

NO. D-1-GV-08-002014

STATE OF TEXAS, Plaintiff	§ § § § § § §	IN THE DISTRICT COURT OF  TRAVIS COUNTY, TEXAS  261st JUDICIAL DISTRICT
v.		
AMERITRUST TITLE COMPANY Defendant		

**APPLICATION FOR APPROVAL OF FEES AND EXPENSES**

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

Comes now Cantilo & Bennett, L.L.P., Special Deputy Receiver of Ameritrust Title Company (the “SDR” and “Ameritrust” respectively), and files this *Application for Approval of Fees and Expenses* (the “Application”).

**I. BACKGROUND**

1. Ameritrust was placed in receivership in this proceeding on March 20, 2009. The Court entered a Permanent Injunction and Order Appointing Permanent Receiver on March 20, 2009 appointing the Texas Commissioner of Insurance as Permanent Receiver. The Receiver designated Cantilo & Bennett, L.L.P., as SDR of Ameritrust effective as of April 16, 2009.

2. The Special Deputy Receiver is authorized to file this Application pursuant to TEX. INS. CODE ANN. §443.151, which provides that the SDR is to conduct the business of the estate. The subject matter of this Application has been referred to the Special Master appointed in this proceeding in accordance with Paragraph III of the Order of Reference to Master entered on March 25, 2009.

**II. BASIS FOR APPLICATION**

3.1 TEX. INS. CODE § 443.015(c)(1) requires the Receiver to submit an application for the approval of the terms of compensation of an SDR or contractor(s) when the Receiver reasonably expects

that the total amount of compensation to be paid over the course of the proceeding will exceed Two Hundred and Fifty Thousand Dollars (\$250,000), or such another amount established by the Court. In addition, TEX. INS. CODE § 443.015 (d) permits the Receiver, at his discretion, to submit an application to approve any compensation, anticipated expenses, or incurred expenses not described by Subsection (c)(1).

3.2 Given the uncertainties associated with the future administration of this proceeding, it is difficult to predict whether the total compensation for the SDR or any contractor will exceed \$250,000. It is anticipated that a number of the SDR's subcontractors will be paid less than \$250,000. To insure compliance with the provisions of Chapter 443 of the Code, the SDR requests the Court to approve all terms of compensation pursuant to TEX. INS. CODE § 443.015 (d). The rates for compensation for the SDR and its contractors are shown on Exhibit A, which is attached hereto and incorporated by reference. These rates have been approved by the Receiver in accordance with TEX. INS. CODE § 443.154(a).

3.3 TEX. INS. CODE § 443.015(c)(2) also requires the Receiver to submit an application for the approval of any anticipated expenses not otherwise covered under § 443.015(c)(1) in excess of Twenty-Five Thousand Dollars (\$25,000), or another amount established by the Court. The SDR does not anticipate that any single expense will exceed \$25,000 in this proceeding. If the SDR determines that an expense will exceed \$25,000, an application for approval in accordance with TEX. INS. CODE § 443.015(d) will be filed.

3.4 TEX. INS. CODE § 443.015(g) provides that on a quarterly basis, or as otherwise provided by this Court, the Receiver shall submit to the Court a summary of expenses incurred during the period. The SDR requests the Court to establish quarterly reporting periods that coincide with the State of Texas fiscal year beginning on September 1, 2008. The SDR further requests that such reports be filed

by the 15th day of the month following the end of the quarterly reporting period with the first report to cover the period from March through May 2009 (the third fiscal quarter).

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, the Special Deputy Receiver respectfully requests this Court to grant this Application, and grant such further relief to which it may show itself to be justly entitled.

Respectfully submitted,

By: /Christopher Fuller/  
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Attorney for Cantilo & Bennett, L.L.P.,  
Special Deputy Receiver of Ameritrust Title Company

And

By: /Jo Ann Howard/  
Jo Ann Howard  
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Attorney for Cantilo & Bennett, L.L.P.,  
Special Deputy Receiver of Ameritrust Title Company

**CERTIFICATE OF SERVICE**

I certify that on June 22, 2009, a true and correct copy of this Application was served pursuant to the Order of Reference, the Texas Rules of Civil Procedure and TEX. INS. CODE ANN. SEC. 443.007(d) on the following by regular mail, except as specifically noted.

By: /Christopher Fuller/

Christopher Fuller

Texas Bar No. 07515500

*Via Email:* Jean.Sustaita@tdi.state.tx.us

Jean Sustaita

Texas Department of Insurance

582 Liquidation Oversight

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*Via Email:* Leanne.Layne@tdi.state.tx.us

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Bellaire, TX 77401-4528

## 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 Special Deputy Receiver's Application for Approval of Fees is set for written submission before the Special Master, Tom Collins, on July 6, 2009.

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 such date on:
  - (a) The Special Master's Docket Clerk, Ms. Jean Sustaita, Texas Department of Insurance, **(Hand Delivery)** 333 Guadalupe, Hobby Tower III, 5th Floor, Room 540-A, Austin, Texas; or **(Mail To)** P.O. Box 149104 (MC 305 1-D), Austin, Texas 78714-9104.
  - (b) All interested parties, including those listed on the Applicant's Certificate of Service.
3. The objecting party shall coordinate with opposing 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.

**SPECIAL DEPUTY RECEIVER'S CERTIFICATION PURSUANT TO TEXAS  
INSURANCE CODE ANNOTATED SECTION 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., Special Deputy Receiver of AmeriTrust Title Company (the "SDR" and "AmeriTrust"). I am duly authorized to make this Certification and Affidavit on behalf of the SDR.

3. I certify that the exhibits, books, accounts, records, papers, correspondence, and/or other records and documents attached hereto were produced pursuant to Texas Insurance Code Annotated section 443.017(b), are true and correct copies of records 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.

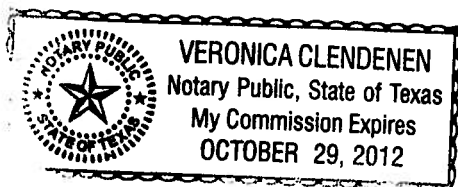
4. I further state that I have read the statements contained in the attached Application, and they are true and correct based on my personal knowledge, my review of estate records, and my consultation with my staff and sub-contractors

5. Further affiant sayeth not.

By: \_\_\_\_\_

*Susan E. Salch*  
Susan E. Salch

**SUBSCRIBED AND SWORN TO BEFORE ME** on June 22, 2009, by Susan E. Salch, on behalf of CANTILO & BENNETT, L.L.P., Special Deputy Receiver of AmeriTrust Title Company, in receivership.



By: \_\_\_\_\_

*Veronica Clendenen*  
Notary Public

**EXHIBIT A  
AMERITRUST TITLE COMPANY**

**FEE SCHEDULE**

<b>NAME</b>	<b>POSITION</b>	<b>HOURLY RATE</b>
<b><u>Special Deputy Receiver</u></b>		
<b>Cantilo &amp; Bennett, L.L.P.</b>		
	Primary Responsible Person	\$150.00
	Partners (2)	\$150.00
	Associate I (2)	\$125.00
	Associate II (2)*	\$120.00
	Senior Receivership Specialist	\$100.00
	Receivership Specialist(s)	\$ 90.00
	Administrative/Clerical	\$ 30.00

\*One associate is taking the July 2009 Texas State Bar Exam. The associate will be billed at the Receivership Specialist rate until licensed, at which time the Associate II rate will apply.

**Legal Subcontractors**

**Jo Ann Howard & Associates, P.C.**

Senior Legal Specialist (2)	\$200.00
Junior Legal Specialist	\$175.00
Investment Specialist	\$175.00
Paralegal	\$ 90.00
Administrative Manager/Records Technician	\$ 90.00
Receivership Administrative Assistant	\$ 90.00
Legal Assistant & Records Specialist	\$ 90.00
Receivership Specialist	\$ 90.00

**Law Office of Hubert Bell, Jr.**

Attorneys (3)	\$165.00
Paralegal	\$ 60.00
Support Staff	\$ 35.00

**Accounting/Tax Subcontractors**

**Petrosewicz & Company, Inc.**

Principals (2)	\$150.00
Staff Accountant I	\$125.00
Staff Accountant II	\$120.00
Staff Accountant III	\$ 95.00
Staff Accountant IV	\$ 90.00
Staff Accountant V	\$ 80.00
Support Staff	\$ 70.00
Clerical	\$ 25.00

**The Warren Group**

Certified Public Accountant	\$150.00
Preparation of income tax return* (*excluding answering IRS correspondence, filing additional tax forms, and examination by the IRS).	\$1950.00

**Portia Haggerty, P.C.**

Certified Public Accountant/Certified Valuation Analyst	\$ 75.00
Certified Public Accountant	\$ 75.00
Accountant I (2)	\$ 55.00
Accountant II	\$ 35.00

**Claims Services Subcontractor**

**EMKAY Associates, Inc.**

Claims management, consulting & reporting; adjusting and reviewing claims for reserve adequacy, reinsurance and reporting; securing company offices; assisting in takeover activities and site management. \$ 85.00

Records management, takeover activities and site management. \$ 45.00  
Administration and POC database data entry. \$ 35.00  
Records inventory. \$ 25.00

Software & Hardware technical support. \$ 75.00  
POC/Database administration & management; claims representative; UDS data creation; capture and report formatting; reinsurance database administration; reinsurance billing; takeover activities and site management.  
Records management. \$ 55.00

Claims representative; review of claims for reinsurance, reporting and reserve adequacy; assist in takeover activities and site management.	\$ 75.00
Claims representatives; review of claims for reinsurance and reporting & reserve adequacy.	\$ 65.00
Records management; takeover activities and site management.	\$ 45.00
Records inventory.	\$ 25.00

**Information Technology Subcontractor**

**ABACI, Inc.**

Project Manager Business Analyst and Application Designer	\$ 85.00
Technical Managers (2)	\$ 80.00
Technical Analyst	\$ 80.00
Data Analyst	\$ 80.00
Network Security Specialist	\$ 80.00

STATE OF TEXAS,  
Plaintiff

v.

AMERITRUST TITLE COMPANY  
Defendant

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IN THE DISTRICT COURT OF  
  
TRAVIS COUNTY, TEXAS  
  
261st JUDICIAL DISTRICT

**ORDER APPROVING APPLICATION FOR APPROVAL OF FEES AND EXPENSES**

On this day came on to be heard the *Application for Approval of Fees and Expenses* (“Application”) filed by Cantilo & Bennett, L.L.P., Special Deputy Receiver of Ameritrust Title Company (the “SDR” and “Ameritrust” respectively). The SDR appeared by and through its counsel. Having considered the Application and the recommendation of the Special Master, the Court finds that the Application should be granted.

It is therefore ORDERED, ADJUDGED and DECREED as follows:

1. The Application is GRANTED in all respects.
2. The terms of compensation for the Special Deputy Receiver and the contractors listed on Exhibit A are approved.
3. Pursuant to TEX. INS. CODE § 443.015 (c)(2), the Special Deputy Receiver shall obtain the approval of this Court for any expense that is anticipated to exceed \$25,000.00, and is not required to obtain approval for any expense that is not anticipated to exceed \$25,000.00.
4. The Special Deputy Receiver shall file with this Court a summary of expenses pursuant to TEX. INS. CODE § 443.015 (g) on a quarterly basis as described in Paragraph 3.4.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2009.

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JUDGE PRESIDING