

NO. D-1-GV-09-000007

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
VS.	§	TRAVIS COUNTY, TEXAS
	§	
SOUTHERN STAR TITLE	§	
COMPANY, LLC	§	53rd JUDICIAL DISTRICT

APPLICATION TO PROVIDE NOTICE OF LIQUIDATION, SET CLAIMS FILING DEADLINE AND ESTABLISH A CLAIMS PROCESSING PROCEDURE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Jennifer Ramsey, PC, Special Deputy Receiver of Southern Star Title Company, LLC (“SDR” and “Southern Star”, respectively) and files this *Application to Provide Notice of Liquidation, Set Claims Filing Deadline and Establish a Claims Processing Procedure* (“Application”) for Southern Star, and respectfully shows the Court the following:

I. INTRODUCTION

1. The SDR seeks approval for its proposed manner to provide notice of the liquidation to potential claimants, deadline by which all claims must be filed, form of proof of claim and claims processing procedure.

II. BACKGROUND AND AUTHORITY

2. On January 8, 2009, the Court entered an *Agreed Order Appointing Liquidator and Permanent Injunction* placing Southern Star into receivership and appointing the Texas Commissioner of Insurance as Receiver.

3. On January 8, 2009, the Texas Commissioner of Insurance designated Southern Star an “impaired agent”. As of that date, the Texas Title Insurance Guaranty Association (“TTIGA”) became responsible for the payment of “covered claims” as defined by TEX. INS. CODE ANN. § 2602.251. The SDR does not anticipate that any other guaranty association will or may become obligated to pay claims as a result of the Southern Star liquidation.

4. On March 9, 2009, this Court entered an order granting TTIGA's application for the transfer of Southern Star escrow funds to TTIGA and setting October 14, 2009 as the deadline to file claims with TTIGA.

5. The Receiver designated Jennifer Ramsey, PC, as Special Deputy Receiver ("SDR") of Southern Star on March 26, 2009.

6. Southern Star was a title insurance agency with its offices in Edinburg and McAllen, Texas. Its insolvency is directly related to the misappropriation of trust and other funds. Southern Star is not an insurance company. Southern Star was a title agent for title insurance companies including Commonwealth Land Title Insurance Company and United General Title Insurance Company f/k/a First American Title Insurance Company.

7. Though the estate has limited cash or distributable assets at this time, its assets do include causes of action against parties or entities responsible for the estate's damages.¹

8. The Insurer Receivership Act and this Court's orders govern the administration of this estate. This Application is filed pursuant to TEX. INS. CODE ANN. § 443.155.

9. The subject matter of this Application has been referred to the Special Master appointed in this proceeding in accordance with Section III, Paragraph 12 of the *Order of Reference* to Master entered on January 26, 2009.

10. TEX. INS. CODE ANN. § 443.007 sets out the general notice requirements for an application filed in the receivership proceeding. It requires that notice be given "to all persons on the service list and any other parties as determined by the receiver" by first class mail, electronic mail or facsimile at the receiver's discretion.

¹ *Jennifer Ramsey, PC as Special Deputy Receiver of Southern Star Title Company, LLC v. Rogelio "Roy" Ibanez*; Cause No. D-1-GN-09-002120; In the 419th Judicial District Court of Travis County, Texas.

III. NOTICE OF LIQUIDATION AND CLAIM FILING DEADLINE

11. TEX. INS. CODE ANN. § 443.155 sets out specific notice requirements for liquidation. It requires that notice of the liquidation order be given by first class mail or electronic means to guaranty associations that are or may become obligated to pay claims as a result of the liquidation; agents, brokers or producers of record and all persons or entities known or reasonably expected to have claims against the insurer at their last known address as indicated by the records of the company; and all state and federal agencies with an interest in the proceeding. The SDR has reviewed the books and records of Southern Star to ascertain which such persons may have a claim against Southern Star and proposes to provide notice to such claimants in the manner described below.

12. Southern Star was a title agency and not an insurance company. Therefore, Southern Star does not have claimants with claims arising under a policy of insurance. Rather, Southern Star's universe of possible claimants include guaranty associations, vendors, employees, service providers, contractual claimants and taxing and regulatory authorities.

13. The SDR proposes to give notice of the liquidation and claims filing deadline to TTIGA and Southern Star's vendors, employees, service providers, contractual claimants, claimants to escrow funds, taxing and regulatory authorities and other such claimants it has identified from the books and records of the company with known claims and those or who are reasonably expected to have a claim against Southern Star, in the form set out in the attached Exhibit A by either first class mail or, by electronic mail if the electronic mail address is known or can be reasonably determined by the SDR. The notice advises of the entry of the liquidation order, availability of possible coverage by TTIGA, the impact of the stay, the claims filing deadline, how to receive notice of receivership pleadings, status conferences and directs them on how to obtain full information concerning these topics.

14. The notice directs all those receiving notice to obtain a copy of the proof of claim (“POC”) on the internet at www.sstitleco-receivership.com. The notice provides an address for requesting a copy of the POC to be mailed if the claimant does not have internet access.

15. Claimants with “covered claims” have or will also be notified by TTIGA of the liquidation and of their right to file a claim with TTIGA for the payment of “covered claims”. The SDR requests that a claim filed with TTIGA constitute a claim filed with Southern Star by the individual claimant for the purpose of fixing rights for that claimant, if any, in excess of TTIGA’s statutory limits.

16. The SDR requests that this Court enter an order approving the notice form substantially in the form of the notice attached hereto as Exhibit A and the manner of notice as described above and finding that such notice complies with the notice provisions of the Insurer Receivership Act and the requirements of due process. The SDR further requests that this Court find that the mailing of notice to the last known address or emailing of notice in such manner constitutes prima facie evidence of receipt by the recipient to whom the notice is addressed.

17. In order to provide notice to parties who may have changed addresses as well as notice to unknown parties who may have claims against Southern Star, the SDR proposes to publish notice of the appointment of a liquidator and the liquidation, the claims filing deadline, and notice procedures at least once in a newspapers of general circulation in McAllen and Edinburg, Texas. The SDR requests the Court enter an order authorizing the SDR to notice claimants by publication as described herein and finding that such notice by publication to unknown claimants and to parties with changed addresses complies with the notice provisions of the Insurer Receivership Act and the requirements of due process.

18. TEX INS. CODE ANN. § 443.155 requires that a POC must be in a form designated by the SDR. The SDR proposes to use the POC form attached to this Application as Exhibit B.

The SDR requests this Court to approve a POC substantially in the form of the POC attached hereto as Exhibit B.

19. The SDR will refer all claims that may be “covered claims” to TTIGA for processing.

20. In accordance with TEX. INS. CODE ANN. § 443.155, this Court may specify a period of time within which all POCs must be filed. The SDR requests that this Court set a claims filing deadline of March 31, 2010 requiring that all POCs be postmarked to the address designated by the SDR on or before 11:59 p.m. C.D.T. on that date. TTIGA filed its Application to Extend Escrow Claims Filing Deadline on September 24, 2009. The hearing is set for submission before the Special Master on October 12, 2009. In its Application, TTIGA asks this Court to extend the deadline for filing claims against Southern Star’s escrow accounts for which TTIGA is responsible to pay as “covered claims” as defined by TEX. INS. CODE ANN. § 2602.251. Coordinating the estates claim filing deadline with TTIGA’s extended claim filing deadline will enable the SDR and TTIGA to better coordinate notice and claims processing and help to avoid or diminish claimant confusion because of multiple and differing claim filing deadlines.

21. TEX. INS. CODE ANN. § 443.251(b) authorizes the SDR to accept POCs filed after the claims filing deadline under certain circumstances. The SDR proposes to require the claimant to provide an affidavit under oath to verify eligibility to file a late POC and request the Court to enter an order approving this requirement.

IV. CLAIMS PROCESSING

22. The SDR will process POCs under the provisions of the Insurer Receivership Act.

23. TEX. INS. CODE ANN. § 443.301(a) requires the SDR to pay each class of creditors in full or retain adequate funds for such payment before paying any other class of creditors. The

SDR proposes to adjudicate all claims with a priority of Class 1 and Class 2 under TEX. INS. CODE ANN. § 443.301(a) and (b) in the manner specified in TEX. INS. CODE ANN. § 443.253. Because Southern Star was not an insurance company, the SDR does not anticipate any Class 2 claims other than claims of guaranty associations. TTIGA has reported to the SDR that as of August 31, 2009, it had paid claims in the amount of \$186,210.32 and anticipates paying additional funds in the future.

24. The SDR's Statement of Assets as of August 31, 2009 reflects \$90,643.00 in cash/liquid assets, a copy of which is attached hereto as Exhibit C. The administration of the estate to date has been financed by loans from the Texas Department of Insurance from funds obtained from the Abandoned Property Fund in accordance with TEX. INS. CODE ANN. § 443.304(c).

25. The estate does not currently have enough funds to pay Class 1 administrative expenses including repayment of the loan from the Abandoned Property Fund. The SDR does not currently anticipate having funds sufficient to pay TTIGA's Class 2 claim in full. In order to preserve the very limited assets of this estate, the SDR proposes that it not be required to adjudicate claims with a priority of Class 3 or lower unless or until funds become available for a distribution to Class 3. TEX. INS. CODE ANN. § 443.253(k) provides that:

[t]he liquidator is not required to process claims for any class until it appears reasonably likely that property will be available for a distribution to that class. If there are insufficient assets to justify processing all claims for any class listed in Section 443.301, the liquidator shall report the facts to the receivership court and make such recommendations as may be appropriate for handling the remainder of the claims.

Until such time as the SDR reasonably believes that there may be sufficient assets to pay all Class 2 claims in full, the SDR proposes to classify all claims with a priority of Class 3 or lower, notify the claimant of the classification and take no further action and requests this Court enter

an order approving the proposed suspension of the processing of claims with a priority of Class 3 or lower.

V. NOTICE

26. Pursuant to TEX. INS. CODE ANN. § 443.007(d), this Application has been served on the entire service list for this proceeding, including TTIGA, in the manner shown on the certificate of service. Service of the Application complies with TEX. INS. CODE ANN. § 443.303(e).

PRAYER

WHEREFORE, PREMISES CONSIDERED, the SDR respectfully requests that this Court enter an Order:

1. Approving this Application in all respects;
2. Approving the notice form substantially in the form of the notice attached hereto as Exhibit A and the mailing or emailing of such notice as described in the Application;
3. Finding that the form of notice attached hereto as Exhibit A and the mailing or emailing of such notice as described in the Application complies with the notice provisions of the Insurer Receivership Act and the requirements of due process;
4. Finding that the mailing of notice to the last known address or emailing of notice in the manner described in the Application is prima facie evidence of receipt by the recipient to whom the notice is addressed;
5. Authorizing the SDR to notice claimants by publication as described in the Application;

6. Finding that notice by publication to unknown claimants and to parties with changed addresses complies with the notice provisions of the Insurer Receivership Act and the requirements of due process;
7. Approving a proof of claim substantially in the form of the proof of claim attached hereto as Exhibit B;
8. Establishing a claims filing deadline of 11:59 p.m. C.D.T., March 31, 2010;
9. Requiring that all proofs of claim be postmarked to the address designated by the SDR on or before the claims filing deadline;
10. Requiring that a proof of claim filed after the claims filing deadline include an affidavit under oath by the claimant verifying eligibility to file a proof of claim pursuant to TEX. INS. CODE ANN. § 443.251(b); and
11. Granting the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

BRIAN E. RIEWE, P.C.
4408 Spicewood Springs Rd., Suite 101
Austin, Texas 78759
Telephone: 512/236-9955
Facsimile: 512/236-9966

Brian E. Riewe
State Bar No. 16915600

Brian E. Riewe

By: _____

Attorneys for the Special Deputy Receiver

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 *Application to Provide Notice of Liquidation, Set Claims Filing Deadline and Establish a Claims Processing Procedure* is hereby set for written submission before the Special Master, Tom Collins, on **Monday, October 26, 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 3, Room 550, Austin, Texas; or **(Mail To)** P. O. Box 149104, Austin, Texas 78714-9104
 - (b) All interested parties, including those listed on the Applicant's Certificate of Service.
3. 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.
4. If a matter is set for submission, an objecting party shall expeditiously coordinate with Applicant's counsel and the master's docket clerk [(512) 463-6450] to obtain an oral hearing, unless the master determines that an oral hearing is not necessary. The objecting party shall serve a Notice of Oral Hearing on applicant's counsel and all interested parties, including those listed on the Applicant's Certificate of Service.
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.

Brian E. Riewe

Brian E. Riewe

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all interested parties in accordance with the Texas Rules of Civil Procedure and TEX. INS. CODE ANN. § 443.007(d) this 12th day of October 2009.

Mr. Tom Collins, Special Master
by serving his Docket Clerk, Ms. Jean Sustaita
Texas Department of Insurance
333 Guadalupe, Tower III, 5th Fl., MC-305-1D
Austin, Texas 78701
VIA FACSIMILE: 512/490-1023
Email: jean.sustaita@tdi.state.tx.us

Ms. John Walker
Ms. Leanne Layne
Ms. Rachel Giani
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714
VIA FACSIMILE: 512/490-1023
VIA FACSIMILE: 512/475-1843
Email: john.walker@tdi.state.tx.us
Email: leanne.layne@tdi.state.tx.us
Email: rachel.giani@tdi.state.tx.us

Ms. Karen Pettigrew, Asst. Attorney General
Attorney General's Office – Financial Litigation
P.O. Box 12548
Austin, Texas 78711-2548
VIA FACSIMILE: 512/477-2348
Email: karen.pettigrew@oag.state.tx.us

Mr. James E. Davis, Atty for Southern Star Title
Locke, Lord, Bissell & Liddell, L.L.P.
100 Congress Avenue, Suite 300
Austin, Texas 78701
VIA FACSIMILE: 391-4708
Email: jdavis@lockelord.com

Mr. Bruce McCandless
Mitchell, Williams, Selig, Gates & Woodyard
106 E. 6th Street, Suite 300
Austin, Texas 78701
VIA FACSIMILE: 512/322-0301
Email: bmccandless@mwlaw.com

Mr. Randall W. Hill
Hill & Villarreal, P.C.
719 S. Shoreline, Suite 300
Corpus Christi, Texas 78401
VIA FACSIMILE: 361/883-0612
Email: rhill@hvlegal.com

Mr. Darryl Lemke
Bank of South of Texas
506 E. Dove Avenue
McAllen, Texas 78504
VIA FACSIMILE: 956/664-0954
Email: darryl.lemke@bankofsouthtexas.com

Mr. Edmundo O. Ramirez, Atty for R. Ibanez
Ellis, Koeneke & Ramirez
1101 Chicago
McAllen, Texas 78501-4822
VIA FACSIMILE: 956/682-0820
Email: eor@ekrattorneys.com

Brian E. Riewe

Brian E. Riewe

Southern Star Title Company, LLC

“NOTICE OF LIQUIDATION AND CLAIMS FILING DEADLINE”

The 53rd District Court, Travis County, Texas has placed Southern Star Title Company, LLC in receivership and appointed Mike Geeslin, Texas Commissioner of Insurance, the Receiver. You have been identified as someone who may have a claim in the receivership proceeding. You may also have a claim payable by the Texas Title Insurance Guaranty Association if your claim is against Southern Star trust funds or escrow account and is unpaid. You can obtain information about the receivership by going to the Internet website: www.sstitleco-receivership.com. To protect your legal rights, you need to read all of the information relating to the receivership proceeding at this website, including the Frequently Asked Questions, and file a proof of claim before **March 31, 2010**, the Court ordered claims filing deadline in order for your claim to be considered timely filed. Additional information about the status of the receivership, status conferences set by the Court appointed Special Master and proposed actions will be posted on the website on an ongoing basis.

If you do not have access to the Internet, return this Notice in a separate envelope to the return address on the front of this Notice and request that you be sent the information and forms necessary for filing a claim. After reviewing the information, please complete the Proof of Claim form and mail it to the address on the front of this Notice. Correct your mailing address if it is not correct.

All timely filed claims must be filed on an approved Proof of Claim form and postmarked on or before 11:59 p.m. March 31, 2010.

Jennifer Ramsey, PC
Special Deputy Receiver of the
Southern Star Title Company, LLC
P.O. Box 303123
Austin, Texas 78703-0053

IMPORTANT LEGAL NOTICE

FOR AN INDIVIDUAL:

Signature

Print Name

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, who has executed this instrument on such individual's own behalf, who _____ is personally known to me or who _____ has produced a driver's license or other information as identification.

Notary Public

Printed Name: _____

My Commission Expires: _____

(NOTARY SEAL)

CONTINUE TO NEXT PAGE IF THIS CLAIM IS FILED OTHER THAN IN AN INDIVIDUAL CAPACITY.

FOR A CORPORATION OR LIMITED LIABILITY COMPANY:

Signature

Print Name

Title

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ (name of officer or member/manager), as _____ (title of officer or member/manager) of _____ (name of corporation or limited liability company), a _____ (describe state of incorporation or legal organization, who has executed this instrument on behalf of the said entity, who _____ is personally known to me or who _____ has produced a driver's license or other information as identification.

Notary Public

Printed Name: _____

My Commission Expires: _____

(NOTARY SEAL)

**CONTINUE TO NEXT PAGE IF THIS CLAIM IS NOT FILED FOR
A CORPORATION OR LIMITED LIABILITY COMPANY.**

FOR A PARTNERSHIP:

Signature

Print Name

Title

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ (name of partner), as partner of _____ (describe name of partnership), a _____ (state jurisdiction in which partnership is legally organized) partnership, who executed this instrument on behalf of the said entity, who _____ is personally known to me or who _____ has produced a driver's license or other information as identification.

Notary Public
Printed Name: _____
My Commission Expires: _____

(NOTARY SEAL)

**CONTINUE TO NEXT PAGE IF THIS CLAIM IS NOT FILED FOR
A PARTNERSHIP.**

FOR AN UNINCORPORATED BUSINESS ASSOCIATION OR TRUST:

Signature

Print Name

Title

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ (name of representative), on behalf of _____ (describe the name of the unincorporated business association or trust), a _____ (state jurisdiction in which unincorporated business association or trust is legally organized), who executed this instrument on behalf of the said entity, who _____ is personally known to me or who _____ has produced a driver's license or other information as identification.

Notary Public

Printed Name: _____

My Commission Expires: _____

(NOTARY SEAL)

CONTINUE TO NEXT PAGE IF THIS CLAIM IS NOT FILED FOR AN UNINCORPORATED BUSINESS ASSOCIATION OR TRUST.

**FOR A PUBLIC OFFICER, TRUSTEE, EXECUTOR, ADMINISTRATOR, GUARDIAN,
OR OTHER AUTHORIZED REPRESENTATIVE:**

Signature

Print Name

Title

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ (name of representative), as _____ (title of representative) of _____ (describe name of entity or person represented), who executed this instrument on behalf of the said entity or person represented, who _____ is personally known to me or who _____ has produced a driver's license or other information as identification.

Notary Public

Printed Name: _____

My Commission Expires: _____

(NOTARY SEAL)

END OF PROOF OF CLAIM FORM

READ CAREFULLY BEFORE COMPLETING THE PROOF OF CLAIM FORM

PROOF OF CLAIM INSTRUCTIONS

FILING DEADLINE: 11:59 P.M., C.D.T MARCH 31, 2010

Southern Star Title Company, LLC (“Southern Star”) was placed in receivership for liquidation by order of the 53rd Judicial District Court of Travis County, Texas on January 8, 2009. Jennifer Ramsey, PC was designated the Special Deputy Receiver (“SDR”) on March 26, 2009. This Proof of Claim form is to be used if you have a claim against Southern Star and must be postmarked to the SDR no later than **11:59 P.M. CDT MARCH 31, 2010**.

It is very important that you complete all the sections applicable to you, sign, and return the proof of claim form.

Please follow these instructions in completing the Proof of Claim form:

1. Provide us with your full name, permanent address, phone number, and, if you have computer access, your e-mail address. During the course of the receivership proceedings, you must notify us in writing of any mailing address and telephone number change. Failure to provide us with any change in your address may cause your claim to be delayed or disallowed.
2. You must provide your social security numbers (or Tax ID number) and telephone numbers, and sign and date the Proof of Claim. Claims filed by corporations must be signed by an authorized representative, stating the capacity of the signatory. If the form is completed by someone other than the claimant, evidence of the authority to file the claim must be attached.
3. If you have assigned your right of recovery, or if your claim was assigned to you, you must indicate the assignee’s name and address and attach a copy of the assignment.
4. Indicate the type of claim and amount, if known, by checking the appropriate category and indicating the amount. If the amount of a claim is unknown, insert the word “unstated” in the amount column.
5. **YOU MUST INCLUDE ANY DOCUMENTATION SUPPORTING YOUR CLAIM.** If you fail to adequately describe or document your claim, your claim may be disallowed.
6. To reduce expenses, receipt of the Proof of Claim form by the SDR will not be acknowledged. You will receive notice at the address you have provided to us on the Proof of Claim form when your claim is processed.
7. You must disclose all deposits, cash, premiums, securities, trust funds, letters of credit, or other assets of the Southern Star Receivership that you hold or control.
8. After you complete the Proof of Claim form, review the completed form, sign, and date it. Failure to properly complete the Proof of Claim form according to these instructions may cause your claim to be delayed or disallowed.

IMPORTANT NOTICE

MAIL THE COMPLETED AND SIGNED FORM AND ALL OF YOUR DOCUMENTATION TO:

SOUTHERN STAR TITLE COMPANY, LLC

IN RECEIVERSHIP

Jennifer Ramsey, PC, Special Deputy Receiver

P. O. Box 303123

Austin, Texas 78703-0053

Telephone: (512) 610-1614

THIS PROOF OF CLAIM FORM MUST BE SIGNED AND POSTMARKED

NO LATER THAN 11:59 PM C.D.T. on MARCH 31, 2010

For more information go to www.sstitleco-receivership.com.