

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 FOR APPROVAL  
OF SETTLEMENT AGREEMENT [DIRECTORS AND OFFICERS]**

TO THE HONORABLE JUDGE OF SAID COURT:

CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Access Insurance Company (the “SDR” and “AIC” respectively), files its *Application for Approval of Settlement Agreement [Directors and Officers]* (the “Application”).

**I. BACKGROUND**

1.1. The SDR requests the Court to approve a confidential settlement with AIC’s former directors and officers and certain related parties. The settlement agreement (the “Agreement”) resolves the SDR’s claims against these parties currently pending in Cause No. D-1-GN-19-000869, *CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Access Insurance Company, Inc. v. Access Insurance Holdings, LLC, et al.*, in the 53<sup>rd</sup> Judicial District Court, Travis County, Texas (the “Lawsuit”).

1.2. The SDR is authorized to file this Application pursuant to TEX. INS. CODE §§ 443.007(c) and 443.154(y), which provide for this Court’s approval of certain settlements.

**II. DOCUMENT FILED UNDER SEAL**

2.1 As a condition of the settlement, the SDR agreed to keep the terms of the Agreement confidential. Accordingly, the SDR files the Agreement (Exhibit 1) under seal. The *Insurer*

*Receivership Act* expressly provides that the SDR may submit certain records under seal. See TEX.

INS. CODE § 443.007(c):

The receiver shall file an application explaining the proposed action and the basis of the proposed action. The receiver may include any evidence in support of the application. If the receiver determines that any documents supporting the application are confidential, the receiver may submit them to the receivership court under seal for in camera inspection.

2.2 The SDR has determined that the Agreement should be kept confidential. The settling defendants insisted that the terms of the settlement remain as confidential before they would agree to settle. The SDR submits that publishing the document would cause the settling defendants to not agree to its terms, might deter the future willingness of parties to settle other claims with the SDR and would provide the remaining defendants and other responsible third parties with information regarding the SDR's litigation and settlement strategy.

### **III. JURISDICTION**

3.1. On March 13, 2018, the Court entered an *Agreed Order Appointing Liquidator, Permanent Injunction, and Notice of Automatic Stay* appointing the Texas Commissioner of Insurance as Liquidator of AIC. Effective March 13, 2018, the Texas Commissioner of Insurance, as Liquidator, designated CANTILO & BENNETT, L.L.P. as SDR of AIC.

3.2. This Court has jurisdiction over the subject matter of this Application and of the parties herein 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); because it resolves disputes involving property of the estate pursuant to TEX. INS. CODE § 443.005; because this is a civil proceeding arising under and related to a delinquency proceeding under Chapter 443 of the Texas Insurance Code (the "Code"); and because the exercise of jurisdiction over any non-resident party 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. The proposed terms of the Agreement have been approved by the Liquidator. The subject matter of this Application has been referred to the Special Master.

#### **IV. BACKGROUND**

4.1 The SDR filed suit against the former directors and officers of AIC (Michael McMenamin, Daniel Lazarek, Rhonda Gale Sloan, Cullen Christie Wilkerson, Jr., Michael Henry Meadows, Jason Thorpe Jones, Donald Howard Johnson II, Andromeda Maria Thompson, and Teofilo Sioson Vizon) (collectively, the “D&O Defendants”) and numerous other defendants in the Lawsuit. Following negotiations, the SDR and the D&O Defendants have agreed to resolve all claims by and between themselves and certain other parties.

#### **V. TERMS OF THE AGREEMENT**

5.1 The specific terms and details of the Agreement are confidential. Accordingly, the Agreement is filed under seal. The following summarizes the major terms of the Agreement but does not vary them to the extent of any inconsistency between the Application and the Agreement. In summary, the Agreement provides that the SDR and the D&O Defendants agree to settle all claims and for all defense costs to be paid. The D&O Defendants’ insurance carrier shall pay the settlement amount to the SDR in exchange for the dismissal with prejudice of the SDR’s claims against them and defendants Access Insurance Holdings, LLC (“AIH”), Access Holdco, LLC (“AH”), the respective officers, directors, members and managers of AIH and AH, the respective insurers of the D&O Defendants, AIH and AH, and non-defendant Turning Leaf Group, Inc. (collectively the “D&O Released Parties”). The settlement expressly excludes all remaining defendants and other potential parties and their respective insurers. The D&O Released Parties further agree to waive any objection to the turnover of AIC business records currently held by one

or more of the alleged successors to Access Holdco Management, L.L.C. to the SDR, without waiving any privileges which may protect said records from disclosure, and agree that any disputes regarding the D&O Released Parties' assertion of any applicable privilege shall be resolved in this Court.

5.2 The SDR asserts that, the proposed Agreement is in the best interests of the estate and its policyholders and creditors because, among other reasons, it allows the SDR to resolve unliquidated claims without the further expense, uncertainty and delay of litigation.

## **VI. NOTICE**

6.1 The SDR has served this Application to all known parties in interest, including all affected guaranty associations, 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 government agencies.

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

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

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

8.1 All pleadings filed in response to this Application or regarding this estate 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., Special Deputy Receiver of Access Insurance Company, prays that this Court

1. Grant this Application;

2. Approve the terms of the Agreement;
3. Authorize the SDR to carry out the terms of the Agreement;
4. Order that the Agreement be filed and maintained under seal; and
5. 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 Access Insurance Co.**

## CERTIFICATE OF SERVICE

I certify that on August 14, 2020 the foregoing Application served pursuant to the Court's order requiring electronic service, the Texas Rules of Civil Procedure and TEX. INS. CODE CHAPTER 443.007(d) 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 for Approval of Settlement Agreement [Directors and Officers]* is hereby set for written submission before the Special Master, Tom Collins, on August 31, 2020.

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

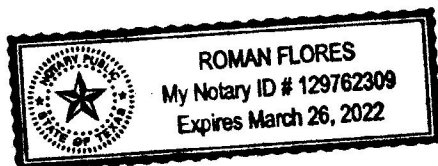
BEFORE ME, the undersigned authority appeared Susan E. Salch, who after being by me duly sworn, stated the following under oath:

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 Settlement Agreement [Directors and Officers]* 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 insurer, and are held by the Special Deputy Receiver in its official capacity."

By:   
Susan E. Salch

**SUBSCRIBED AND SWORN TO BEFORE ME** on August 14, 2020, by Susan E. Salch, partner in CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Access Insurance Company

  
Notary Public



### 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  
Bar No. 07515500  
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Envelope ID: 45403528  
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