

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>	§ §	261st JUDICIAL DISTRICT

**ORDER GRANTING APPLICATION FOR APPROVAL
OF SETTLEMENT AGREEMENT [DIRECTORS AND OFFICERS]**

On this date, the Court heard the *Application for Approval of Settlement Agreement [Directors and Officers]* (the “Application”) filed by CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Access Insurance Company (the “SDR” and “AIC” respectively). The Special Deputy Receiver appeared by and through its counsel.

Having considered the Application, the Court finds as follows:

1. The *Order of Reference to Master* (“Order of Reference”) provides that motions filed pursuant to TEX. INS. CODE § 443.154 are referred to the Special Master appointed in this proceeding;
 2. Notice of the Application was provided in accordance with TEX. INS. CODE §443.007 (d) and the *Order of Reference to Master*;
 3. No objections to the Application were filed;
 4. The Texas Property and Casualty Insurance Guaranty Association filed its acknowledgement and waiver;
 5. The Court has jurisdiction over the Application and the parties affected hereunder;
- and
6. The SDR’s Application should be granted as set out in this Order.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows: (Capitalized terms in this Order shall have the same meanings ascribed to them in the Application and the Settlement Agreement and Mutual Releases (the “Agreement”)):

1. The Application is GRANTED except that the Agreement (Exhibit 1 to the Application), as redacted, is not filed under seal.
2. The terms of the Agreement are approved.
3. The SDR is authorized to carry out the terms of the Agreement.
4. This order constitutes a final order fully resolving all issues relating to the Application.

SIGNED: October 6, 2020.



TIM SULAK, JUDGE PRESIDING

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 ST JUDICIAL DISTRICT

EXHIBIT 1

**TO SPECIAL DEPUTY RECEIVER'S APPLICATION FOR
APPROVAL OF SETTLEMENT AGREEMENT
[DIRECTORS AND OFFICERS]**

Respectfully submitted,

FULLER LAW GROUP

By: /s/Christopher Fuller

Christopher Fuller

Texas Bar No. 07515500

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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 October 6, 2020 the foregoing document was 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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Special Master's Clerk
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Austin, TX 78714-9104

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Christopher Fuller

EXHIBIT 1

Execution Version-08/03/20

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is entered into between CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Access Insurance Company (the "SDR" and "Access" respectively), (collectively "Plaintiff"), on the one hand, and 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"), Access Insurance Holdings, LLC ("AIH"), and Access Holdco, LLC ("AH"), on the other hand. Plaintiff, the D&O Defendants, AIH, and AH are referred to collectively as the "Parties."

RECITALS

WHEREAS, Access is a defendant in a delinquency proceeding under Chapter 443 of the Texas Insurance Code proceeding styled Cause No. D-1-GN-18-0001285, *The Texas Department of Insurance v. Access Insurance Company*, in the 261st District Court of Travis County, Texas (the "Receivership Proceeding").

WHEREAS, the Parties are litigants in a lawsuit styled 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 53rd Judicial District Court, Travis County, Texas (the "Lawsuit");

WHEREAS, Plaintiff has asserted multiple causes of action in the Lawsuit and allegations of wrongdoing in correspondence dated March 17, 2020 (collectively the "Claims") against the D&O Defendants, AIH, and AH on behalf of Access and its policyholders and creditors;

WHEREAS, the Parties have decided to enter into this Agreement in order to resolve Plaintiff's Claims and to avoid the uncertainties, the substantial expense, and other burdens inherent in prosecuting and defending the Lawsuit;

WHEREAS, Continental Casualty Company ("Continental") issued the following insurance policies to AH: (1) Management Liability Policy No. 596643334 for the Policy Period of December 23, 2015 to December 23, 2021; and (2) Management Liability Policy No. 287517073 for the Policy Period of June 27, 2017 to June 27, 2018, with a Run-Off Period of June 27, 2018 to June 27, 2019, for AIC and a Run-Off Period of June 27, 2018 to June 27, 2021, for "Insureds", as that term is defined in the AIC Policies, other than AIC (collectively, the "AH D&O Policies") and which Continental acknowledges provide for payment of Loss (as that term is defined in the AH D&O Policies) arising out of and in settlement of Plaintiff's Claims;

WHEREAS, Continental and Columbia Casualty Company (collectively, the "Insurers") issued, respectively: (1) Management Liability Policy No. 596644144 to ACP Insurance Holdings, Inc.; and (2) E&O Solutions Policy No. 596644130 to ACP Insurance Holdings, Inc. (collectively, the "ACP Policies") and which Insurers acknowledge provide for payment of Loss (as that term is defined in the ACP Policies) arising out of and in settlement of Plaintiff's Claims;

WHEREAS, the Insurers have acknowledged coverage under the AH D&O Policies and the ACP Policies, subject to certain reservations of rights, for the D&O Defendants, AIH and AH, who and which are defendants in the Lawsuit;

WHEREAS, the Parties stipulated, and the court entered on January 21, 2020, an agreed order in the Receivership Proceeding for the advancement of a sum certain of defense costs from the AH D&O insurance policies (the "Original Defense Costs Stipulation");

WHEREAS, the Parties desire to modify the Original Defense Costs Stipulation by stipulating to and obtaining entry of a modified order in the Receivership Proceeding which comports with the Parties' Rule 11 Agreement;

WHEREAS, the Insurers have consented to the D&O Defendants', AIH's, and AH's settlement of Plaintiff's Claims and agreed to fund all incurred defense costs, as that term is defined in the AH D&O Policies and the ACP Policies ("Defense Costs"), and the settlement amount pursuant to the allocation set forth on Exhibit 1 (the "Allocation") to the Parties' Rule 11 Agreement, which is attached to this Agreement as Exhibit A.

WHEREAS, entry into this Agreement is not an admission of liability by the D&O Defendants, AIH, and AH;

NOW, THEREFORE, for and in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, it is agreed, by and among the undersigned, that Plaintiff's Claims as to the D&O Defendants, AIH, AH, the respective officers, directors, members, and managers of AIH and AH, and the respective Insurers of the D&O Defendants, AIH, and AH, shall be settled with all costs to defend the D&O Defendants, AIH, and AH paid, and Plaintiff's Claims shall be dismissed with prejudice on the following terms.

TERMS

1. Payment. The D&O Defendants shall pay a total of \$9,600,000 (the "Settlement Payment") to the SDR. The Settlement Payment shall be made within ten (10) business days of the date the Receivership Court order approving the settlement becomes final (30 days after its entry) unless a timely notice of appeal or motion for new trial is filed, at which time payment must be made within ten (10) business days of the dismissal, denial, or withdrawal of the motion for new trial or appeal. The Settlement Payment shall be made on the later of the aforementioned occurrences by four checks made payable per the instructions to be provided by SDR.

2. Voluntary Dismissal with Prejudice. Within five (5) business days following the "Full Funding" of the Settlement Payment, Plaintiff shall file a stipulation of dismissal of the Lawsuit, with prejudice, as to the D&O Defendants, AIH, and AH. The term "Full Funding" as used in this Agreement shall mean the date that the SDR's bank(s) credit the SDR's account(s), with no holds, with the entire amount of the Settlement Payment.

3. Approval by the Receivership Court. Approval of this Agreement, including all exhibits and attachments hereto, by the Receivership Court is a condition precedent to the Parties' duty to perform their obligations under this Agreement. "Approval" for purposes of this paragraph shall mean a decision of the Receivership Court that authorizes use of the AH D&O policies' proceeds to fund the Settlement Payment and to pay Defense Costs incurred by the D&O Defendants, AIH, and AH in accordance with the Allocation and that authorizes Plaintiff to proceed with the performance of Plaintiff's obligations under this Agreement to accept the Settlement Payment as part of the settlement and resolution of Plaintiff's Claims.

RELEASES AND COVENANTS

4. Release by Plaintiff. Effective upon the Full Funding of the Settlement Payment, Plaintiff and all of Plaintiff's respective representatives, predecessors, successors, assignees and assignors release and forever discharge (a) the D&O Defendants; (b) AIH; (c) AH; (d) the respective officers, directors, members, managers of AIH and AH; and (e) the Insurers of the D&O Defendants, AIH, and AH (collectively, the "D&O Released Parties"), from any and all actual or potential claims, liabilities, actions, demands, rights, damages, costs, expenses, judgments, attorneys' fees, executions on account thereof, and causes of action of any kind and nature that now exist, or might exist in the future, whether known or unknown, whether anticipated or unanticipated, and whether absolute or contingent that have been, were or could have been asserted by the Plaintiff against the D&O Released Parties. In addition, upon receipt of the Settlement Payment in accordance with Paragraph 1 of this Agreement, Plaintiff and all of Plaintiff's respective representatives, predecessors, successors, assignees and assignors release and forever discharge any interest, right or claim to the AH D&O Policies and do hereby acknowledge and agree that the Insurers may use the residual proceeds from the AH D&O Policies to pay Loss (as that term is defined in the AH Policies) for other covered claims.

5. Release by D&O Released Parties. Effective upon the D&O Defendants', AIH's, and AH's dismissal from the Lawsuit with prejudice, as referenced in paragraph 2 above, the D&O Released Parties and all of their representatives, predecessors, successors, assignees and assignors release and forever discharge Plaintiff and Plaintiff's present and former officers, directors, employees, agents, insurers, attorneys, representatives, shareholders, predecessors and successors in interest, affiliates, and their parents, subsidiaries, and affiliated corporations, and the officers, directors, employees, agents, members and shareholders of their parents, subsidiaries, and affiliated corporations, and all other related persons and entities of and from any and all actual or potential claims, liabilities, actions, demands, rights, damages, costs, expenses, judgments, attorneys' fees, executions on account thereof, and causes of action of any kind and nature of the D&O Released Parties that now exist, or might exist in the future, whether known or unknown, whether anticipated or unanticipated, and whether absolute or contingent that have been, were or could have been asserted by the D&O Released Parties against Plaintiff.

6. Limitation of Releases. Notwithstanding any provision to the contrary that otherwise may be contained in this Agreement, the Parties acknowledge that this Agreement does not release the Plaintiff's actions, causes of action, claims, counterclaims, debts, demands, liabilities, losses and damages against any party named in the Lawsuit other than the D&O Released Parties. The Plaintiff does not release any insurer and such insurer(s), including the Insurers, do not release Plaintiff with respect to any coverage afforded to a party or individual other than the

D&O Released Parties. The Plaintiff does not release any actions, causes of action, claims, counterclaims, debts, demands, liabilities, losses and damages against the following: Altamont Capital Partners; ACP Insurance Intermediate, LLC; ACP Insurance Holdings, Inc.; ACP Insurance Holdings, LP; ACP Insurance, LLC; Access Holdco Management, LLC; ACP Finance, Inc.; Embark Insurance, LLC; Embark Holdco Management, LLC; Embark Insurance Intermediate, LLC; Embark Corporate Services, LLC; Embark General Insurance Adjusters, LLC; Embark General Insurance Agency, LLC; ACPI (Assignment for the Benefit of Creditors), LLC; ACPAHM (Assignment for the Benefit of Creditors), LLC; AGIA (Assignment for the Benefit of Creditors); LLC, ACS (Assignment for the Benefit of Creditors), LLC; AGIAC (Assignment for the Benefit of Creditors), LLC; APF (Assignment for the Benefit of Creditors), LLC; Access General Agency of Arizona, LLC; Access General Agency of Pennsylvania, LLC; Keoni Schwartz; Sam Gaynor; or their predecessor, successor, and affiliated entities except for the D&O Released Parties.

7. Use of Proceeds from ACP Policies. The use of proceeds from the ACP Policies to pay Defense Costs and the Settlement Payment does not constitute a waiver or limitation of the right of any party related to the ACP Policies.

8. Business Records. The Parties have entered into a separate Irrevocable Consent and Non-Waiver Agreement relating to potentially privileged business records, which is attached to this Agreement as Exhibit B. The confidentiality provisions of this Agreement do not apply to the Irrevocable Consent and Non-Waiver Agreement.

9. No Indemnification. The Parties agree that the SDR will not indemnify or hold harmless any D&O Released Party from third party claims, causes of action, or demands (whether arising from agreement, statute, or other law) and that none of the D&O Released Parties, individually or collectively, will indemnify or hold harmless the SDR from third party claims, causes of action, or demands (whether arising from agreement, statute, or other law).

10. Non-disparagement. The Parties agree not to make any public statement, including but not limited to issuance of a press release, about the settlement and release of Plaintiff's Claims against the D&O Released Parties. If asked about the settlement, the Parties shall respond as follows: "The case has been resolved to the satisfaction of all parties." Notwithstanding the foregoing, nothing in this paragraph shall be construed to prejudice, limit or otherwise have any application to pleadings filed by Plaintiff, argument in court by Plaintiff's counsel, testimony elicited by Plaintiff, testimony given by any Party in the Lawsuit, evidence presented by Plaintiff in connection with its prosecution of the Lawsuit, other legal proceedings in connection with the Access estate or any other lawsuit, action, arbitration or other proceeding which Plaintiff brings to assert rights or recover damages related to Access or document produced by a D&O Released Party when requested or commanded by statute or rule of civil procedure. The SDR may make all required filings with, and disclosures to, the Commissioner of Insurance in his capacity as Liquidator of Access, to the Texas Department of Insurance, and to the Receivership Court.

MISCELLANEOUS PROVISIONS

11. Confidentiality. This Agreement and its terms, including all exhibits and attachments hereto, shall be treated as strictly confidential and shall not be disclosed—directly or indirectly—to any person or entity except (i) the D&O Released Parties’ respective board members, officers, directors, managers, members, insurers, reinsurers, accountants, auditors, attorneys, financial advisors or bankers; government regulators; licensing boards; or licensing authorities to the extent necessary for performance of their responsibilities; (ii) the Commissioner of Insurance in his capacity as Liquidator of Access, the Texas Department of Insurance, the Receivership Court, and the SDR’s accountants, auditors, attorneys, financial advisor(s) or bankers to the extent necessary for performance of their responsibilities; (iii) as required by law or response to lawful process seeking disclosure after at least 7 business days notification to the other Parties; (iv) in connection with proceedings seeking to enforce this Agreement; (v) to any other insureds under the Policies issued by the Insurers so long as such insured agrees to keep this Agreement and its terms confidential or (vi) with the prior written consent of each other Party.

12. No Third-Party Beneficiaries. The Parties agree that there are no third-party beneficiaries to this Agreement but for the non-signatory D&O Released Parties.

13. Covenant not to sue. Effective upon the Full Funding of the Settlement Payment to Plaintiff and the dismissal of the Lawsuit with prejudice as to the D&O Defendants, AIH, and AH, the Parties and their respective successors, assigns, managers, members, officers, directors, employees, agents, insurers, and other representatives, hereby covenant and agree to forever refrain and desist from continuing to prosecute, appeal, institute, or assert against any of the D&O Released Parties or the Plaintiff, any actual or potential claim, cause of action, liability, demand, proceeding, action, arbitration or lawsuit of whatever kind or nature, known or unknown, either directly or indirectly based upon or relating to the Claims.

14. Proofs of Claims. Any and all Proofs of Claims (“POCs”) filed with the SDR by any of the D&O Released Parties shall be deemed withdrawn with prejudice. The D&O Released Parties waive any right to appeal such withdrawal, and the SDR shall have no further obligation to process any such POCs. The D&O Released Parties agree that they shall not file any future POCs with the SDR.

15. Mutual Duty to Cooperate on Effectuation. The Parties promise to cooperate in good faith and to take all actions reasonably necessary to effectuate this Agreement.

16. Entire Agreement. This Agreement, including all exhibits and attachments hereto, is the entire agreement among the Parties. This Agreement cannot be altered, modified, or amended except through a writing executed by all Parties.

17. Severability. In the event that any part of this Agreement is found to be illegal, in violation of public policy, or for any reason unenforceable, such finding shall not invalidate any other part of this Agreement.

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18. Execution of Agreement. Each Party warrants and represents that it has the authority to execute this Agreement and that the terms of this Agreement have been read completely, are fully understood, and accepted voluntarily.

19. Effectiveness of Agreement. This Agreement and the Parties' obligations hereto shall become effective immediately following execution by all of the Parties.

20. Construction of Agreement. All Parties have participated in the drafting of this Agreement, and any ambiguity should not be resolved by virtue of a presumption in favor of any party. This Agreement was reached at arm's-length by parties represented by counsel.

21. Executed in Counterparts. This Agreement may be executed in counterparts, all of which shall be considered the same as if a single document had been executed, and shall become effective when such counterparts have been signed by each of the Parties and delivered to each of the other Parties.

22. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Texas without giving effect to any conflict of law provisions that would cause the application of the laws of any jurisdiction other than Texas.

23. Parties to Bear Own Costs, Attorney's Fees and Expenses. Except as otherwise expressly set forth in paragraph 25 and in accordance with the Modified Stipulation and Agreed Order Regarding the Payment of Loss Under Insurance Policies to be entered in the Receivership Court, the Insurers for each Party hereto will pay all fees, costs and expenses it, he or she incurred in connection with the Lawsuit, including fees, costs and expenses incident to its, his or her negotiation, preparation or compliance with this Agreement, and including any fees, expenses and disbursements of its, his or her counsel, accountants, and other advisors.

24. Assignees and Successors. This Agreement is and shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

25. Notice. All notices required or permitted under or pertaining to this Agreement shall be in writing, delivered by any method providing proof of delivery, be deemed to have been given on the date of receipt, and be delivered to the Parties at the following addresses until a different address has been designated by notice to the other Parties:

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rburke@mmmlaw.com

Counsel to Defendant Access Holdco, LLC

26. **Enforcement of this Agreement.** The exclusive jurisdiction and venue for any action to enforce any provision of this Agreement shall be the Receivership Proceeding where all Parties agree personal jurisdiction exists over them. If the Plaintiff or any of the D&O Released Parties brings a lawsuit to enforce any term of this Agreement, including without limitation the confidentiality obligations, then the prevailing party in such litigation is entitled to receive from

Execution Version-08/03/20

the non-prevailing parties any reasonable expenses, including without limitation, its reasonable attorneys' fees and costs incurred.

27. No Admission of Liability. It is expressly understood and agreed that the terms of this Agreement are contractual and that the agreements herein contained and the consideration transferred is to compromise disputed claims and to avoid litigation, and that no payments made, or releases, or any other consideration given shall be construed as an admission of liability.

In Witness Whereof, and in agreement herewith, the Parties have executed and delivered this Agreement.

**CANTILO & BENNETT, L.L.P.,
Special Deputy Receiver of
Access Insurance Company**

By: Susan E. Salch
Cantilo + Bennett, LLP.

Name: SUSAN E. SALCH

Title: Special Deputy Receiver

Date: August 6, 2020

Michael McMenamin

By: [Signature]

Date: 8/3/2020

Access Insurance Holdings, LLC

By: 777J 777, JL

Name: MICHAEL McMENAMIN

Title: PRESIDENT

Date: 8/3/2020

Access Holdco, LLC

By: 777J M. H.

Name: MICHAEL McMENAMIN

Title: PRESIDENT

Date: 8/3/2020

Daniel Lazarek

By: _____

Date: _____

Rhonda Gale Sloan

By: _____

Date: _____

Access Insurance Holdings, LLC

By: _____

Name: _____

Title: _____

Date: _____

Access Holdco, LLC

By: _____

Name: _____

Title: _____

Date: _____

Daniel Lazarek

By: Daniel Lazarek

Date: 8/4/20

Rhonda Gale Sloan

By: _____

Date: _____

DA
8/4/20

Access Insurance Holdings, LLC

By: _____

Name: _____

Title: _____

Date: _____

Access Holdco, LLC

By: _____

Name: _____

Title: _____

Date: _____

Daniel Lazarek

By: _____

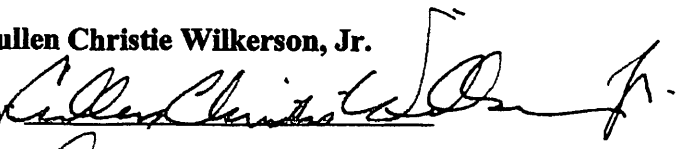
Date: _____

Rhonda Gale Sloan

By: Rhonda G. Sloan

Date: 08/04/20

Cullen Christie Wilkerson, Jr.

By: 

Date: August 4, 2020

Michael Henry Meadows

By: _____

Date: _____

Jason Thorpe Jones

By: _____

Date: _____

Donald Howard Johnson, II

By: _____

Date: _____

Andromeda Maria Thompson

By: _____

Date: _____

Teofilo Sioson Vizon

By: _____

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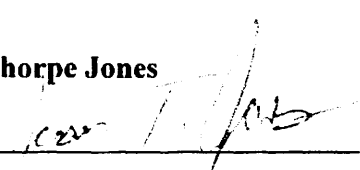
Date: _____

Michael Henry Meadows

By: _____

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Jason Thorpe Jones

By:  _____

Date: 8/4/2020

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Andromeda Maria Thompson

By:  _____

Date: 8-4-2020

Teofilo Sioson Vizon

By: _____

Date: _____

Execution Version-08/03/20

Cullen Christie Wilkerson, Jr.

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Date: _____

Michael Henry Meadows

By: _____

Date: _____

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By: _____

Date: _____

Donald Howard Johnson, II

By: _____

Date: _____

Andromeda Maria Thompson

By: _____

Date: _____

Teofilo Sioson Vizon

By: Teofil S Vizon

Date: 08/04/2020

Christopher Fuller
THE FULLER LAW GROUP

4612 Ridge Oak Drive
Austin, Texas 78731
(512) 470-9544
cfuller@fullerlaw.org

June 24, 2020

***Via Email:** bburner@mwlaw.com*

Burnie Burner
MITCHELL WILLIAMS
500 W. 5th Street, Ste. 1150
Austin, Texas 78701

***Via Email:** ryan@wittliffcutter.com*

Ryan Botkin
WITTLIFF | CUTTER
1803 West Avenue
Austin, Texas 78701

***Via Email:** chris.cowan@butlersnow.com*

***Via Email:** karson.thompson@butlersnow.com*

Chris Cowan
Karson Thompson
BUTLER SNOW LLP
1400 Lavaca Street, Suite 1000
Austin, Texas 78701

***Via Email:** bill.helfand@lewisbrisbois.com*

***Via Email:** david.hargis@lewisbrisbois.com*

William Helfand
David Hargis
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***Via Email:** fox@bmelaw.com*

***Via Email:** carter@bmelaw.com*

Benjamin E. Fox
Jason J. Carter
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Atlanta, Georgia 30309

***Via Email:** agriffin@scottdoug.com*

Asher B. Griffin
SCOTT DOUGLASS & MCCONNICO, LLP
303 Colorado Street, Suite 2400
Austin, Texas 78701

***Via Email:** mnavarre@bnsfirm.com*

Michael L. Navarre
BEATTY NAVARRE STRAMA, PC
901 S. Mopac Expressway, Ste. 200, Bldg. 1
Austin, Texas 78746

Re: D&O RULE 11 AGREEMENT

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 53rd Judicial District Court, Travis County, Texas

Dear Counsel:

This Agreement under Rule 11 of the Texas Rules of Civil Procedure (the "Agreement") is entered into between CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Access Insurance Company (the "SDR" and "Access" respectively), (collectively

“Plaintiff”); and 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”). The SDR and the D&O Defendants are collectively referred to as the “Parties.”

The D&O Defendants agree to pay the SDR \$9,600,000 (the “Settlement Amount”) in exchange for a general release of any and all of the SDR’s claims and causes of action against them and defendants Access Insurance Holdings, LLC (“AIH”) and Access Holdco, LLC (“AH”) 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 53rd Judicial District Court, Travis County, Texas (the “Lawsuit”) and the dismissal, with prejudice, of the D&O Defendants, AIH and AH from the Lawsuit.

The SDR agrees to stipulate to the payment of all defense costs incurred by the D&O Defendants, AIH and AH in accordance with the proposed allocation set forth in the Allocation Analysis for SDR Settlement and Defense Costs (the “Payment Allocation”), attached hereto as Exhibit 1, and further agrees that the Settlement Amount shall be funded 75% from AH D&O policies and 25% from the ACP D&O/E&O policies as set forth on Exhibit 1.

The Parties shall exchange mutual releases, which shall include, in addition to the D&O Defendants, the following entities and persons: (a) AIH, (b) AH, (c) the respective officers, directors, members and managers of AIH and AH, and (d) the respective insurers of the D&O Defendants, AIH and AH. The D&O Defendants, AIH, AH, and the persons and entities described in (c) and (d) are collectively referred to as the “D&O Released Parties.” The respective insurers of the D&O Defendants, AIH and AH shall be released only to the extent of their liability on behalf of the D&O Defendants, AIH and AH. To the extent that the insurers provide coverage for claims asserted by the SDR against parties other than the D&O Released Parties, the insurers will not be released. There will be no indemnification or hold harmless agreements and all entities and persons identified as “ACP¹,” as defined below, shall be expressly excluded from the SDR’s release.

The Agreement is subject to approval by the Receivership Court presiding over the Chapter 443 proceeding styled Cause No. D-1-GN-18-0001285, *The Texas Department of Insurance v. Access Insurance Company*, in the 261st District Court of Travis County, Texas. The SDR agrees

¹ “ACP” includes Altamont Capital Partners, ACP Insurance Intermediate, LLC, ACP Insurance Holdings, Inc., ACP Insurance Holdings, LP, ACP Insurance, LLC, Access Holdco Management, LLC, ACP Finance, Inc., Embark Insurance, LLC, Embark Holdco Management, LLC, Embark Insurance Intermediate, LLC, Embark Corporate Services, LLC, Embark General Insurance Adjusters, LLC, Embark General Insurance Agency, LLC, ACPI (Assignment for the Benefit of Creditors), LLC, ACPAHM (Assignment for the Benefit of Creditors), LLC, AGIA (Assignment for the Benefit of Creditors), LLC, ACS (Assignment for the Benefit of Creditors), LLC, AGIAC (Assignment for the Benefit of Creditors), LLC, APF (Assignment for the Benefit of Creditors), LLC, Access General Agency of Arizona, LLC, Access General Agency of Pennsylvania, LLC, Keoni Schwartz, Sam Gaynor, as well as their predecessor, successor, and affiliated entities and any persons or entities to whom they have transferred possession or control of any documents or records relating to Access, excluding the D&O Released Parties.

to seek approval of the settlement and the use of AH D&O policies proceeds as expeditiously as possible.

The D&O Released Parties (except non-defendant, [REDACTED], a member of AH) consent to the receipt by the SDR of documents or other records in the possession, custody, or control of ACP, whether in paper or electronic form, which may contain information subject to AH's, AIH's or the individual D&O Defendants' respective attorney client, work product or other applicable privileges without waiving any such privilege. The D&O Released Parties (excluding [REDACTED] further agree to submit to the jurisdiction of the Receivership Court for purposes of resolving any dispute regarding the assertion by any D&O Released Party (excluding [REDACTED]) of any privilege protecting the documents and other records from disclosure. [REDACTED] will execute a separate agreement providing the same consent.

The SDR agrees to maintain the confidentiality of the settlement terms and provisions and not to make any public statement, including but not limited to issuance of a press release, about the settlement of the Lawsuit and release of claims against the D&O Released Parties. The SDR, however, may make any filings it deems necessary to pursue other litigation and/or legal proceedings not involving the D&O Released Parties in connection with the Access estate and all required filings with and disclosures to the Commissioner of Insurance in his capacity as Liquidator of AIC, the Texas Department of Insurance, and Receivership Court.

Payment of the Settlement Amount will be made by four checks (sight drafts are not permitted) made payable as designated by the SDR in the amounts shown on Exhibit 1 within ten business days after the order approving the settlement and the use of AH D&O policies proceeds becomes final (30 days after its entry) unless a notice of appeal or motion for new trial is filed, in which case the payment must be made within ten business days of the dismissal of appeal, denial of appeal, and/or withdrawal of the motion for new trial or appeal.

The SDR will file and seek entry of a motion to dismiss, with prejudice, the D&O Defendants, AIH and AH within five days of the receipt and full funding of the Settlement Amount in the SDR's designated account and shall obtain an order approving the motion to dismiss, with prejudice.

This Agreement is subject to the execution of formal mutually acceptable settlement documents.

Sincerely,



Christopher Fuller

Enclosure: Exhibit 1

AGREED:



Burnie Burner
MITCHELL WILLIAMS
*Counsel for Defendants Michael McMenamini,
Access Holdco, LLC and Access Insurance
Holdings, LLC*

Ryan Botkin
WITTLIFF | CUTTER
*Counsel for Defendants Michael Henry Meadows,
Rhonda Gale Sloan, Andromeda Maria Thompson
and Teofilo Vizon*

Chris Cowan
Karson Thompson
BUTLER SNOW LLP
*Counsel for Defendant Donald Howard
Johnson, II*

William Helfand
David Hargis
LEWIS BRISBOIS
*Counsel for Defendant Cullen Christie Wilkerson,
Jr.*

Benjamin E. Fox
Jason J. Carter
BONDURANT, MIXSON & ELMORE, LLP
- and -
Asher B. Griffin
SCOTT DOUGLASS & McCONNICO, LLP
Counsel for Defendant Daniel Lazarek

Michael L. Navarre
BEATTY NAVARRE STRAMA, PC
Counsel for Defendant Jason Thorpe Jones


AGREED:

Burnie Burner
MITCHELL WILLIAMS
*Counsel for Defendants Michael McMenamin,
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Holdings, LLC*



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Karson Thompson
BUTLER SNOW LLP
*Counsel for Defendant Donald Howard
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Asher B. Griffin
SCOTT DOUGLASS & MCCONNICO, LLP
Counsel for Defendant Daniel Lazarek




Ryan Botkin
WITTLIFF | CUTTER
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David Hargis
LEWIS BRISBOIS
*Counsel for Defendant Cullen Christie Wilkerson,
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Michael L. Navarre
BEATTY NAVARRE STRAMA, PC
Counsel for Defendant Jason Thorpe Jones

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*Counsel for Defendants Michael McMenamin,
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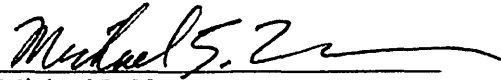


Chris Cowan
Karson Thompson
BUTLER SNOW LLP
*Counsel for Defendant Donald Howard
Johnson, II*

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Counsel for Defendant Daniel Lazarek

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William Helfand
David Hargis
LEWIS BRISBOIS
*Counsel for Defendant Cullen Christie Wilkerson,
Jr.*



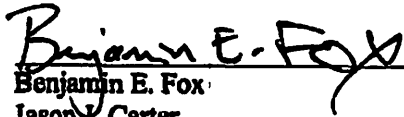
Michael L. Navarre
BEATTY NAVARRE STRAMA, PC
Counsel for Defendant Jason Thorpe Jones

AGREED:

Burnie Burner
MITCHELL WILLIAMS
*Counsel for Defendants Michael McMenamain,
Access Holdco, LLC and Access Insurance
Holdings, LLC*



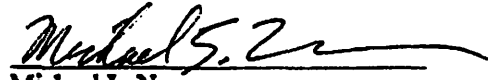
Chris Cowan
Karson Thompson
BUTLER SNOW LLP
*Counsel for Defendant Donald Howard
Johnson, II*



Benjamin E. Fox
Jason J. Carter
BONDURANT, MIXSON & ELMORE, LLP
- and -
Asher B. Griffin
SCOTT DOUGLASS & MCCONNICO, LLP
Counsel for Defendant Daniel Lazarek

Ryan Botkin
WITTLIFF | CUTTER
*Counsel for Defendants Michael Henry Meadows,
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William Helfand
David Hargis
LEWIS BRISBOIS
*Counsel for Defendant Cullen Christie Wilkerson,
Jr.*



Michael L. Navarre
BEATTY NAVARRE STRAMA, PC
Counsel for Defendant Jason Thorpe Jones

ALLOCATION ANALYSIS FOR SDR SETTLEMENT AND DEFENSE COSTS

SDR Settlement	Estimated SDR Defense Costs	Total Payments	Allocation to Access Policies	Access Limits for Other Claims*	Allocation to ACP Policies	ACP Limits for Other Claims**
\$9,600,000	\$856,123	\$10,456,123	\$7,654,156	\$2,345,843	\$2,801,966	\$7,198,034

Policies	Estimated SDR Defense Costs	SDR Settlement	Total Payments
Policy # 596643334 (Old AH, LLC D&O)	\$227,078	\$3,600,000	\$3,827,078
Policy # 287517073 (New AH, LLC D&O)	\$227,078	\$3,600,000	\$3,827,078
Totals	\$454,156	\$7,200,000	\$7,654,156

Policies	Estimated SDR Defense Costs	SDR Settlement	Total Payments
Policy # 596644144 (ACP D&O)	\$200,983	\$1,200,000	\$1,400,983
Policy # 596644130 (ACP E&O)	\$200,983	\$1,200,000	\$1,400,983
Totals	\$401,966	\$2,400,000	\$2,801,966

*CNA has acknowledged coverage for other claims under certain Access and ACP policies regarding related claims (such as claims made by **REDACTED**) for which defense costs were incurred, and is negotiating a coverage dispute regarding one of those related claims. The payment of defense costs and resolution of the coverage dispute will impact the remaining limits of the Access and ACP policies.

**Defense costs and any indemnity for the SDR's claim against the ACP Entities will also erode the limits of the ACP policies.

Exhibit B

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 ST JUDICIAL DISTRICT

IRREVOCABLE CONSENT AND NON-WAIVER AGREEMENT

This Irrevocable Consent and Non-Waiver Agreement is entered into between CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Access Insurance Company (the “SDR” and “Access” respectively), on the one hand, and 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”), Access Insurance Holdings, LLC (“AIH”), and Access Holdco, LLC (“AH”), on the other hand.

The D&O Defendants, AIH, and AH consent to the receipt by the SDR of documents or other records, whether in paper or electronic form, in the possession, custody, or control of ACP relating to Access subject to the individual D&O Defendants’, AIH’s or AH’s respective attorney client, work product or other applicable privileges without waiving any such privilege. “ACP” means and includes Altamont Capital Partners; ACP Insurance Intermediate, LLC; ACP Insurance Holdings, Inc.; ACP Insurance Holdings, LP; ACP Insurance, LLC; Access Holdco Management, LLC; ACP Finance, Inc.; Embark Insurance, LLC; Embark Holdco Management, LLC; Embark Insurance Intermediate, LLC; Embark Corporate Services, LLC; Embark General Insurance Adjusters, LLC; Embark General Insurance Agency, LLC; ACPI (Assignment for the Benefit of Creditors), LLC; ACPAHM (Assignment for the Benefit of Creditors), LLC; AGIA (Assignment for the Benefit of Creditors), LLC; ACS (Assignment for the Benefit of Creditors), LLC; AGIAC (Assignment for the Benefit of Creditors), LLC; APF (Assignment for the Benefit of Creditors), LLC; Access General Agency of Arizona, LLC; Access General Agency of Pennsylvania, LLC; Keoni Schwartz; Sam Gaynor; as well as their predecessor, successor, and affiliated entities and any person(s) or entity(ies) to whom they have transferred possession or control of any documents or records relating to Access, whether in paper or electronic form, excluding the D&O Defendants, AIH, AH, and the respective officers, directors, members, and managers of AIH and AH.

The D&O Defendants, AIH, and AH further agree to submit to the jurisdiction of the above-captioned court in Travis County, Texas, for purposes of resolving any dispute with regard



to the assertion by any individual D&O Defendant, AIH or AH of any privilege protecting the documents and other records from disclosure.

This Irrevocable Consent and Non-Waiver Agreement is irrevocable.

CANTILO & BENNETT, L.L.P.,
Special Deputy Receiver of
Access Insurance Company

By: Susan E. Salch
Cantilo + Bennett LLP
Name: SUSAN E SALCH
Title: Special Deputy Receiver
Date: August 13, 2020

Michael McMenamin

By: MM
Date: 8/7/2020

Access Insurance Holdings, LLC

By: MM
Name: MICHAEL MCMENAMIN
Title: PRESIDENT
Date: 8/7/2020

Access Holdco, LLC

By: MM
Name: MICHAEL MCMENAMIN
Title: PRESIDENT
Date: 8/7/2020

Daniel Lazarek

By: Daniel Lazarek

Date: 8/11/20.

Rhonda Gale Sloan

By: _____

Date: _____

Cullen Christie Wilkerson, Jr.

By: _____

Date: _____

Michael Henry Meadows

By: _____

Date: _____

Jason Thorpe Jones

By: _____

Date: _____

Donald Howard Johnson, II

By: _____

Date: _____

Andromeda Maria Thompson

By: _____

DA
8/11/20.

Daniel Lazarek

By: _____

Date: _____

Rhonda Gale Sloan

By:  _____

Date: 8/11/20

Cullen Christie Wilkerson, Jr.

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Jason Thorpe Jones

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Date: _____

Donald Howard Johnson, II

By: _____

Date: _____

Daniel Lazarek

By: _____

Date: _____

Rhonda Gale Sloan

By: _____

Date: _____

Cullen Christie Wilkerson, Jr.

By: Cullen Christie Wilkerson Jr.

Date: August 10, 2020

Michael Henry Meadows

By: _____

Date: _____

Jason Thorpe Jones

By: _____

Date: _____

Donald Howard Johnson, II

By: _____

Date: _____

Daniel Lazarek

By: _____

Date: _____

Rhonda Gale Sloan

By: _____

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By:  _____

Date: 8/10/2020

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Michael Henry Meadows

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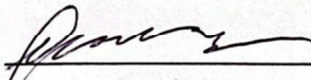
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By: _____

Date: _____

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By:  _____

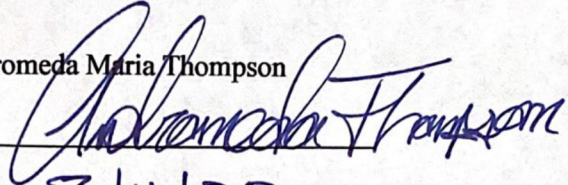
Date: 8/7/20

Andromeda Maria Thompson

By: _____

Andromeda Maria Thompson

By: _____



Date: _____

8/11/20

Teofilo Sioson Vizon

By: _____

Date: _____

Andromeda Maria Thompson

Daniel Laxarck

By: _____

Date: _____

Teofilo Sioson Vizon

Teofilo Sioson

By: Teofilo Sioson Vizon

Date: 08/11/2020

Cullen Christie Wilkerson, Jr.

By: _____

Date: _____

Michael Henry Meadows

By: _____

Date: _____

Jason Thope Jones

By: _____

Date: _____

Donald Howard Johnson, II

By: _____

Date: _____

Automated Certificate of eService

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Associated Case Party: TPCIGA

Name	BarNumber	Email	TimestampSubmitted	Status
Amber Alayne Walker	785581	awalker@tpciga.org	10/6/2020 4:03:26 PM	SENT

Associated Case Party: Embark Holdco Management, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Renae Waldner		rwaldner@foley.com	10/6/2020 4:03:26 PM	SENT
Barbara ADye		bdye@foley.com	10/6/2020 4:03:26 PM	SENT
Mark TMitchell		mmitchell@foley.com	10/6/2020 4:03:26 PM	SENT

Case Contacts

Name
Brian Falligant
Special Masters Clerk Special Masters Clerk
Vicente Aguillon
Christopher G. Fuller
Robert Francis Johnson
Edward D. Burbach
Linda R. Meltzer
Kimberly M. Hammer
Matthew James Kennedy
Melvin L. Burner
Anthony Lee Icenogle
Jennifer Jackson
Patricia Muniz
John Alexander

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Status as of 10/7/2020 2:08 PM CST

Case Contacts

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