

CAUSE NO. D-1-GV-09-000007

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

**SUBJECT TO AND WITHOUT WAIVING ITS OBJECTIONS TO THIS MATTER
BEING HEARD IN THE RECEIVERSHIP PROCEEDING, FALCON INTERNATIONAL
BANK'S MOTION TO DETERMINE EQUITY IN REAL ESTATE OR IN THE
ALTERNATIVE, MOTION FOR RELIEF FROM AUTOMATIC STAY PURSUANT TO
TEXAS INSURANCE CODE §443.008**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Falcon International Bank ("FALCON BANK"), by and through the undersigned counsel, and subject to and without waiving its objections to this matter being heard in the RECEIVERSHIP PROCEEDING, files this its Motion to Determine Equity in Real Estate or in the Alternative, Motion for Relief from Automatic Stay Pursuant to Texas Insurance Code §443.008. FALCON BANK would respectfully show the Court as follows:

I.
SUMMARY OF REFERENCED PARTIES, PROCEEDINGS & PROPERTY

1. **SDR RAMSEY**: Jennifer Ramsey, PC as Special Deputy Receiver of Southern Star Title Company, LLC was appointed by the State of Texas as liquidator in the instant proceeding ("RECEIVERSHIP PROCEEDING"). SDR RAMSEY is also the Plaintiff in another lawsuit which was filed in an effort to collect funds allegedly misappropriated by Rogelio "Roy" Ibanez ("IBANEZ") from Southern Star Title Company, LLC ("DEFENDANT INSURER").

2. **FALCON BANK:** FALCON BANK loaned Southern Star Title Plant, Inc. ("BORROWER") the principal sum of \$2,050,000.00 for the purpose of purchasing a title plant and to provide working capital.¹ Prior to the RECEIVERSHIP PROCEEDING, BORROWER leased the title plant to DEFENDANT INSURER.

3. **IBANEZ LITIGATION:** On July 2, 2009, SDR RAMSEY filed suit against IBANEZ in *Cause No. D-1- GN-09-002120; Jennifer Ramsey, PC as Special Receiver of Southern Star Title Company, LLC vs. Rogelio "Roy" Ibanez; filed in the District Court, Travis County, Texas, 419th Judicial District.* SDR RAMSEY secured an ex parte temporary restraining order in the IBANEZ LITIGATION on July 10, 2009, which has been continued to May 12, 2011 ("IBANEZ LITIGATION TRO") by agreement between SDR RAMSEY and IBANEZ.² FALCON BANK intervened in the IBANEZ LITIGATION and filed a motion to dissolve the IBANEZ LITIGATION TRO. FALCON BANK'S motion to dissolve was denied and there still has not been a temporary injunction hearing in the IBANEZ LITIGATION.³

4. **SANTO ANDREI:** Santo Andrei, Ltd. guaranteed payment of the multi-million dollar loan extended by FALCON BANK to BORROWER and further pledged its interest in the McALLEN REAL ESTATE as collateral for the loan.⁴

5. **McALLEN REAL ESTATE:** Two tracts of real estate comprised of +/- 51.01 acres in McAllen, Texas owned by SANTO ANDREI and pledged to FALCON BANK as collateral for the multi-million dollar loan. FALCON BANK is the senior lien holder on the McALLEN REAL ESTATE and its position is secured by a first lien deed of trust.⁵

¹ Falcon Exhibit "A-1."

² Falcon Exhibit "A-2."

³ Falcon Exhibit "A-3."

⁴ Falcon Exhibit "A-4."

⁵ Falcon Exhibit "A-5." To have a valid deed of trust, the instrument must be in writing, executed by a person with authority and acknowledged.⁵ See 11 Tex.Prac., Texas Methods of Practice §11.12 (2008). FALCON BANK recorded the REAL ESTATE DEED OF TRUST in the official records of Hidalgo County on

II.
PROCEDURAL & FACTUAL SUMMARY

6. On September 5, 2006, BORROWER entered into a promissory note with FALCON BANK in the principal sum of \$2,050,000.00 ("NOTE").⁶ The NOTE is secured by a Deed of Trust pledging the McALLEN REAL ESTATE.⁷

7. On January 8, 2009, an agreed order was entered, appointing liquidator and granting a permanent injunction in the above referenced cause ("RECEIVERSHIP PROCEEDING"). An agreed order placed Southern Star Title Company, L.L.C. ("DEFENDANT INSURER") into liquidation pursuant to Tex. Ins. Code §443.151 et.seq. and appointed the Commissioner of Insurance for the State of Texas ("COMMISSIONER") as liquidator of the DEFENDANT INSURER ("RECEIVERSHIP ORDER"). The permanent injunction was issued pursuant to Tex. Ins. Code §443.008(a), thereby restraining DEFENDANT INSURER and its agents from conducting DEFENDANT INSURER'S business as well as other parties from taking any action against DEFENDANT INSURER or its property.⁸

8. After the NOTE is in default and on April 7, 2010, an attorney representing SDR RAMSEY contacted FALCON BANK'S counsel and advised that he "represents an undisclosed client" whose interests "are for purposes of information only."⁹

9. On July 2, 2009, SDR RAMSEY files her original petition in the IBANEZ LITIGATION

September 12, 2006. The most basic principle of Texas lien law is that "the first in time is the first in right." *World Help v. Leisure Lifestyles, Inc.*, S.W.2d 662, 668 (Tex.App.-Fort Worth 1998, pet. denied); *Windam v. Citizens Nat. Bank*, 105 S.W.2d 348, 351 (Tex.Civ.App.-Austin 1937, writ dismissed); *Rankin v. Scott*, 25 U.S. 177, 179, L.Ed. 592 (1827). Of additional importance is the existence of Federal Tax Liens pending against DEFENDANT IBANEZ alone are in the amount of \$473,709.46 and a child support lien. There is at least one abstract of judgment filed in June 2010 against SANTO ANDREI. Any lien rights claimed by PLAINTIFF SDR are inferior to these liens. See Falcon Exhibit "A-12."

⁶ Falcon Exhibit "A-1."

⁷ Falcon Exhibit "A-5."

⁸ FALCON BANK was never served with the Receivership ORDER or otherwise given notice of the temporary injunction in the RECEIVERSHIP PROCEEDING. See Tex.Ins.Code §443.155 (a)(1)(C) and (b) (all entities reasonably expected to have claims against an insurer are to be given notice that (i) the insurer is in liquidation, (ii) certain acts are stayed and (iii) there is a deadline to file claims).

⁹ Falcon Exhibit "A-6."

and secures an ex parte temporary restraining order ("IBANEZ LITIGATION TRO").

10. On July 28, 2009, FALCON BANK was first served with a copy of an IBANEZ LITIGATION TRO, which purportedly precludes FALCON BANK from foreclosing on the MCALLEN REAL ESTATE.¹⁰

11. Again, On August 7, 2009, an attorney representing SDR RAMSEY contacted FALCON BANK'S counsel and advised that SDR RAMSEY "does not desire to interfere with any of FALCON BANK'S negotiations or rights but is only interested in recovering such monies or sums which may become available to Mr. Ibanez as a result of any such sale."¹¹

12. After multiple extensions of the IBANEZ LITIGATION TRO, FALCON BANK intervened in the IBANEZ LITIGATION and filed its motion to dissolve in December of 2009.¹² A tentative settlement is reached in the IBANEZ LITIGATION in February of 2010. The settlement falls apart on July 5, 2010. On October 10, 2010, after the court hears FALCON BANK'S motion to dissolve, an order is entered denying the requested relief.¹³

13. Since entry of the order denying FALCON BANK'S motion to dissolve was entered, the IBANEZ LITIGATION TRO was extended two more times.¹⁴

14. FALCON BANK currently seeks to enforce its contractual rights of collection against BORROWER and SANTO ANDREI by foreclosing on the MCALLEN REAL ESTATE.

¹⁰ Falcon Exhibit "A-2."

¹¹ Falcon Exhibit "A-7."

¹² Falcon Exhibit "A-8."

¹³ Falcon Exhibit "A-3."

¹⁴ Falcon Exhibit "A-2."

III.
EXHIBITS

15. FALCON BANK attaches and incorporates the following evidence in support of this motion:

FALCON EXHIBIT A-1 Promissory Note Dated September 2006, in the principal amount of \$2,050,000.00 whereby Southern Star Title Plant, Inc. is Maker and Falcon International Bank is Holder.

Allonge and Modification of Promissory Note effective September 5, 2007.

Second Allonge and Modification of Promissory Note dated effective December 5, 2007.

Modification, Renewal and Extension of Note and Lien dated effective March 5, 2008.

Modification, Renewal and Extension of Note and Lien dated effective June 5, 2008.

FALCON EXHIBIT A-2 True and Correct Copies of all temporary restraining orders entered in the IBANEZ LITIGATION.

FALCON EXHIBIT A-3 True and Correct Copy of the Order denying FALCON BANK'S motion to dissolve filed in the IBANEZ LITIGATION

FALCON EXHIBIT A-4 Guaranty executed by SANTO ANDREI and IBANEZ.

FALCON EXHIBIT A-5 Certified Copy of Deed of Trust Security Agreement - Financing Statement Assignment of Rents between Santo Andrei, Ltd. and Falcon International Bank dated September 2006.

FALCON EXHIBIT A-6 April 7, 2009, correspondence from Charles Fiscus to Richard Haynes.

FALCON EXHIBIT A-7 August 7, 2009, correspondence from Charles Fiscus to Richard Haynes.

FALCON EXHIBIT A-8 Certified Copy of Docket Sheet in IBANEZ LITIGATION.

FALCON EXHIBIT A-9 Rule 11 Agreement.

FALCON EXHIBIT A-10 Excerpts from the transcript for the October 19, 2010 hearing in the IBANEZ LITIGATION.

FALCON EXHIBIT A-11 MCALLEN REAL ESTATE Appraisals.

FALCON EXHIBIT A-12 Certified copies of various lien filings against DEFENDANT IBANEZ and SANTO ANDREI.

IV.
FALCON BANK'S OBJECTIONS

16. FALCON BANK files this motion subject to and without waiving its objections to this matter being heard in the RECEIVERSHIP PROCEEDING.¹⁵

GENERAL OBJECTION TO RECEIVERSHIP PROCEEDING

17. Prior to the filing of this motion, SDR RAMSEY "informally" advised FALCON BANK that its Motion to Determine Equity as filed in the IBANEZ LITIGATION must be heard by the RECEIVERSHIP COURT.¹⁶ FALCON BANK disagrees and objects to any such contention. First, this contention is unsupported by the Constitution of the United States or the Texas Constitution. U.S. Const. Amend. XIV., Tex.Const.Art.1, §19. SDR RAMSEY neither sued FALCON BANK nor served FALCON BANK with any notice that there would be an adjudication of FALCON BANK's rights in the RECEIVERSHIP PROCEEDING. *Id.* Nothing in the Receivership Act allows SDR RAMSEY or the State of Texas to strip FALCON BANK of its basic constitutional right to due process.

18. Additionally, SDR RAMSEY voluntarily elected to file the IBANEZ LITIGATION in a

¹⁵ Falcon Exhibit "A-9."

¹⁶ Counsel for SDR RAMSEY and FALCON BANK participated in an informal telephone conference with Jennifer Kracht, staff attorney to the Honorable Judge Jenkins who is presiding over the IBANEZ LITIGATION. In said conference, SDR RAMSEY's position was stated. The parties then agreed to enter into the attached Exhibit "A-9."

separate lawsuit six months after the entry of the RECEIVERSHIP ORDER. It is in the IBANEZ LITIGATION whereby SDR RAMSEY first sought any type of injunctive relief which would in any way preclude, interfere and/or delay FALCON BANK'S rights of collection against non-parties to the RECEIVERSHIP PROCEEDING. SDR RAMSEY had already selected the forum in which she wanted to adjudicate the rights of FALCON BANK, but now she wants to force FALCON BANK to adjudicate its rights in two different forums. First, SDR RAMSEY wants injunctive relief in the IBANEZ LITIGATION to preclude FALCON BANK from foreclosing on the McALLEN REAL ESTATE and further wants to use said litigation to support her alleged "property interest" claim. Second, SDR RAMSEY wants FALCON BANK to seek relief from a temporary restraining order currently pending in the IBANEZ LITIGATION, which has been continued for over a year and a half, in the RECEIVERSHIP PROCEEDING. SDR RAMSEY'S actions are inherently unfair, inefficient and expensive to FALCON BANK, a third party whose contractual rights arose well before the RECEIVERSHIP PROCEEDING.¹⁷ FALCON BANK has a valid contractual relationship with BORROWER and SANTO ANDREI.¹⁸ FALCON BANK has certain rights of collection which include foreclosure of the McALLEN REAL ESTATE.¹⁹ SANTO ANDREI clearly owned the McALLEN REAL ESTATE prior to the existence of DEFENDANT INSURER, any alleged wrongful acts of IBANEZ and the RECEIVERSHIP PROCEEDING. Further, SANTO ANDREI still owns the McALLEN REAL ESTATE and SDR RAMSEY and DEFENDANT INSURER do not have an ownership or property interest in the McALLEN REAL ESTATE.²⁰

¹⁷ Falcon Exhibits "A-1," "A-4" and "A-5."

¹⁸ Id.

¹⁹ Id.

²⁰ At best, SDR RAMSEY has a *potential* right to receive any excess proceeds from the foreclosure of the McALLEN REAL ESTATE. SDR RAMSEY contends that an interlocutory judgment against IBANEZ in the IBANEZ LITIGATION grants a second lien interest in Mc ALLEN REAL ESTATE thereby bringing it within the 'property of the insurer' or 'property of the estate.' FALCON BANK refutes same because an interlocutory judgment

SPECIFIC OBJECTION TO McALLEN REAL ESTATE BEING TREATED AS PROPERTY OF THE RECEIVERSHIP ESTATE

19. FALCON BANK objects to any argument and assertion by SDR RAMSEY that the McALLEN REAL ESTATE is property of the RECEIVERSHIP ESTATE. If the McALLEN REAL ESTATE was the property of the RECEIVERSHIP ESTATE, then SDR RAMSEY was required to give FALCON BANK notice of the RECEIVERSHIP PROCEEDING as a creditor. Tex.Ins.Code §443.155 (a)(1)(C) and (b). No such notice was ever given to FALCON BANK, because FALCON BANK is not a creditor of DEFENDANT INSURER and DEFENDANT INSURER does not have any property rights or rights of ownership in the McALLEN REAL ESTATE.

20. Although the Texas Receivership Act broadly defines 'property of the insurer' as well as 'property of the estate,' any property interest is derivative of the property rights of the DEFENDANT INSURER.²¹ Tex.Ins.Code §443.004(a)(20) ("all right title and interest of the insurer").²² Although FALCON BANK has been unable to find any receivership case

cannot create *an interest in property or a lien of any sort*, because it is not a final judgment. *Blankenship & Buchanan v. Herring*, 132 S.W.882 (Tex. Civ. App.—Fort Worth 1910, no writ). Put differently, a judgment cannot be enforced by execution until it is final. See *Williams v. State of Wash.*, 566 S.W.2d 54, 56 (Tex. Civ. App.—Dallas 1978, *rev'd on other grounds*, 584 S.W.2d 260 (Tex. 1979)) (citing *Trigg v. Royal Indemnity Company of New York*, 468 S.W.2d 468, 469 (Tex. Civ. App.—Austin 1971, no writ); *McMillan v. McMillan*, 67 S.W.2d 342 (Tex. Civ. App.—Dallas 1933, no writ). The plain language of the judgment provides that it is interlocutory, granted in favor of SDR RAMSEY and against IBANEZ. See *In re Smith*, 192 S.W.3d 564, 568-69 (Tex. 2006). At best, PLAINTIFF SDR *may* have a right to collect any excess proceeds after the foreclosure sale of the McALLEN REAL ESTATE *but only if* PLAINTIFF SDR secures a final judgment against IBANEZ *and* PLAINTIFF SDR establishes her seniority over all other junior lienholders. See *Mortgage & Trust, Inc. v. Bonner & Co.*, 572 S.W.2d 344,351 (Tex.Civ.App.-Corpus Christi 1978, writ ref'd n.r.e.); see also *McDonald v. Dorbrandt*, 42 S.W. 1047, 1048 (Tex. Civ. App.—Austin 1897, no writ). SDR RAMSEY's claim to excess proceeds is secondary to prior judgment holders and the Federal Tax Liens. See additional authorities cited in Paragraph 20.

²¹ FALCON BANK has been unable to locate any case law interpreting the definition of 'property of the insurer' and/or 'property of the estate.' However, it is important to note that the language "right, title and interest" mirrors that of a quitclaim deed. See *Geodyne Energy Income Prod. P'ship I-E v. Newton Corp.*, 161 S.W.3d 482, 486-87 (Tex. 2005). Language in a deed assigning all of one's "right, title, and interest" in property does not convey the property – it merely conveys whatever interest in the property the assignor possesses. *Id.*

²² None of these definitions include language about the property of an affiliate, control or subsidiary. See Tex.Ins.Code §443.004(a)(14) and (20). If the Texas Legislature intended for property belonging to an

law directly on point, federal bankruptcy law is also consistent with FALCON BANK'S position. *Farmers Bank v. March (In re March)*, 140,B.R. 387 (E.D.Virginia 1992), *aff'd* 988 F.2d 498 (4th Cir. 1993), *cert denied*, 510 U.S. 864, 114 S.Ct. 182, 126 L.Ed.2d 141 (1993) (a debtor's junior liens in real property were 'clearly' property of the estate, but the land was not included in the estate by virtue of the lien.). FALCON BANK'S reasoning is analogous to a debtor who is a partner in a partnership – the debtor's interest in the partnership is part of the bankruptcy estate, but the partnership's property is not. See *In re Madden*, 153 B.R. 119, 122 (Bkrtcy.E.D.N.Y. 1993) (“[b]ecause a partner has no right to assign specific partnership property, nor is such property subject to attachment or execution by an individual partner's creditors, a debtor/partner's estate does not include such rights.”). Lastly, FALCON BANK has no knowledge of the MCALLEN REAL ESTATE ever being identified or otherwise disclosed as an asset in the RECEIVERSHIP PROCEEDING based upon its review of all summary statements of expenses and financials filed by SDR RAMSEY in the RECEIVERSHIP PROCEEDING.

V.
MOTION TO DETERMINE EQUITY IN REAL ESTATE

21. Subject to and without waiving any of its rights and/or previously asserted objections herein, FALCON BANK files this motion to determine equity in the MCALLEN REAL ESTATE pursuant to the Court's ruling and stipulation of SDR RAMSEY in the IBANEZ LITIGATION.²³

22. On September 13, 2010, RGV Appraisal Services, LLC (“RGV”) submitted a

affiliate, control or subsidiary to constitute 'property of the insurer' or 'property of the estate,' then the Texas Legislature would have included same in its definition. See *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981) (a court can insert additional words into a statutory provision only when it is necessary to give effect to the clear legislative intent).

²³ Falcon Exhibit “A-10.”

certified appraisal to FALCON BANK on each of the tracts comprising the McALLEN REAL ESTATE.²⁴ The combined value of the two appraisals for the McAllen Real Estate is \$1,430,000.00.²⁵

23. The NOTE's original principal balance of \$2,050,000.00 is owed to FALCON BANK, which is exclusive of any additional principal amounts funded by FALCON BANK as well as any contractual interest, fees, costs and expenses due and owing.²⁶

24. Therefore, FALCON BANK respectfully requests an evidentiary hearing on its Motion to Determine Equity in the Certain Real Estate, and upon a finding of no equity of DEFENDANT INSURER and/or SDR RAMSEY in the McALLEN REAL ESTATE, FALCON BANK seeks entry of an order affirming its rights to foreclose on the McALLEN REAL ESTATE.

VI.
IN THE ALTERNATIVE, MOTION FOR RELIEF FROM AUTOMATIC STAY
PURSUANT TO TEX. INS. CODE §443.008

25. Subject to and without waiving any of its rights and/or previously asserted objections herein, FALCON BANK, in the alternative, files this motion to determine equity in the McALLEN REAL ESTATE pursuant to Texas Insurance Code §44.3008(h), which provides in part:

Upon request of a party-in-interest and after notice and any hearing, the receivership court determines is appropriate, the receivership court may grant relief from the stay of such Section (c) or (d), such as by terminating, annulling, modifying, and conditioning the stay:

- (1) for causes described in sub-section (i); or
- (2) with respect to the stay of an act against property of Section (c) if:
 - a. The insured does not have equity in the property; and
 - b. The property is not necessary for an effective rehabilitation plan.

²⁴ Falcon Exhibit "A-11."

²⁵ Id.

²⁶ Falcon Exhibit "A-1."

26. Texas Insurance Code §443.008 authorizes the receivership court to terminate, annul or modify the stay for cause or where there is no equity and the subject property is not necessary for an effective reorganization. While there appears to be no case law interpreting §443.008, the statutory language is similar to the automatic stay provisions of the Bankruptcy Code, 11 U.S.C. §362(d)(1) and (2), which authorizes relief from a bankruptcy stay for cause or when there is no equity and the property is not necessary for an effective reorganization. In bankruptcy, “cause” for purposes of modification of the automatic stay is an intentionally broad and flexible concept that permits the bankruptcy court, as a court of equity, to respond to inherently fact sensitive situations. *In Re Texas State Optical, Inc.*, 188 B.R. 552 (Bankr.E.D.Tex. 1995); *see also In Re Blythe*, 2002 Bankr. Lexis 1974 (Bankr.N.D.Tex. 2002) *citing Mooney v. Gild*, 310 B.R. 543 (Bankr.N.D.Tex. 2002).

27. Factors to consider when determining whether relief from the stay for “cause” is appropriate include the following:

a. FALCON BANK’S position continues to deteriorate. Interest continues to accrue at the daily per diem rate of \$467.58 or \$170,666.70 per annum.

b. The fair market value of the MCALLEN REAL ESTATE is less than the amount of the FALCON BANK secured debt. The fair market value as of September 2010 is \$1,430,00.00. The amount owed to FALCON BANK on the NOTE as of February 28, 2011, is \$2,407,974.75.

28. **The MCALLEN REAL ESTATE is not Property of DEFENDANT INSURER.** As previously asserted herein, FALCON BANK contends that the MCALLEN REAL ESTATE is not property of the DEFENDANT INSURER. FALCON BANK specifically incorporates all arguments and authorities set forth in Section IV above as additional support of its position. If the MCALLEN REAL ESTATE is not the property of DEFENDANT INSURER, then

Tex. Ins. Code §443.008(h) is inapplicable and FALCON BANK should be permitted to foreclose without further interference by SDR RAMSEY.

29. **If the McALLEN REAL ESTATE is Property of DEFENDANT INSURER, then DEFENDANT INSURER has no Equity.** It is undisputed the original principal amount of the NOTE due FALCON BANK is in the amount of \$2,050,000.00, exclusive of interest, fees, costs and expenses or any other extensions of principal. The appraised value of the McALLEN REAL ESTATE is \$1,430,000.00. It is irrefutable that there is no equity in the McALLEN REAL ESTATE. FALCON BANK'S interest accrues at the rate of \$467.58 per day or approximately \$170,666.70 per annum. Interest on the NOTE is accruing without payment by SDR RAMSEY. In light of the foregoing, Falcon Bank seeks relief from the stay because there is no equity. Tex. Ins. Code §443.008(h)(2).

30. **The McALLEN REAL ESTATE is not necessary for an effective rehabilitation plan.** DEFENDANT INSURER is in liquidation. There is no plan of rehabilitation for DEFENDANT INSURER. Thus, the McALLEN REAL ESTATE is unnecessary for rehabilitation and FALCON BANK hereby seeks relief from the stay. Tex. Ins. Code §443.008(h)(2).

VII **PRAYER**

31. WHEREFORE PREMISES CONSIDERED, subject to and without waiving its objections to this matter being heard in the RECEIVERSHIP PROCEEDING, FALCON BANK requests that this motion be set for an evidentiary hearing upon notice to all parties; that the Court find that there is no equity of DEFENDANT INSURER and/or SDR RAMSEY in the McALLEN REAL ESTATE subject to this motion; and that the Court enter an order affirming FALCON BANK'S right to foreclosure and for such other and further relief to which FALCON BANK may be entitled, whether at law or in equity.

Respectfully submitted,

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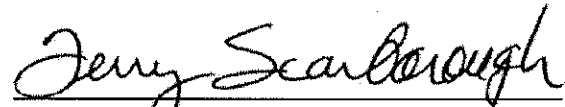
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BANK

Notice of Hearing Subject to Ruling by Judge Jenkins

Subject to a ruling by Judge Jenkins granting Plaintiff's Motion to Enforce Order of Reference, this matter is set before the Special Master Tom Collins on April 27, 2011 at 9:00 a.m. at the Texas Department of Insurance, Room 100, 333 Guadalupe Street, Austin, Texas.



Terry L. Scarborough

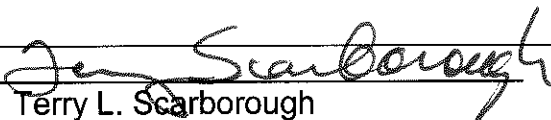
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record herein by way of:

- U.S. Mail, First Class
- Certified Mail
- Facsimile
- Federal Express
- Hand Delivery
- E-Service

on this 14th day of March, 2011, to wit:

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 Terry L. Scarborough