

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

<p><b>THE STATE OF TEXAS,</b> <b>Plaintiff</b></p> <p>v.</p> <p><b>SANTA FE AUTO INSURANCE</b> <b>COMPANY</b> <b>Defendant</b></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p><b>IN THE DISTRICT COURT OF</b></p> <p><b>TRAVIS COUNTY, TEXAS</b></p> <p><b>419<sup>th</sup> JUDICIAL DISTRICT</b></p>
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**SPECIAL DEPUTY RECEIVER'S APPLICATION FOR AUTHORITY TO ENTER INTO REINSURANCE SETTLEMENT AGREEMENTS**

TO THE HONORABLE DISTRICT 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 for Authority to Enter into Reinsurance Settlement Agreements (the “Application”).

**I. INTRODUCTION AND SUMMARY OF RELIEF**

1.1 The SDR files this Application pursuant to TEX. INS. CODE §§ 443.007 and 443.154(y) and seeks Receivership Court authority to enter into reinsurance settlement agreements with each of its three reinsurers. The settlements, which have been approved by the Receiver, provide that the reinsurers will pay all amounts owed under the quota share reinsurance agreements, including paid losses and current case reserves, in exchange for termination of the agreements in their entirety. SFAIC will receive approximately \$11.1 million. The reinsurers also agree to withdraw their Proofs of Claims (“POCs”) filed in the receivership.

**II. RECEIVERSHIP STATUS**

2.1 On March 8, 2013, this Court entered an *Order Appointing Rehabilitator and Permanent Injunction*, appointing the Texas Commissioner of Insurance (the “Commissioner”)

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, this Court entered an *Order Appointing Liquidator and Permanent Injunction* (the “Liquidation Order”), placing SFAIC into liquidation and appointing the Commissioner as Liquidator of SFAIC.

### **III. JURISDICTION**

3.1 The SDR is authorized to file this Application pursuant to TEX. INS. CODE § 443.154(y).

3.2 This Court has exclusive jurisdiction over the subject matter of this Application pursuant to TEX. INS. CODE § 443.005. The Court has personal jurisdiction over all parties to the transactions described herein pursuant to TEX. INS. CODE § 443.005(d), and all claimants against the assets of the SFAIC receivership estate pursuant to TEX. INS. CODE § 443.005. Further, this Court has jurisdiction because this is a civil proceeding arising under, and related to, a delinquency proceeding under Chapter 443 of the Texas Insurance Code, and because the exercise of jurisdiction over any non-resident claimant comports to customary standards of fair play and substantial justice, and complies with the protections of the Constitutions of the United States of America and the state of Texas.

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. FACTUAL BACKGROUND**

4.1 SFAIC reinsured approximately fifty percent (50%) of losses on its pre-2013 policies. (There is no reinsurance for policies issued after December 31, 2012.) Beginning on July 1, 2008, the company began ceding a portion of its basic statutory limits private passenger

auto liability. SFAIC had reinsurance contracts (also referred to as “treaties”) with three reinsurers: Hannover Reinsurance (Ireland) PLC (“Hannover”), SCOR Re (“SCOR”), and GHS Property & Casualty (“GHS”). EWI Risk Services (“EWI”) was the reinsurance intermediary/broker for all of the SFAIC’s reinsurance. All reporting and payments from SFAIC to the reinsurers and from the reinsurers to SFAIC went through EWI. There was no coverage for policies issued in 2007, and SFAIC did not have any reinsurance for policies issued after December 31, 2012. No single reinsurer ever took more than forty-five percent (45%) of the risk.

4.2 Reinsurance was on a “Policies Effective” basis, where each reinsurer agreed to pay its percentage share of any losses on any policy issued during the time period of the respective treaty, regardless of the date the loss occurred. Before receivership, SFAIC wrote basic limits private passenger auto liability under either a one-month policy form, or a six-month policy form. It is the inherent nature of non-standard private passenger auto liability to be a very high transactional volume, low margin insurance business.

4.3 After receivership, the SDR obtained an inception to date calculation of the amounts due under the reinsurance agreements. As of May 31, 2015, a total of \$11,104,245 is due SFAIC under the three treaties for paid losses and reserves.

4.4 The SDR sought to commute all of the reinsurance coverage for the estate based on the May 31, 2015 reporting because all policies had been cancelled by May 5, 2013; very few new claims are being filed with the guaranty associations; and the POC filing deadline was October 5, 2015. Absent settlement, the reinsurers were willing to pay only “paid claims,” not reserves. Accordingly, the SDR would have to incur the additional expense of periodically calculating the amounts owed under the treaties.

4.5 The proposed settlements enable the SDR to collect all amounts owed as of May 31, 2015 without any present value discount on reserves. Hannover further agrees to waive certain fees owed by SFAIC under the contracts, totaling approximately \$240,000, consisting of fees related to maintaining a letter of credit and interest on a funds withheld account. Pursuant to the agreements, the three reinsurers' POCs are also withdrawn with prejudice.

4.6 Nothing in this Application or any related agreement or transaction nor the relief sought herein shall affect, in any way, the Receiver's or the SDR's immunities from suit or 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 Permanent Injunction remain in affect unless expressly modified herein.

4.7 Nothing in this Application or any related agreement or transaction shall release, waive, and/or settle any reinsurance agreements with any parties other than Hannover, SCOR and GHS. The SDR expressly does not waive, release and/or settle any claims against any other parties.

## V. LEGAL AUTHORITY

5.1 The SDR is authorized to enter into the proposed reinsurance settlements pursuant to the terms of the Permanent Injunction and the provisions of TEX. INS. CODE § 443.154.

Specifically, TEX. INS. CODE § 443.154(y) provides:

(y) The liquidator may hypothecate, encumber, lease, sell, transfer, abandon or otherwise dispose of or deal with any property of the insurer, settle or resolve any claim brought by the liquidator on behalf of the insurer, or **commute or settle any claim of reinsurance under any contract or reinsurance**, as follows:

(1) if the property or claim has a market or settlement value that does not exceed the lesser of \$1 million or 10 percent of the general assets of the estate as shown on the receivership's financial statements, the liquidator may take action at the liquidator's discretion, provided that the receivership court may, upon petition of the liquidator, increase the threshold upon a showing that compliance with this requirement is burdensome to the liquidator in administering the estate and is unnecessary to protect

- the material interests of creditors;
- (2) in all instances other than those described in Subdivision (1), the liquidator may take the action only after obtaining approval of the receivership court as provided by Section 443.007;
  - (3) the liquidator may, at the liquidator's discretion, request the receivership court to approve a proposed action as provided by Section 443.007 if the value of the property or claim appears to be less than the threshold provided by Subdivision (1) but cannot be ascertained with certainty, or for any other reason as determined by the liquidator; and,
  - (4) after obtaining approval of the receivership court as provided in Section 443.007, the liquidator may, subject to Subsection (z), transfer rights to payment under ceding reinsurance agreements covering policies to a third-party transferee.

TEX. INS. CODE § 443.154(y) (emphasis added).

5.2 The SDR asserts that in its business judgment the proposed settlements are in the best interests of the estate and its creditors.

#### **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**

7.1 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.

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

8.1 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, the Special Deputy Receiver respectfully requests that this Court:

1. grant this Application;
2. authorize the SDR to execute such agreements as may be necessary to carry out this Court's authorization to the SDR; and
3. 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, L.L.P.,  
SPECIAL DEPUTY RECEIVER OF  
SANTA FE AUTO INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

I certify that on December 7, 2015, a true and correct copy of the foregoing SPECIAL DEPUTY RECEIVER'S APPLICATION FOR AUTHORITY TO ENTER INTO REINSURANCE SETTLEMENT AGREEMENTS 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 Order of Reference to Master entered by the District Court in this cause, the SDR's *Application for Approval of Reinsurance Settlement Agreements* is hereby set for written submission before the Special Master, Tom Collins, on December 21, 2015.

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)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

**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:

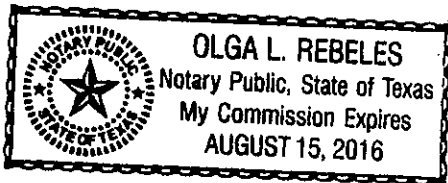
1. My name is Susan E. Salch. I am competent to make this affidavit. The statements of fact set forth herein are true and correct, and are within my personal knowledge.

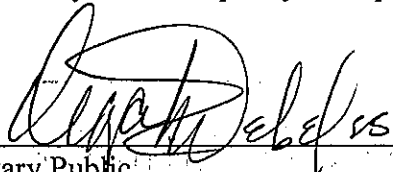
2. I am a partner in CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Santa Fe Auto Insurance Company (the "SDR" and "SFAIC" respectively). I am duly authorized to make this Certification and Affidavit on behalf of the SDR.

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 sub-contractors.

By:   
Susan E. Salch

**SUBSCRIBED AND SWORN TO BEFORE ME** on December 3, 2015, 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