraudulent, in whole or in part, pursuant to TUFTA Sections 24.005 and 24.006. The SDR prays for an award equal to all transfers to Bailey Crowe that are avoidable under the TUFTA.

**D. Breach of Fiduciary Duty**

8.6 Bailey Crowe owed Santa Fe a fiduciary duty arising from its attorney-client and agent-principal relationships. The duty included, without limitation, absolute honesty, absolute loyalty, complete and accurate disclosure, diligence in retaining and supervising third parties, accurate and timely billing, and strict compliance with all rules governing the practice of law in the state of Texas. Bailey Crowe repeatedly violated those duties, and such breach of fiduciary duty was the actual, proximate, and producing cause of damages to Santa Fe. Plaintiff prays for an award of its damages and, further, an order from this Court requiring Bailey Crowe to

disgorge all fees previously paid by Santa Fe and forfeiting any and all rights (the existence of which are denied) to any additional compensation, reimbursement, or payment.

**E. Negligence**

8.7 In the course of the transactions between Santa Fe and Bailey Crowe, the law firm owed Santa Fe a duty to use ordinary care and diligence in the course and scope of its professional relationship with the company, including without limitation, full, timely, and complete disclosure of the terms of its retention. The SDR would show that Bailey Crowe failed to exercise ordinary care in performing such duty. The acts and/or omissions of Bailey Crowe described herein, by which Bailey Crowe breached such duty, were the actual, proximate, and producing causes of damages to Santa Fe.

**F. Aiding and Abetting Breach of Fiduciary Duty**

8.8 As set forth above, Defendants Jim Maxwell and Doug Maxwell owed fiduciary duties to Santa Fe, breached their fiduciary duties to Santa Fe by causing the company to pay the legal fees and expenses for themselves and their affiliates, and caused injury to Santa Fe. Bailey Crowe knew of Jim Maxwell and Doug Maxwell's actions and conduct and knew that those actions constituted a breach of their fiduciary duties. Bailey Crowe substantially assisted and encouraged Jim Maxwell and Doug Maxwell in the conduct that constituted a breach of their fiduciary duties to Santa Fe. As a direct and proximate result of the breach of fiduciary duties, and Bailey Crowe's participation in the breach, Santa Fe suffered injuries, damages, or losses in an amount to be determined at trial.

**ALAN RICH**

8.9 Plaintiff incorporates, by reference, the allegations set out above.

**A. Section 443.205 Fraudulent Transfers**

8.10 Alan Rich was paid more than \$380,000 by Santa Fe to represent its affiliates, Alpha Partners, Gamma Group, and CSi, and its directors Jim Maxwell and Doug Maxwell in the Lincoln General litigation. Santa Fe received less than a reasonably equivalent value in exchange for the payments. The SDR prays for an award equal to all transfers to Rich avoidable under Section 443.205.

**B. Section 443.204 Voidable Preferences**

8.11 The legal fees and expenses paid to Rich in the two years prior to receivership enabled Rich to receive more than he would have received if Santa Fe was liquidated under the Receivership Act. The payments are recoverable because they were made to an attorney and, pleading alternatively: Santa Fe was insolvent at the time of the transfer; the transfer was made within 120 days before the date of filing of the petition commencing delinquency proceedings; or, at the time the transfer was made, Rich had reasonable cause to believe that Santa Fe was insolvent or was about to become insolvent. The SDR prays for an award of all transfers to Rich that are avoidable under Section 443.204.

**C. Texas Uniform Fraudulent Transfer Act, Tex. Bus. & Com. Code Ch. 24**

8.12 The SDR is deemed a creditor without knowledge for purposes of pursuing claims under the TUFTA. The SDR may avoid any transfer of the property of Santa Fe that the insurer or a policyholder, creditor, member, or stockholder of the insurer may have avoided without regard to any knowledge of the receiver, the commissioner, the insurer, or any policyholder, creditor, member, or stockholder of the insurer regardless of whether such a policyholder, creditor, member, or stockholder exists.

8.13 Santa Fe's transfers to Rich were fraudulent, in whole or in part, pursuant to TUFTA Sections 24.005 and 24.006. The SDR prays for an award equal to all transfers to Rich that are avoidable under the TUFTA.

**D. Breach of Fiduciary Duty**

8.14 Rich owed Santa Fe a fiduciary duty arising from his attorney-client and agent-principal relationships. The duty included, without limitation, absolute honesty, absolute loyalty, complete and accurate disclosure, diligence in retaining and supervising third parties, accurate and timely billing, and strict compliance with all rules governing the practice of law in the state of Texas. Rich repeatedly violated those duties, and such breach of fiduciary duty was the actual, proximate, and producing cause of damages to Santa Fe. Plaintiff sues for an award of its damages and, further, an order from this Court requiring Rich to disgorge all fees previously paid by Santa Fe and forfeiting any and all rights (the existence of which are denied) to any additional compensation, reimbursement, or payment.

**E. Negligence**

8.15 In the course of the transactions between Santa Fe and Rich, he owed Santa Fe a duty to use ordinary care and diligence in the course and scope of his professional relationship with the company. The SDR would show that Rich failed to exercise ordinary care in performing such duty. The acts and/or omissions of Rich described herein, by which Rich breached such duty, were the actual, proximate, and producing causes of damages to Santa Fe.

**F. Aiding and Abetting Breach of Fiduciary Duty**

8.16 As set forth above, Defendants Jim Maxwell and Doug Maxwell owed fiduciary duties to Santa Fe, breached their fiduciary duties to Santa Fe by causing the company to pay the legal fees and expenses for themselves and Santa Fe's affiliates, and caused injury to Santa Fe.

Rich knew of Jim Maxwell and Doug Maxwell's actions and conduct and knew that those actions constituted a breach of their fiduciary duties. Rich substantially assisted and encouraged Jim Maxwell and Doug Maxwell in the conduct that constituted a breach of their fiduciary duties to Santa Fe. As a direct and proximate result of the breach of fiduciary duties, and Rich's participation in the breach, Santa Fe suffered injuries, damages, or losses in an amount to be determined at trial.

**US AUTO, GAMMA GROUP, ALPHA PARTNERS, CSI, JIM MAXWELL, AND DOUG MAXWELL**

8.17 Plaintiff incorporates, by reference, the allegations set out above.

**A. Section 443.205 Fraudulent Transfers**

8.18 Santa Fe's payment of legal fees and expenses for its affiliates US Auto, Gamma Group, Alpha Partners, CSi, and its directors Jim Maxwell and Doug Maxwell constitute transfers to or on behalf of affiliates and fiduciaries. Santa Fe received less than a reasonably equivalent value in exchange for the payments. The SDR prays for an award of all transfers to US Auto, Gamma Group, Alpha Partners, CSi, Jim Maxwell, and Doug Maxwell avoidable under Section 443.205.

**B. Section 443.204 Voidable Preferences**

8.19 The legal fees and expenses paid to Bailey Crowe and Rich in the two years prior to Santa Fe's receivership enabled US Auto, Gamma Group, Alpha Partners, CSi, Jim Maxwell, and Doug Maxwell to receive more than they would have received if Santa Fe was liquidated under the Receivership Act. The payments are recoverable because they were made on behalf of affiliates and fiduciaries and, pleading alternatively: Santa Fe was insolvent at the time of the transfer; the transfer was made within 120 days before the date of filing of the petition commencing delinquency proceedings; or, at the time the transfer was made, US Auto, Gamma

Group, Alpha Partners, CSi, Jim Maxwell, and Doug Maxwell had reasonable cause to believe that Santa Fe was insolvent or was about to become insolvent. The SDR prays for an award of all transfers to Bailey Crowe and Rich that are avoidable under Section 443.204 against US Auto, Gamma Group, Alpha Partners, CSi, Jim Maxwell, and Doug Maxwell.

**C. Texas Uniform Fraudulent Transfer Act, Tex. Bus. & Com. Code Ch. 24**

8.20 The SDR is deemed a creditor without knowledge for purposes of pursuing claims under the TUFTA. The SDR may avoid any transfer of the property of Santa Fe that the insurer or a policyholder, creditor, member, or stockholder of the insurer may have avoided without regard to any knowledge of the receiver, the commissioner, the insurer, or any policyholder, creditor, member, or stockholder of the insurer regardless of whether such a policyholder, creditor, member, or stockholder exists.

8.21 Santa Fe's transfers on behalf of US Auto, Gamma Group, Alpha Partners, CSi, Jim Maxwell, and Doug Maxwell were fraudulent, in whole or in part, pursuant to TUFTA Sections 24.005 and 24.006. The SDR prays for an award equal to all transfers to US Auto, Gamma Group, Alpha Partners, CSi, Jim Maxwell, and Doug Maxwell that are avoidable under the TUFTA.

**D. Breach of Fiduciary Duty (Jim Maxwell and Doug Maxwell Only)**

8.22 At all relevant times, Defendants Jim Maxwell and Doug Maxwell were officers and/or directors of Santa Fe and the ultimate controlling parties for the company. Jim Maxwell and Doug Maxwell caused Santa Fe to pay the legal fees and expenses for themselves, US Auto, Gamma Group, Alpha Partners, and CSi in the Lincoln General litigation and other matters. Defendants Jim Maxwell and Doug Maxwell owed a fiduciary duty, as well as statutory and common law obligations to Santa Fe. The legal fee and expense payments were made in

violation of Texas law and of Jim Maxwell and Doug Maxwell's duties and fiduciary obligations to Santa Fe. The violations damaged Santa Fe in the amount of such payments.

**E. Punitive and Exemplary Damages (Jim Maxwell and Doug Maxwell Only)**

8.23 The SDR prays for an award of punitive and exemplary damages against Jim Maxwell and Doug Maxwell, individually, in the maximum amount allowed by law and equity. The Maxwell Defendants' conduct, described above, entitles Plaintiff to an award of exemplary and punitive damages from Defendants in order to punish such conduct and serve as a warning to deter others from committing such conduct. Plaintiff is entitled to, and prays for, an award of such damages pursuant to the provisions of TEX. CIV. PRAC. & REM. CODE ANN. § 41.003, *et seq.* and all other common law and statutory provisions for the award of such damages in the maximum amount authorized by law or equity from each culpable Defendant.

**F. Section 443.202 Transfers to Affiliates**

8.24 The SDR has the right to recover from any affiliate of Santa Fe any property of the insurer transferred to or for the benefit of the affiliate, or the property's value, if the transfer was made within the two years preceding the initial petition for receivership. All of Santa Fe's payments of legal fees and expenses on behalf of US Auto, Gamma Group, Alpha Partners, CSi, Jim Maxwell, and Doug Maxwell constitute transfers to or on behalf of affiliates. Santa Fe's payment of \$465,667.17 on January 3, 2012, to Alpha Partners also constitutes a recoverable transfer under this statute. The SDR prays for an award equal to all transfers made to or on behalf of US Auto, Gamma Group, Alpha Partners, CSi, Jim Maxwell, and Doug Maxwell recoverable under this statute.

**FROST BANK**

8.25 Plaintiff incorporates, by reference, the allegations set out above.



**A. Section 443.207 Liability of Transferees**

8.26 Bailey Crowe and Rich are transferees of payments made by Santa Fe to or on behalf of Defendants Jim Maxwell, Doug Maxwell, US Auto, Gamma Group, Alpha Partners, and CSi. Defendant Frost Bank is a transferee of the debenture payments made by Santa Fe to Alpha Partners. Pursuant to Section 443.207 of the Code, the SDR is entitled to recover any transfer of property recoverable under Sections 443.201-443.206 from the transferee, the immediate transferee, and/or mediate transferee. The SDR is entitled to recover from Bailey Crowe, Rich, and Frost all such payments avoidable under Sections 443.201-443.206.

8.27 The SDR prays for an award equal to the value of the property transferred, the greater of: (A) the actual interest or income earned by the property, or (B) interest at the statutory rate for judgments from the later of the date of the entry of the receivership order or the date of the transfer; and all costs, including investigative costs and other expenses necessary to the recovery of the property or funds, and reasonable attorney fees.

**IX. ATTORNEY FEES**

9.1 The Defendants' conduct, described above, individually and collectively, has required the SDR to engage the undersigned counsel and agree to pay reasonable and necessary attorney fees, litigation costs, costs of court, and other related expenses. The SDR is entitled to recover its attorney fees and expenses from the Defendants, individually and collectively, pursuant to the provisions of Texas law, including but not limited to Chapter 443 of the Texas Insurance Code, Chapter 24 of the Texas Business & Commerce Code, Chapter 38 of the Texas Civil Practice & Remedies Code, and equitably. The SDR prays for an award of its reasonable and necessary attorney fees and related costs from the Defendants, jointly and severally.

## **X. DEMAND FOR JURY TRIAL**

10.1 Plaintiff makes a demand for jury trial and tenders the appropriate jury fee with this petition.

## **XI. REQUEST FOR DISCLOSURE**

11.1 Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff requests that Defendants disclose, within fifty (50) days of the service of this request, the information and material described in Rule 194.2 (a) – (k).

## **PRAYER**

WHEREFORE, PREMISES CONSIDERED, the Special Deputy Receiver respectfully prays that:

1. Defendants be cited to appear and answer;
2. The SDR be granted judgment for the amount of actual damages against Defendants to be established by the Court or jury;
3. That Defendant Bailey Crowe be ordered to disgorge its fees in the amount to be determined by the Court;
4. That Defendant Rich be ordered to disgorge his fees in the amount to be determined by the Court;
5. The SDR be awarded punitive and exemplary damages in the maximum amount allowed by law;
6. The SDR be awarded its reasonable and necessary attorney fees, cost of court, and all other costs of litigation;
7. The SDR be granted judgment for pre-judgment and post-judgment interest at the highest legal or contractual rate allowed by law; and
8. The SDR be granted such other and further relief to which it may be justly entitled.

Respectfully submitted,

**FULLER LAW GROUP**

By:  /s/Christopher Fuller

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SPECIAL DEPUTY RECEIVER OF  
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