

NO. D-1-GV-05-000846

THE STATE OF TEXAS

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IN THE DISTRICT COURT OF

VS.

TRAVIS COUNTY, TEXAS

FINANCIAL INSURANCE COMPANY
OF AMERICA

261st JUDICIAL DISTRICT

FINAL ACCOUNTING AND APPLICATION TO TERMINATE RECEIVERSHIP

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Resolution Oversight Corporation, Special Deputy Receiver of Financial Insurance Company of America (the “SDR” and “FICA”, respectively), files its *Final Accounting and Application to Terminate Receivership* (the “Application”).

I. RELIEF REQUESTED

1. On December 10, 2014, this Court entered its *Order Approving Final Report and Application to Make Final Distribution* (“Final Distribution Order”). The SDR has completed the distribution of assets in accordance with the Final Distribution Order and submits its final accounting. The SDR requests that the Court terminate this receivership proceeding, and discharge the Texas Commissioner of Insurance (“Commissioner”) as Receiver of FICA, and Resolution Oversight Corporation, as the Special Deputy Receiver of FICA.

II. AUTHORITY

2. The SDR is authorized to file this Application pursuant to § 443.352 of the Texas Insurance Code (the “Code”). The subject matter of this Application has been referred to the Master appointed in this proceeding in accordance with the *Amended Order of Reference to Master* entered on November 4, 2005.

III. FINAL FINANCIAL STATEMENTS

3. The Balance Sheet, attached as “Exhibit A”, and the Sources and Uses of Cash Statement, attached as “Exhibit B”, reflect the financial condition of the receivership estate as of February 28, 2015.

IV. EXPENSES

4. The Final Distribution Order approved an Expense Reserve of \$45,500 for the payment of estimated expenses from November 1, 2014 through the termination of the receivership. The actual expenses incurred were \$39,186.79. Attached as “Exhibit C” is the final statement expenses submitted pursuant to § 443.015 of the Code.

V. DISTRIBUTIONS

5. A schedule of all distributions from the receivership is attached as “Exhibit D”. Through early access payments and the distributions authorized in the Final Distribution Order, the SDR paid 100% of the Class 1 claims. The SDR also made Class 2 distributions, credits and assignments of \$14,499,923.00, representing a distribution of approximately 44.95% to that class. No assets were available for distribution to Class 3 or classes of lower priority.

6. The Final Distribution Order authorized the SDR to make an additional distribution if there were sufficient funds remaining after the payment of expenses. The SDR determined that the unused portion of the expense reserve justified a subsequent distribution to the Class 2 claimants. After taking into account the \$15.00 *de minimis* threshold approved in the Final Distribution Order, the SDR made a subsequent distribution totaling \$7,391.84 to three claimants.

7. The SDR was also authorized to transfer any residual funds left from the Expense Reserve to the Commissioner to defray expenses incurred after the termination of receivership

proceeding for handling inquiries and asset management issues related to the transferred assets. The residual funds of \$1,798.02 have been transferred to the Commissioner.

VI. UNCLAIMED FUNDS

8. There were no unclaimed funds to deliver to the Commissioner, as all distributions were received and deposited by the claimants.

VII. FEDERAL INCOME TAX RETURNS

9. The SDR has filed a final federal tax return for 2014. No federal income taxes were owed by the receivership estate.

VIII. TRANSFERS

10. The Final Distribution Order authorized the SDR to transfer the Facility Insurance Stock and any unknown assets of FICA to the Commissioner. In addition, the order authorized the SDR to transfer certain unliquidated assets to the Texas Property and Casualty Insurance Guaranty Association (“TPCIGA”). The unliquidated assets to be transferred to the Commissioner and to TPCIGA are identified in “Exhibit E” and “Exhibit F”, respectively.

IX. RECORDS

11. The Final Distribution Order authorized the SDR to destroy certain records of FICA that were no longer required for the administration of the receivership. The remaining records of FICA will be transferred to the Commissioner, or to the state insurance guaranty associations that have agreed to accept them (“Guaranty Associations”). In accordance with the Final Distribution Order, Commissioner and the Guaranty Associations were authorized to dispose of any or all records transferred to them at their discretion.

X. TERMINATION AND DISCHARGE

12. The SDR requests that this Court issue an Order terminating the receivership estate and discharging the Receiver and the SDR.

XI. OFFER OF PROOF

13. Attached hereto as Exhibit "G" is an Affidavit submitted under § 443.017 of the Code, authenticating Exhibits A through F, which are incorporated herein by reference.

WHEREFORE, PREMISES CONSIDERED, the SDR prays that this Court grant this Application and enter an order:

1. Accepting into evidence all the Exhibits filed with this Application;
2. Granting the Application in all respects;
3. Approving the Final Statement of Expenses;
4. Approving the transfer of the assets listed on Exhibit E to the Commissioner, and vesting ownership of these assets in the Commissioner;
5. Approving the Assignment of Unliquidated Assets listed on Exhibit F to TPCIGA, and vesting ownership of these assets in TPCIGA;
6. Approving the SDR's transfer the residual funds from the expense reserve to the Commissioner pursuant to §443.352 of the Code.
7. Discharging the Receiver and the SDR;
8. Terminating this proceeding; and,
9. Granting the Receiver and the SDR other relief to which they may be entitled.

Respectfully submitted,

STROUD, MARRERO & WELCH, PLLC
11824 Jollyville Road, Suite 200
Austin, Texas 78759
Telephone: 512/482-9291
Facsimile: 512/482-9211

Rachel J. Stroud
State Bar No. 19424700
rstroud@stroudmarrerowelch.com

By: /s/ Rachel J. Stroud
Attorneys the Special Deputy Receiver

APPLICANT'S NOTICE OF SUBMISSION

In accordance with the Amended Order of Reference to Master entered by the District Court in this cause, the *Final Accounting and Application to Terminate Receivership* is hereby set for written submission before the Special Master, Tom Collins, on **Monday, March 30, 2015**.

The Special Master has established the following rules pursuant to Rule 171 of the Texas Rules of Civil Procedure:

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 email by such date on:
 - (a) The Special Master's Docket Clerk, at SpecialMasterClerk@tdi.texas.gov
 - (b) All interested parties, including the undersigned counsel and 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) 676-6915] 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 a Guaranty Association or other interested party should be filed at least three (3) calendar days before the submission or hearing date.

/s/ Rachel J. Stroud

Rachel J. Stroud

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 TEX. INS. CODE § 443.007 and the Texas Rules of Civil Procedure this 10th day of March, 2015.

Mr. Tom Collins
Special Master
Texas Department of Insurance
333 Guadalupe, Tower III,
Room 550, MC-305-1D
Austin, Texas 78701
E-mail: specialmasterclerk@tdi.texas.gov

Ms. Alison Burton
Senior Assistant City Attorney
City of Odessa
411 W. 8th St.
P.O. Box 4398
Odessa, Texas 79761
E-mail: aburton@odessa-tx.gov

Ms. Kathy Gartner
Liquidation Oversight
Texas Department of Insurance
333 Guadalupe
Tower III, 5th Floor, MC-305-1D
Austin, Texas 78701
E-mail: kathy.gartner@tdi.texas.gov

Mr. Mark D. Steckbeck
National Conference of Insurance Guaranty
Funds
10 West Market Street, Suite 1190
Indianapolis, IN 46204
Email: msteckbeck@ncigf.org

Mr. James Kennedy
Legal Services
Texas Department of Insurance
333 Guadalupe
Tower 1, 8th Floor, MC-110-1A
Austin, Texas 78701
Email: james.kennedy@tdi.texas.gov

Cynthia Morales
Assistant Attorney General
Financial Litigation, Tax and Charitable
Trusts Division
P.O. Box 12548
MC-017-6
Austin, TX 78711-2548
Email: Cynthia.Morales@texasattorneygeneral.gov

Ms. Amber Walker
Texas Property & Casualty Ins. Guaranty Assoc.
9120 Burnet Road
Austin, Texas 78758
E-mail: awalker@tpciga.org

United States Attorney General
Civil Process Clerk
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216-5597

Ms. Becky Tafoya, Executive Director
Ms. Vanessa Ramirez
New Mexico Insurance Guaranty Assoc.
Integrion Group
P.O. Box 27815
Albuquerque, New Mexico 87125
E-mail: beckyt@integriongroup.com
E-mail: vanessar@integriongroup.com

United States Attorney General
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

Chief of Special Procedures Staff
U.S. Internal Revenue Service
300 East 8th Street, Suite 352
Austin, Texas 78701

Chief of Special Procedures Staff
U.S. Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Ms. Sharon Williams
Commercial Litigation Branch
Civil Division
Department of Justice
Washington, D.C. 20530
Email: Sharon.williams@usdoj.gov

/s/ Rachel J. Stroud
Rachel J. Stroud
Email: rstroud@stroudmarrerowelch.com

EXHIBIT A

**FINANCIAL INSURANCE COMPANY OF AMERICA IN RECEIVERSHIP R-522
BALANCE SHEET
FEBRUARY 28, 2015**

Assets			
Cash- Unrestricted			\$0
Reinsurance Recoverables on Unpaid Losses & LAE (net of allowance)			0
Other Receivables			
Premiums Due from Agents & Policyholders (net of allowance)	\$0		
Other Receivables/ professional employment organization deductible receivables (net of allowance)	<u>0</u>		
Total Other Receivables			<u>0</u>
Total Assets			<u><u>\$0</u></u>
Liabilities & Equity			
Liabilities			
Administrative Claims- Class 1			\$0
Policy Claims- Class 2			
Loss Claims- Guaranty Associations			
Loss Claims Paid	\$8,333,658		
Loss Claims Reserves	8,994,137		
Other Loss Claims Paid	194,025		
Unearned & Advance Premium Claims- Guaranty Associations	<u>223,750</u>		
Total Class 2 Claims			17,745,570
Other Liabilities			
Class 5 General Unsecured Creditor Claims	219,443		
Class 5 Reinsurance Related Unsecured Claims	66,156		
Class 8 Claims	22,710		
Class 9 Claims	<u>1,000,000</u>		
Total Other Liabilities			<u>1,308,309</u>
Total Liabilities			19,053,879
Equity (Deficit)			<u>(19,053,879)</u>
Total Liabilities & Equity			<u><u>\$0</u></u>

EXHIBIT B

**FINANCIAL INSURANCE COMPANY OF AMERICA IN RECEIVERSHIP R-522
SOURCES & USES OF CASH STATEMENT
INCEPTION TO DATE THROUGH ESTATE CLOSING**

Receipts

Receipts from Assets/Receivables		
Premium Receipts	\$1,003,886	
Reinsurance Recoveries	16,012,866	
Salvage & Subrogation Recoveries	935,596	
Other Receipts	620,907	
Sale of Real & Personal Property	4,062	
Investment Sales/Receipts	<u>4,879,223</u>	
Total Receipts from Assets/Receivables		\$23,456,540

Passive Receipts		
Interest & Dividend Receipts	124,301	
Cash Deposit Interest	<u>909,910</u>	
Total Passive Receipts		<u>1,034,211</u>

Total Cash Receipts 24,490,751

Disbursements for Operations

SDR Fees & Expenses	(1,713,461)	
Subcontractor Legal Fees & Expenses	(522,053)	
Subcontractor Other Fees & Expenses	(591,071)	
Other Expenses	(191,390)	
RLO Fees & Expenses	<u>(241,317)</u>	
Total Disbursements for Operations		<u>(3,259,292)</u>

Net Cash from Operations 21,231,459

Cash Distributions

Guaranty Associations	(21,181,145)	
Other Loss Claims	(158,607)	
De Minimis Funds Returned to Commissioner	<u>(12)</u>	
Total Cash Distributions		<u>(21,339,764)</u>

Net Decrease in Cash (108,305)

Cash at Beginning of Period 108,305

Cash at End of Period \$0

EXHIBIT C

**FINANCIAL INSURANCE COMPANY OF AMERICA IN RECEIVERSHIP R-522
FINAL STATEMENT OF EXPENSES**

	Total Expenses	Approved Expense Reserves	Residual Funds
SDR			
SDR administration and accounting	\$15,794.58	\$16,700.00	\$905.42
Subcontractors			
Stroud Marrero Welch- legal	12,535.51	13,200.00	664.49
Emkay Associates- claims	1,709.50	4,500.00	2,790.50
The Warren Group- tax return	2,467.50	3,100.00	632.50
Other Vendors/ Expenses			
Safesite- records storage	2,855.50	3,400.00	544.50
Texas State Library- records storage	645.00	700.00	55.00
Bank charges	879.20	1,600.00	720.80
Liquidation Oversight Allocation			
Liquidation Oversight allocation	2,000.00	2,000.00	0.00
Special Master's fees	300.00	300.00	0.00
Total Expenses	<u>\$39,186.79</u>	<u>\$45,500.00</u>	6,313.21
Interest earned subsequent to estate closing application			<u>1,090.86</u>
Residual Funds for Subsequent Distribution			<u>\$7,404.07</u>

EXHIBIT D

FINANCIAL INSURANCE COMPANY OF AMERICA IN RECEIVERSHIP R-52
ACCOUNTING OF FINAL DISTRIBUTIONS

POC NUMBER	CLAIMANT	CLAIMANT ADDRESS	CLAIMANT CITY	CLMT STATE	CLMT ZIP	CLAIM TYPE	CLASS	AMOUNT CLAIMED	CLASS 1 ALLOWED	CLASS 2 ALLOWED	CLASS 2 PRO-RATA DISTRIBUTION 44.9569631%	PAYMENT METHOD	DISTRIB DATE	CLASS 2 SUBSEQUENT DISTRIBUTION 0.0229563%	PAYEE NAME
007	UNIMED DIRECT	5068 W. PLANO PKWY. #122	PLANO	TX	75093	VENDOR	2	3,003.95		1,028.38	462.33	wire	12/16/14	de minimis	UNIMED DIRECT
014	TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION	9120 BURNET ROAD	AUSTIN	TX	78758	PAYMENTS OF EXPENSES INCURRED BY GUARANTY ASSOCIATION	1	UNSTATED	6,407,285.72			wire	12/12/06, 12/16/14		TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION ADMINISTRATIVE ACCOUNT
014	TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION	9120 BURNET ROAD	AUSTIN	TX	78758	PAYMENT OF COVERED CLAIMS	2	UNSTATED		29,299,355.38	13,172,100.39	wire & distribution credits	12/16/14	6,726.05	TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION ADMINISTRATIVE ACCOUNT
029	IMAGE SOLUTIONS, INC.	6250 FOURWINDS DRIVE	BRYAN	TX	77808	DEFENSE & INDEMNITY UNDER POLICY OF INSURANCE -GREG LANDRY SUIT	2	299,372.89		299,372.89	134,588.96	wire	12/16/14	68.72	ICENOGL & SULLIVAN, PLLC IOLTA ACCOUNT
030	IMAGE SOLUTIONS, INC.	6250 FOURWINDS DRIVE	BRYAN	TX	77808	DEFENSE & INDEMNITY UNDER POLICY OF INSURANCE	2	see poc 029							JOINT CLAIMANT-see poc 029
032	USA STAFFING, INC.	100 COMMERCIAL CIRCLE, BLDG. B	CONROE	TX	77304	DEFENSE & INDEMNITY UNDER POLICY OF INSURANCE	2	see poc 029							JOINT CLAIMANT-see poc 029
039	NEW MEXICO PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION	11501 MONTGOMERY BLVD., NE	ALBUQUERQUE	NM	87111	PAYMENTS OF EXPENSES INCURRED BY GUARANTY ASSOCIATION	1	UNSTATED	425,150.97			liquidation of stat dep	5/26/10		THE NEW MEXICO PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION
039	NEW MEXICO PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION	11501 MONTGOMERY BLVD., NE	ALBUQUERQUE	NM	87111	PAYMENT OF COVERED CLAIMS	2	UNSTATED		2,600,897.40	1,169,284.48	liquidation of stat dep, wire	5/26/10, 12/16/14	597.07	THE NEW MEXICO PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION
040	RRR STAFF LEASING, INC. DBA NATIONWIDE STAFF LEASING	16398 N. EVAN RD., STE. 9	SELMA	TX	78154	UEP AND OVER FUNDED COLLATERAL	1	88,997.23	88,997.23			cash's ck/ ck# 1604	12/28/07/ 8/23/11		RRR STAFF LEASING, INC. DBA NATIONWIDE STAFF LEASING
055	GENEX SERVICES, INC.	440 E. SWEDES FORD ROAD, SUITE 3000	WAYNE	PA	19087	CASE MANAGEMENT SERVICES/IME SCHEDULING SERVICES	2	52,243.49		52,243.49	23,487.09	wire	12/16/14	de minimis	GENEX SERVICES, INC. DEPOSITORY ACCOUNT
096	USA STAFFING, INC.	100 COMMERCIAL CIRCLE, BLDG. B	CONROE	TX	77304	PRE-RECEIVERSHIP ATTORNEY FEES NOT PAID	2	see poc 029							JOINT CLAIMANT-see poc 029
Totals									\$6,921,433.92	\$32,252,897.54	\$14,499,923.25			\$7,391.84	

EXHIBIT E
ASSETS TRANSFERRED TO THE TEXAS COMMISSIONER OF INSURANCE

All of rights, title and interests of Financial Insurance Company of America, in Receivership, past, present, or future, to any and all of the following assets:

1. Certificate No. 99 representing 28,260 shares of Class A Common Stock of Facility Insurance Holding Corporation.
2. All unknown assets of Financial Insurance Company of America, in Receivership.

EXHIBIT F
LIST OF ASSETS TO BE TRANSFERRED AND ASSIGNED TO TPCIGA

1. Default Judgment in the amount of \$10,447.00, plus interest and attorneys' fees of \$3,134.10 in Cause No. D-1-GN-08-001278; *Financial Insurance Company of America, in Receivership v. Sim Trucking, Inc., D/B/A Sims Trucking, Inc., A/K/A Sim Oil Field Services*; in the 261st Judicial District Court of Travis County, Texas.
2. Agreed Judgment against AES Employer Services, Inc., N/K/A RSLC, Inc., for the sum of \$64,727.43 plus interest in Cause No. D-1-GN-09-001254; *Financial Insurance Company of America, in Receivership v. 21st Century Resources, Inc., Edmundo Pacheco, Theodore Zogob, Randy Roberts and AES Employer Services, Inc., N/K/A RSLC, Inc.*; In the 261st Judicial District Court of Travis County, Texas.
3. Financial Insurance Company's share of interest in the Default Judgment and Order of Severance against Systems Management Solutions, Inc., on January 16, 2009, the Interlocutory Default Judgment entered on June 23, 2009 against United Focus, Inc., United Capital Services, Inc., United Capital Investment Group, Inc., Safestaff, Inc., Service Professionals, Inc., Center Point Outsourcing, LLC, American Continental Management, Inc. or LLC, RMS Groups, Inc., and United Managers Group, Inc.; and Final Judgment entered against John D. Walker, II, Charles E. Pircher, Mike Solis, Richard Trussell and Emergency Management Services on January 4, 2012; In Cause No. D-1-GN-08-004272; *Texas Property and Casualty Insurance Guaranty Association and Financial Insurance Company of America, in Receivership v. John D. Walker, II., et al*; In the 98th Judicial District Court of Travis County, Texas.
4. Final Judgment against Steven L. Goldberg in the amount of \$67,530.36; in Cause No. D-1-GN-12-000025; *Texas Property and Casualty Insurance Guaranty Association and Financial Insurance Company of America, In Receivership v. Steven L. Goldberg*; In the 261st Judicial District Court. Steven Goldberg filed for Bankruptcy. A Settlement Agreement was entered into with Goldberg for \$48,000.00. Steven Goldberg executed a Promissory Note with Financial Insurance Company of America for \$48,000.00 and the current balance owed is \$29,000.
5. That Certain Second Casualty Excess of Loss Reinsurance Agreement with St Paul Reinsurance Company Limited, as amended and endorsed.
6. Any premiums that might be owed to FICA for workers compensation policies that were issued prior to receivership.

THE STATE OF TEXAS

IN THE DISTRICT COURT OF

VS.

TRAVIS COUNTY, TEXAS

FINANCIAL INSURANCE COMPANY
OF AMERICA

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261st JUDICIAL DISTRICT

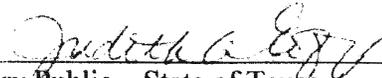
**AFFIDAVIT OF ERNESTO A. GARZA IN SUPPORT OF
FINAL ACCOUNTING AND APPLICATION TO TERMINATE RECEIVERSHIP**

BEFORE ME, the undersigned authority, appeared Ernesto A. Garza, who after being by me duly sworn, stated the following under oath:

1. "My name is Ernesto A. Garza. I am over the age of eighteen years. I am competent to make this Affidavit. The statements of facts in this Affidavit are true and correct, and are within my personal knowledge. I am the President of Resolution Oversight Corporation, the Special Deputy Receiver ("SDR") of Financial Insurance Company of America ("FICA"). I am authorized to make this Certification and Affidavit on behalf of the Special Deputy Receiver.
2. I have read the Final Accounting and Application to Terminate Receivership in the case styled: Cause No. D-1-GV-05-000846; *State of Texas vs. Financial Insurance Company of America*; In the 261st Judicial District Court of Travis County, Texas ("*Final Accounting*"). I have also reviewed the Exhibits attached and incorporated into the *Final Accounting* by reference. I verify that all of the facts contained in the *Final Accounting* and this *Affidavit* are true and correct based on my personal knowledge, my review of the estate records and my consultation with my staff and sub-contractors.
3. I certify that the exhibits, books, accounts, papers, and/or other records attached thereto were produced pursuant to TEX. INS. CODE ANN. §443.017, and are either true and correct copies of records of the insurer and were received from the custody of the insurer or found amongst its effects or were 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. All assets justifying the expense of collection and distribution have been collected and distributed and the remaining unliquidated assets do not justify the expenses of continuing this proceeding. Accordingly, it is my recommendation that this proceeding should be terminated. "
5. The Affiant has nothing further to say."


Ernesto A. Garza

Subscribed and sworn to before me on this 10 day of March, 2015 by Ernesto A. Garza, on behalf of Resolution Oversight Corporation, Special Deputy Receiver of Financial Insurance Company of America.


Notary Public – State of Texas

