

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

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

**APPLICATION TO APPROVE FIRST EARLY ACCESS DISTRIBUTION**

**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 First Early Access Distribution (“Application”).

**I. INTRODUCTION**

1.1 The SDR files this Application for authority to make a first early access distribution to the insurance guaranty associations affected by the AIC receivership (collectively, the “Affected Associations”). The SDR requests authority to distribute \$55,310,174 representing the amounts paid by the Affected Associations for Class 1 expenses and Class 2 loss claims as of August 31, 2019, less certain credits.

**II. AUTHORITY**

2.1 The SDR is authorized to file this Application pursuant to TEX. INS. CODE § 443.303, which provides for early access distribution to insurance guaranty associations with the approval of this Court.

2.2 The subject matter of this Application is referred to the Special Master appointed in this proceeding in accordance with Paragraph III of the *Order of Reference to Master* entered on March 21, 2018.

### III. BACKGROUND

3.1 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 Special Deputy Receiver of AIC.

3.2 On August 3, 2018, the SDR filed its *Report Pursuant to TEX. INS. CODE § 443.303(c)*, reporting that the SDR had not had sufficient time to calculate “distributable assets” at that time.

3.3 The SDR has determined that the estate has distributable assets and now seeks Receivership Court authority to make a first early access distribution to the Affected Associations.

### IV. STATUTORY REQUIREMENTS

4.1 Pursuant to TEX. INS. CODE § 443.303, the SDR shall apply to the Court for approval to make early access payments to a guaranty association having obligations in connection with the liquidation on at least an annual basis, if distributable assets are available. However, distributions are not limited to a set timetable and the SDR may, at its sole and absolute discretion, seek a distribution at any time that it determines that an estate has distributable assets. Early access payments are not limited to the claims and expenses paid to date by a guaranty association; however, the SDR may not make a distribution to a guaranty association in excess of all anticipated claims of the guaranty association. Deposits or assets advanced to a guaranty association are treated as advances against distributions to be made under TEX. INS. CODE § 443.302.

4.2 TEX. INS. CODE § 443.303(c) provides:

Within 120 days after the entry of an order of liquidation by the receivership court, and at least annually after the entry of the order, the liquidator shall apply to the receivership court for approval to make early access payments

out of the general assets of the insurer to any guaranty associations having obligations arising in connection with the liquidation or shall report that there are no distributable assets at that time based on financial reporting as required in Section 443.016. . . .

TEX. INS. CODE § 443.303(f) directs that an application for early access payments shall, based on the best information available to the SDR at the time, provide the following:

- (1) the amount reserved for the entire expenses of the liquidation through and after its closure and for distributions on claims, to the extent necessary and appropriate;
- (2) the computation of distributable assets and the amount and method of equitable allocation of early access payments to each of the guaranty associations; and
- (3) the most recent financial information filed with the National Association of Insurance Commissioners.

## **V. DISTRIBUTABLE ASSETS**

5.1 TEX. INS. CODE § 443.303(a) defines “distributable assets” as all general assets of the receivership estate, less the necessary and appropriate amounts reserved for expenses of liquidation through and after closure and distributions on claims other than those of the guaranty associations that fall within the priority classes of claims established in Section 443.301(b). As of August 31, 2019, the date of the SDR’s most recent financial report filed with the Receivership Court, the cash assets of the receivership estate were \$94,333,647. Copies of the August 31, 2019, Statement of Assets and Statement of Liabilities are attached as Exhibits 1-A and 1-B, respectively. The amount reserved for the estimated remaining entire expenses of the liquidation through and after its closing is approximately \$30 million dollars. After adjustment for expenses of liquidation, and establishing a prudent reserve, the SDR’s preliminary estimate for liquid “distributable assets” for the first early access distribution is approximately \$55.3 million.

5.2 The SDR’s preliminary estimate for “distributable assets” is based upon current projections of the receivership’s future activities. The receivership reserves may change substantially due to unforeseen factors beyond the SDR’s control.

## VI. GUARANTY ASSOCIATION CLAIMS

6.1 Pursuant to TEX. INS. CODE § 443.252(d), all Affected Associations report their expense and loss payments and reserves on a monthly basis through the Uniform Data Standards (“UDS”) protocol of the National Conference of Insurance Guaranty Funds. UDS is an electronic communication protocol that uses a series of defined computer file formats to permit guaranty associations to electronically report insolvency-related claims to receivers. In summary, as of August 31, 2019, the Affected Associations report as follows:

- a) Incurred (Paid) Class 1 claims of \$14,276,198;<sup>1</sup>
- b) Paid Class 2 claims of \$41,131,581; and
- c) Class 1 expense reserves of \$5,668,075 and Class 2 reserves of \$52,715,604, for a total of \$58,383,679 in reserves.

6.2 All reporting on behalf of the Affected Associations is subject to supplementation as additional expenses and claims payments are incurred. The paid claims and reserve numbers reported by the associations have not been verified or audited. They are used exclusively for making the calculations necessary for this Application. Neither this Application, nor any other early access application, constitutes an adjudication of the POCs filed or to be filed by any Affected Association.

6.3 At this time, the SDR seeks to make early access distributions based on the “Incurred” (or paid) expenses for Class 1 and on the paid Class 2 claims. It appears that estate assets will ultimately exceed the current and projected Class 1 claims of the Affected Associations so the SDR is able to make a distribution on Class 2 claims. The Schedule attached as Exhibit 2 sets out the paid Class 1 and paid Class 2 claims reported in the UDS reporting for each Affected

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<sup>1</sup> The SDR’s August 31, 2019 Statement of Liabilities, which reflected \$13,117,686 in paid Class 1 claims, inadvertently omitted amounts paid by the Alabama association.

Association as of August 31, 2019. As of the date of this Application, neither the New Mexico nor the North Carolina guaranty association has reported any expense or loss claim payments or reserves, so those associations will not receive distributions at this time.

6.4 An ancillary receiver for AIC was appointed in New Mexico and it recovered \$75,000 of the surety bond that was the statutory deposit in that state. As noted above, no distribution will be made to the New Mexico guaranty association in the first early access distribution. The New Mexico association will share in any future distributions to the extent that its recovery from the statutory deposit does not cover claims and expenses in that state.

6.5 The Louisiana Department of Insurance drew \$20,000 on the surety bond that was the statutory deposit in that state. Accordingly, the SDR proposes to deduct this amount from the Louisiana association's distribution.

6.6 Georgia holds a \$45,000 statutory deposit, and the SDR proposes to deduct this amount from the Georgia association's distribution by that amount.

6.7 Statutory deposits held by the insurance regulators in Arkansas (\$120,000), Nevada (\$200,000) and Tennessee (\$55,000) exceed the amounts paid to date by the associations in those states. Thus, no distributions will be made to those states' associations at this time. The state of North Carolina holds a \$309,683 statutory deposit. As noted above, its association has not reported any claims or expenses and will not receive a distribution at this time.

6.8 Section 443.303(i) provides: "Without the consent of the affected guaranty associations or an order of the receivership court, the liquidator may not offset the amount to be dispersed to any guaranty association by the amount of any specific deposit or any other statutory deposit or asset of the insolvent insurer held in that state unless the association has actually received the deposit." The SDR proposes to reduce the amounts distributed in the first early access distribution to the Arkansas, Nevada and Tennessee associations by the amounts held by

or withdrawn by insurance regulators in their respective states. Each association will share in any future distributions to the extent that its recovery from the statutory deposit does not cover claims and expenses in that state. The SDR moves the Court to order that the SDR may offset the amounts to be dispersed to these associations. To the extent that any deposits are not transferred to an association, the SDR will make additional early access payments, out of future distributions, to the extent necessary to equalize the distributions between all associations.

## **VII. PROPOSED DISTRIBUTION**

7.1 The SDR proposes to distribute \$55,310,174 from the receivership estate as the first early access distribution to the Affected Associations in the amounts set out on Exhibit 2. The SDR agrees to make the distribution within thirty (30) business days after the date the Order is entered by the Receivership Court, unless a motion for new trial or an appeal is filed, or an order staying the distribution is entered and not yet expired.

## **VIII. NOTICE**

8.1 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 including the Affected Associations, by e-mail and, as noted, by mail or overnight delivery to certain state and federal agencies. Further, the Affected Guaranty Associations have waived the thirty (30) days' actual notice of the filing of the application required by TEX. INS. CODE § 443.303(e).

8.2 The Application is set for submission before the Special Master on November 25, 2019.

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

9.1 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.

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

10.1 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 Access Insurance Company, respectfully prays that this Court enter an order:

1. Granting the Application in all respects;
2. Authorizing the Special Deputy Receiver to distribute \$55,310,174 from the assets of the receivership estate to the Affected Associations as the first early access distribution pursuant to TEX. INS. CODE § 443.303 as set out in Exhibit 2;
3. Ordering that the draw on the surety bond held as the statutory deposit in Louisiana shall be applied as a credit against the early access distribution for that state's association;
4. Ordering that the statutory deposit held by Georgia shall be applied as a credit against the early access distribution for that state's association;
5. Authorizing the SDR to reduce the amounts distributed in the first early access distribution to the Arkansas, Nevada, and Tennessee associations by the amounts held by or withdrawn by insurance regulators in their respective states and treated as advances against any distributions to be made to those states' insurance guaranty associations under TEX. INS. CODE § 443.303;
6. Authorizing the SDR to make the early access distribution within thirty (30) business days after the date the Order is entered by the Receivership Court, unless

a motion for new trial or an appeal is filed, or an order staying the distribution is entered and not yet expired;

7. Ordering the Affected Guaranty Associations to return to the Special Deputy Receiver any amount of the early access distribution that may be required to pay secured creditors and other claims as provided in TEX. INS. CODE § 443.303(g);
8. Authorizing the Special Deputy Receiver to take any actions necessary to implement the Order;
9. Finding that the Order constitutes a final order fully resolving all issues relating to this Application, provided that this Court shall retain jurisdiction to issue further orders pursuant to TEX. INS. CODE Chapter 443; and
10. Granting the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

FULLER LAW GROUP

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

Christopher Fuller

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**Attorneys for CANTILO & BENNETT, LLP,  
Special Deputy Receiver of  
Access Insurance Company**



## CERTIFICATE OF SERVICE

I certify that on November 8, 2019, a true and correct copy of this Application was served pursuant to TEX. INS. CODE § 443.007(d) and § 443.303(e), the Order of Reference, and the Court's order requiring electronic service on the following by electronic mail, except as specifically 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 to Approve First Early Access Distribution* is hereby set for written submission before the Special Master, Tom Collins, on **November 25, 2019**.

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:

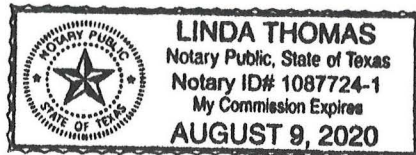
1. "My name is Susan E. Salch. I am of sound mind, capable of making this affidavit, and am competent to testify to the matters contained in this affidavit.
2. I am a partner in CANTILO & BENNETT, L.L.P., the Special Deputy Receiver of Access Insurance Company (the "SDR" and "AIC" respectively), I am duly authorized to make this Affidavit on behalf of the SDR.
3. I have reviewed the Application for Approval of First Early Access Distribution 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 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 agency, and are held by the Special Deputy Receiver in its official capacity."
5. Further affiant sayeth not.

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

**SUBSCRIBED AND SWORN TO BEFORE ME** on November 8, 2019, by Susan E. Salch, partner in CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Access Insurance Company

*Linda Thomas*

Notary Public



# **EXHIBIT 1-A**

R-559

**Access Insurance Co  
Statement of Net Assets**

**For the Period Ending  
08/31/19**

Line		08/31/19
<b>Cash</b>		
1	Cash	
	Cash - Unrestricted	94,333,647
	APF Funds (Loan proceeds)	
<b>Investments</b>		
2	Short-Term Investments	10,450,000
3	Bonds	1,893,597
4	Stocks - Preferred & Common	
5	Investments in Subsidiaries, Controlled or Affiliated Entities	
6	Mortgage Loans	
7	Real Estate	
8	Policy Loans	
9	Other Invested Assets	
<b>Restricted Assets</b>		
10	Statutory Deposits	729,683
11	Funds held by or deposited with Reinsured Companies	
12	Restricted - Other	
	Collateral Assignment - Suntrust Bank Certificate of Deposit	
	Funds Held in Trust for Others-Allianz & Partner Re	12,802,460
	Funds Held-Premium Collected on Cancelled Policies	271
<b>Reinsurance Receivable</b>		
13	Reinsurance Recoverables on Paid Losses & LAE (net of allowance)	5,182,093
14	Reinsurance Recoverables on Unpaid Losses & LAE (net of allowance)	114,672,074
15	Reinsurance Recoverables on UEP & Contingent Commissions	
<b>Other Receivables</b>		
16	Salvage & Subrogation Recoveries	
17	Premiums Due from Agents & Policyholders	
18	Receivable from Parents, Subsidiaries & Affiliates	
19	Receivable from Guaranty Associations - Early Access Payments	
20	Other Receivables	
	Income and Premium Tax Receivable	118,630
<b>Other Assets</b>		
21	FF&E	
22	Other Assets	
	<b>Total Assets</b>	<b>240,182,455</b>

**Exhibit  
1-A**



# **EXHIBIT 1-B**

R-559

Access Insurance Co  
Statement of Net Liabilities

For Period Ending  
08/31/19

Line		08/31/19
1	Secured Claims	
2	APF Loan	
3	Special Deposit Claims	
<b>Administrative Claims - Class 1</b>		
4	Administrative Claims - State/Receiver	
	Special Deputy Receiver, Subcontractors Fees & Expenses	213,524
	Liquidation Oversight	11,432
	Special Master's Fees	0
5	Administrative Claims - Guaranty Assns	
	Administrative Expense Paid	6,414,548
	Administrative Expense Reserves	
6	LAE - Guaranty Assns	
	LAE Paid	6,703,138
	LAE Reserves	5,668,075
<b>Policy Claims - Class 2</b>		
7	Loss Claims - Guaranty Assns	
	Loss Claims Paid	41,131,581
	Loss Claims Reserves	52,715,604
8	Loss Claims - Other	
	Other Loss Claims Paid	
	Other Loss Claims Reserves	182,190,324
9	LAE - Other	
10	Unearned & Advance Premium Claims - GA	19,073,684
11	Unearned & Advance Premium Claims - Other	
<b>Other Liabilities</b>		
12	Class 3 Claims	
13	Class 4 Claims	
14	Class 5 General Unsecured Creditor Claims	15,180,902
15	Class 5 Reinsurance Related Unsecured Claims	128,412,291
16	Class 6 Claims	894,894
17	Class 7 Claims	
18	Class 8 Claims	
19	Class 9 Claims	
20	Class 10 Interest	
21	Class 11 Claims	
22	Other Liabilities	
	Funds Held in Trust for Others-Allianz & Partner Re	12,802,460
	Funds Held-Premium Collected on Cancelled Policies	271
	<b>Total Liabilities</b>	471,412,728
23	Total Equity/(Deficit) Excess (Deficiency) of Assets over Liabilities	(231,230,273)
	<b>Total Liabilities &amp; Equity</b>	240,182,455

**Exhibit  
1-B**

Administrative Report  
Department of Health

Page 1

Item	Description	Quantity	Unit	Value
101	Medical Supplies	100	Box	100.00
102	Pharmaceuticals	50	Box	50.00
103	Diagnostic Equipment	1	Unit	1000.00
104	Medical Personnel	10	Person	1000.00
105	Medical Facilities	1	Unit	5000.00
106	Medical Research	1	Project	2000.00
107	Medical Education	1	Program	1000.00
108	Medical Publications	100	Copy	100.00
109	Medical Conferences	1	Event	500.00
110	Medical Journals	100	Copy	100.00
111	Medical Books	100	Copy	100.00
112	Medical Films	100	Copy	100.00
113	Medical Lectures	100	Session	100.00
114	Medical Seminars	100	Session	100.00
115	Medical Workshops	100	Session	100.00
116	Medical Conferences	100	Session	100.00
117	Medical Exhibitions	100	Session	100.00
118	Medical Demonstrations	100	Session	100.00
119	Medical Simulations	100	Session	100.00
120	Medical Role-plays	100	Session	100.00
121	Medical Case Studies	100	Session	100.00
122	Medical Decision-making	100	Session	100.00
123	Medical Problem-solving	100	Session	100.00
124	Medical Teamwork	100	Session	100.00
125	Medical Communication	100	Session	100.00
126	Medical Leadership	100	Session	100.00
127	Medical Ethics	100	Session	100.00
128	Medical Law	100	Session	100.00
129	Medical History	100	Session	100.00
130	Medical Culture	100	Session	100.00
131	Medical Values	100	Session	100.00
132	Medical Attitudes	100	Session	100.00
133	Medical Beliefs	100	Session	100.00
134	Medical Opinions	100	Session	100.00
135	Medical Attitudes	100	Session	100.00
136	Medical Beliefs	100	Session	100.00
137	Medical Opinions	100	Session	100.00
138	Medical Attitudes	100	Session	100.00
139	Medical Beliefs	100	Session	100.00
140	Medical Opinions	100	Session	100.00

# **EXHIBIT 2**

ACCESS INSURANCE COMPANY IN RECEIVERSHIP									
EARLY ACCESS CALCULATION - GA ADMIN, LAE EXP AND LOSS CLAIMS PAID									
AS OF AUGUST 31, 2019									
State	Reporting From	Reporting To	GA Admin Claims Paid (Class 1)	GA LAE Expense Payments (Class 1)	GA Loss Claims Payments (Class 2)	Total Paid Through August 31, 2019 Columns (A)+(B)+(C)	Statutory Deposits Held by State	Payments via draw down of statutory deposit bonds	Recommended Early Access Payments-Sum of Columns (D)-(E)-(F)
AL	20180501	20190831	\$1,158,511.99	\$320,242.00	\$2,529,781.01	\$4,008,535.00			\$4,008,535.00
AR	20181001	20190630	\$560.54	\$1,705.00	\$2,628.59	\$4,894.13	\$120,000.00		\$0.00
AZ	20180101	20190630	\$10,621.51	\$33,294.35	\$61,647.85	\$105,563.71			\$105,563.71
CA	19000101	20190731	\$5,725,947.62	\$4,782,253.44	\$30,192,777.00	\$40,700,978.06			\$40,700,978.06
GA	19000901	20190731	\$154,905.12	\$56,193.49	\$353,885.54	\$564,984.15	\$45,000.00		\$519,984.15
IN	20180401	20190731	\$8,740.86	\$0.00	\$0.00	\$8,740.86			\$8,740.86
LA	20180101	20190831	\$33,122.81	\$22,355.89	\$151,174.63	\$206,653.33		\$20,000.00	\$186,653.33
MS	20180101	20190630	\$14,501.66	\$42,243.67	\$26,807.01	\$83,552.34			\$83,552.34
NC	Nothing Reported to Date		\$0.00	\$0.00	\$0.00	\$0.00	\$309,682.71		\$0.00
NM	Nothing Reported to Date		\$0.00	\$0.00	\$0.00	\$0.00		\$75,000.00	\$0.00
NV	20180101	20190831	\$10,770.74	\$2,381.50	\$0.00	\$13,152.24	\$200,000.00		\$0.00
OK	20180331	20190831	\$17,677.04	\$8,014.04	\$109,410.55	\$135,101.63			\$135,101.63
PA	20180401	20190731	\$254,177.29	\$1,277,684.78	\$5,834,554.68	\$7,366,416.75			\$7,366,416.75
SC	20180401	20190630	\$162,570.63	\$152,371.58	\$1,868,914.36	\$2,183,856.57			\$2,183,856.57
TN	20180701	20190731	\$13,473.82	\$1,085.00	\$0.00	\$14,558.82	\$55,000.00		\$0.00
TX	20180401	20190831	\$7,478.79	\$3,313.16	\$0.00	\$10,791.95			\$10,791.95
	Totals as of August 31, 2019		\$7,573,060.42	\$6,703,137.90	\$41,131,581.22	\$55,407,779.54	\$729,682.71	\$95,000.00	\$55,310,174.35
						Percentage of Unrestricted Cash			58.63%
			All amounts per UDS Reports reported as of August 31, 2019 including Alabama GA Admin Claims Paid, which was inadvertently omitted from original schedule.						
						Unrestricted Cash Balance at 8/31/19			\$94,333,647.00
						Remaining Cash after EA Payments			\$39,023,472.65

