

NO. D1-GN-06-002366

STATE OF TEXAS	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
VESTA FIRE INSURANCE CORPORATION,	§	
VESTA INSURANCE CORPORATION,	§	
SHELBY CASUALTY INSURANCE	§	
COMPANY, THE SHELBY	§	
INSURANCE COMPANY,	§	
TEXAS SELECT LLOYDS	§	
INSURANCE COMPANY, SELECT	§	
INSURANCE SERVICES, INC., and	§	
AMERICAN FOUNDERS FINANCIAL	§	
CORPORATION	§	
<i>Defendants</i>	§	126th JUDICIAL DISTRICT

**FINAL ACCOUNTING AND APPLICATION TO DISCHARGE RECEIVER AND
SPECIAL DEPUTY RECEIVER AS TO VESTA INSURANCE CORPORATION ONLY**

TO THE HONORABLE JUDGE OF SAID COURT:

Prime Tempus, Inc. Special Deputy Receiver (SDR) of Vesta Fire Insurance Corporation (Vesta Fire), Vesta Insurance Corporation (VIC), Shelby Casualty Insurance Company, The Shelby Insurance Company, Texas Select Lloyds Insurance Company, Select Insurance Services, Inc., and American Founders Financial Corporation files its *Final Accounting and Application to Discharge Receiver and Special Deputy Receiver as to Vesta Insurance Corporation Only* (the Application).

I. RELIEF REQUESTED

1. On April 9, 2021, this Court entered its *Order Granting Special Deputy Receiver's Application to Approve Entry into a Stock Purchase Agreement (Vesta Insurance Corporation)*, which authorized the sale of VIC shares. After the purchaser obtained regulatory approvals, the parties closed the sale of VIC effective September 24, 2021. On October 6, 2021, the SDR filed

its *Notice of Closing and Release of Vesta Insurance Corporation from Rehabilitation* as part of approving the stock purchase agreement. The SDR submits this final accounting and request for a discharge as to VIC only. The SDR requests that the Court terminate this proceeding and discharge the Texas Commissioner of Insurance (Commissioner) as Receiver of VIC, and Prime Tempus, Inc. as SDR of VIC. This Application will not affect the receivership proceedings of Vesta Fire, Shelby Casualty Insurance Company, The Shelby Insurance Company, Texas Select Lloyds Insurance Company, Select Insurance Services, Inc., and American Founders Financial Corporation in this case, which remain pending.

II. AUTHORITY

2. The SDR is authorized to file this Application under Texas Insurance Code §§443.008 and 443.102. The subject matter of this Application has been referred to the Master appointed in this proceeding in accordance with the *Order of Reference to Master* entered on June 28, 2006.

III. BACKGROUND

3. On May 12, 2006, VIC re-domiciled to Texas from Illinois. VIC operated as a property and casualty insurer under what is now Title 10 of the Texas Insurance Code. On June 28, 2006, the Texas Department of Insurance filed this action to place VIC into rehabilitation. This Court issued its *Agreed Order Appointing Rehabilitator and Permanent Injunction* on or about June 28, 2006. The Court issued its *Order of Reference to Master* on or about June 28, 2006. VIC operated successfully, paying its claims as they came due. On April 9, 2021, this Court entered its *Order Granting Special Deputy Receiver's Application to Approve Entry into a Stock Purchase Agreement (Vesta Insurance Corporation)*. This order authorized sale of the stock in VIC by Vesta Fire in receivership. Also, on closing of the sale, the order authorized the

release of VIC from receivership. The transaction under the Stock Purchase Agreement closed on September 24, 2021, and the Notice of Closing and Release of VIC from Rehabilitation was filed on October 6, 2021. This Application sets forth the SDR's final accounting and request for a discharge of VIC for the Receiver and the SDR.

IV. FINANCIAL STATEMENTS

4. The following final financial statements are attached to this Application:
 - a. Balance Sheet (Statement of Net Assets and Net Liabilities) for VIC, Exhibit A-1 to the Craig A. Koenig Affidavit; and
 - b. Sources and Uses of Cash, Exhibit A-2 to the Craig A. Koenig Affidavit.

V. CLAIMS

5. No claims remain against the receivership estate of VIC. All claims against VIC remained with VIC on its sale and release from receivership.

VI. EXPENSES

6. The payment of expenses is authorized by Texas Insurance Code § 443.015. In connection with the closing, the SDR incurred expenses of \$22,978.30, which were deducted from the assets of VIC. Exhibit A-3 to the Affidavit of Craig A. Koenig has those expenses. Any additional expenses associated with the sale of VIC will be paid from the proceeds of sale which were received by Vesta Fire from the purchaser.

VII. CHARTER

7. Because VIC's shares have been sold, no actions need be taken to cancel its charter.

VIII. THE TRANSFER OF VIC WINDS UP THE RECEIVERSHIP AS TO VIC ONLY

8. The SDR successfully sold the shares of VIC. Under the terms of the VIC Sale Order, VIC exited from rehabilitation on the closing of the transaction. Having successfully sold VIC, the proceedings as to VIC only should be wound up. The receivership proceedings will remain in place as to the other companies made the subject of this receivership

IX. TAX RETURNS

9. VIC was a wholly-owned subsidiary of Vesta Fire prior to the sale of VIC's shares. VIC was included in Vesta Fire's consolidated federal income tax returns through December 31, 2020. All 2021 activity prior to the sale of VIC's stock will be included in the 2021 Vesta Fire consolidated return. On the closing of the sale of VIC's shares, VIC, now owned by a new shareholder, will be responsible to file its own tax returns for activity from the date of sale through the balance for the calendar year.

X. FINAL ACCOUNTING AND DISCHARGE

10. The SDR requests that this Court accept the final accounting and discharge the Receiver and the SDR as to VIC only.

XI. NOTICE

11. The SDR has provided notice of the submission of this Application to all persons who have requested notice and to other parties as determined by the SDR.

XII. OFFER OF PROOF

12. The attached Affidavit of Craig A. Koenig supports this Application. The Court is requested to accept this affidavit and its exhibits into evidence.

XIII. REQUEST FOR RELIEF

WHEREFORE, premises considered, the SDR requests that this Court enter an order:

- a) Granting the Application in all respects;
- b) Accepting the Final Accounting;
- c) Accepting the Affidavit of Craig A. Koenig and its exhibits into evidence;
- d) Discharging the Receiver and the SDR as to VIC Only;
- e) Terminating this proceeding as to VIC only; and
- f) Granting the Receiver and the SDR other relief to which they may be entitled.

Respectfully submitted,

WISENER, NUNNALLY ROTH & HIGGINS, LLP

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ATTORNEYS FOR THE
SPECIAL DEPUTY RECEIVER

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 15th day of December, 2021.

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AFFIDAVIT OF CRAIG A. KOENIG

STATE OF TEXAS §
 §
COUNTY OF HAYS §

On this day, Craig A. Koenig, being duly identified to me, appeared before me, the undersigned Notary Public, and, after first being duly sworn by me, stated that:

1. I am the President of Prime Tempus, Inc., Special Deputy Receiver of Vesta Insurance Corporation. I am duly authorized to make this verification and make this verification on behalf of Prime Tempus, Inc., Special Deputy Receiver of Vesta Insurance Corporation. I file this application seeking approval of the Final Accounting and Application to Discharge Receiver and Special Deputy Receiver in that pleading.

2. I attach to my Affidavit the following Exhibits:

Exhibit A-1: Balance Sheet (Statement of Net Assets and Net Liabilities) for Vesta Insurance Corporation;

Exhibit A-2: Sources and Uses of Cash for Vesta Insurance Corporation; and

Exhibit A-3: Statement of expense budget used for the Vesta Insurance Corporation closing.

These exhibits were prepared at my direction by the Special Deputy Receiver staff with the support of the receivership accounting subcontractor. I certify that Exhibits A-1 through A-3 constitute records of the receivership of Vesta Insurance Corporation, and are true and correct copies of records maintained by the Special Deputy Receiver on behalf of the Receiver's office.

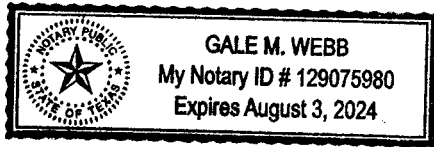
3. For the reasons in the Application, I recommend and request that the Court issue

this order.

S. A. Koenig

Craig A. Koenig, President,
on behalf of Prime Tempus, Inc.

SUBSCRIBED AND SWORN TO before me on the 14th day of December, 2021.



Gale M. Webb
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS.

Vesta Insurance Corporation
Statement of Net Assets

For the Period Ending
10/31/21

Exhibit A-1
Page 1

Line		
Cash		
1	Cash	
	Cash - Unrestricted	
Investments		
2	Short-Term Investments	
3	Bonds	
4	Stocks - Preferred & Common	
5	Investments in Subsidiaries, Controlled or Affiliated Entities	
6	Mortgage Loans	
7	Real Estate	
8	Policy Loans	
9	Other Invested Assets	
Restricted Assets		
10	Statutory Deposits	
11	Funds held by or deposited with Reinsured Companies	
12	Restricted - Other	
Reinsurance Receivable		
13	Reinsurance Recoverables on Paid Losses & LAE (net of allowance)	
14	Reinsurance Recoverables on Unpaid Losses & LAE (net of allowance)	
15	Reinsurance Recoverables on UEP & Contingent Commissions	
Other Receivables		
16	Salvage & Subrogation Recoveries	
17	Premiums Due from Agents & Policyholders	
18	Receivable from Parents, Subsidiaries & Affiliates	
20	Other Receivables - Michigan Catastrophic Claims Association	
Other Assets		
21	FF&E	
22	Other Assets	
	Total Assets	0

R-531

Vesta Insurance Corporation
Statement of Net Assets

For the Period Ending
10/31/21

Exhibit A-1
Page 2

NOTES

Ref No.
General

The receivership statement of assets is prepared based on company books and records using statutory accounting principles. Estimates and assumptions are utilized to report asset amounts.

Vesta Insurance Corporation
Statement of Net Liabilities

For Period Ending
10/31/21

Line

1	Secured Claims	
3	Special Deposit Claims	
Administrative Claims - Class 1		
4	Administrative Claims - State/Receiver	
	Special Deputy Receiver, Subcontractors Fees & Expenses	
	Liquidation Oversight	
	Special Master's Fees	
Policy Claims - Class 2		
8	Loss Claims - Other	
	Other Loss Claims Paid	
	Other Loss Claims Reserves	
9	LAE - Other	
11	Unearned & Advance Premium Claims - Other	
Other Liabilities		
22	Other Liabilities	
	Total Liabilities	0
23	Total Equity/(Deficit) Excess (Deficiency) of Assets over Liabilities	0
	Total Liabilities & Equity	0

**Vesta Insurance Corporation
Statement of Net Liabilities**

**For Period Ending
10/31/21**

NOTES

All amounts recorded based on adjudicated claims unless otherwise specified

Ref. No.
General

The receivership statement of liabilities is prepared using a statutory basis of accounting that differs from generally accepted accounting principles (GAAP).

R-531

Vesta Insurance Corporation
Sources & Uses of Cash
Inception To October 31, 2021

Exhibit A-2

Beginning Cash	\$7,774,995
Recoveries	
Premium Receipts	1,090,624
Agents' Balances Received	356,382
Reinsurance Recoveries	2,394,340
Salvage & Subrogation Recoveries	305,089
Affiliates Recovery	196,774
Other Receipts	411,995
Investment Sales/Receipts	<u>3,666,234</u>
Total Receipts from Assets/Receivables	8,421,438
Passive Income	
Investment Interest/Dividends	662,062
Cash Deposit Interest	<u>747,312</u>
Total Cash Receipts	1,409,374
Disbursements	
SDR Fees & Expenses	995,121
Subcontractor Legal Fees & Expenses	417,739
Other Fees & Expenses	<u>1,194,434</u>
Total Disbursements for Operations	2,607,294
Distributions	
Refunds	1,967,460
Loss Claims & LAE Expense Payments	4,135,589
Other Distributions	<u>8,895,464</u>
Total Cash Distributions	14,998,513
Ending Cash	<u><u>\$0</u></u>

Vesta Fire/Vesta Insurance Corp
 Schedule of Items to be Reimbursed by VIC to VFIC

Exhibit A-3

VIC Cash Amount at August 31, 2021	104,183.10
Claims Payment-Gorcholski	(143.36)
Claims Payment-NRMI LLC	(14,196.00)
Claims Payment-Review Works	<u>(265.64)</u>
Cash Remaining at September 20, 2021	89,578.10

VIC July Expenses

Access Information Holdings	322.94	
Driver Contracting	71.58	
Iron Mountain	463.68	
Prime Tempus	2,690.19	
Petrosewicz	337.50	
Safesite	99.53	
Stroud	24.26	
Patricia White	55.00	
Wisener Nunnally	545.00	
Texas Treasury-RLO	250.00	(4,859.68) A

VIC August Expenses

Prime Tempus	5,540.55	
Petrosewicz	887.50	
Patricia White	55.00	
Wisener Nunnally	560.00	
Texas Treasury-RLO	279.81	(7,322.86) B

VIC September Expenses

Prime Tempus	7,615.76	
Petrosewicz	875.00	
Patricia White	55.00	
Wisener Nunnally	2,000.00	
Texas Treasury-RLO	250.00	<u>(10,795.76) C</u>

Remaining Cash to Send to Darag 66,599.80

Sum of Reimbursement Check A+B+C 22,978.30

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Jacob Higgins on behalf of Robert Nunnally, Jr.
Bar No. 15141600
jacob@wnrlaw.com
Envelope ID: 60071782
Status as of 12/18/2021 8:24 AM CST

Case Contacts

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