

NO. D-1-GV-08-001572

STATE OF TEXAS,
Plaintiff

v.

ESQUIRE TITLE, LLC,
Defendant

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261st JUDICIAL DISTRICT

**SPECIAL DEPUTY RECEIVER'S APPLICATION FOR AUTHORITY TO
ENTER INTO AN ASSIGNMENT
(Texas Title Insurance Guaranty Association)**

TO THE HONORABLE JUDGE OF SAID COURT:

Cantilo & Bennett, L.L.P., solely in its capacity as Special Deputy Receiver of Esquire Title, LLC (the “SDR” and “Esquire,” respectively), files this Application for Authority to enter into an Assignment [Texas Title Insurance Guaranty Association] (the “Application”).

I. INTRODUCTION AND SUMMARY OF RELIEF

1.1 The SDR files this Application pursuant to TEX. INS. CODE § 443.154 (y) and seeks Receivership Court authority to assign the estate’s rights under a policy of insurance including all related causes of action and claims (the “Insurance Claims”) to the Texas Title Insurance Guaranty Association (“TTIGA”)

1.2 The proposed terms of the assignment have been approved by the Receiver. TTIGA supports this Application.

II. RECEIVERSHIP BACKGROUND

2.1 Esquire was placed in receivership in this proceeding on July 22, 2008. The Court entered an *Agreed Order Appointing Liquidator and Permanent Injunction*

(the “Permanent Injunction”) on July 22, 2008, appointing the Texas Commissioner of Insurance as Permanent Receiver. The Receiver designated Cantilo & Bennett, L.L.P. as SDR of Esquire effective as of September 15, 2008.

2.2 The SDR is authorized to file this Application pursuant to TEX. INS. CODE § 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*.

III. JURISDICTION

3.1 This Court has jurisdiction over the subject matter of this Application and of the parties affected herein pursuant to TEX. INS. CODE § 443.005. The Court has exclusive jurisdiction over property of the estate pursuant to TEX. INS. CODE § 443.005(c) and personal jurisdiction over all parties in interest pursuant to TEX. INS. CODE § 443.005(d) and all claimants against the assets of the receivership estates of Ameritrust ("Claimants") pursuant to TEX. INS. CODE § 443.005 because this is a civil proceeding arising under and related to a delinquency proceeding under Chapter 443 of the Texas Insurance Code (the "Code"). The exercise of jurisdiction over any non-resident Claimant comports to customary standards of fair play and substantial justice and complies with the protections of the Constitutions of the United States of America and the State of Texas.

IV. FACTUAL BACKGROUND

4.1 Esquire is the named insured under a policy of insurance issued by Gemini Insurance Company (“Gemini”), bearing Policy No. VPPL001461 (the “Policy”). A copy of the Policy is attached as Exhibit 1. Esquire has submitted claims under the Policy to Vela Insurance Services LLC (“Vela”) as the servicing agent for Gemini under the Policy.

Vela/Gemini has issued a reservation of rights in regards to the claims submitted by the SDR. No payments have been made to the SDR under the Policy.

4.2 The SDR has determined that it is not in the best interest of the estate to continue to pursue the Insurance Claim. While the SDR believes that the estate's rights under the Policy have merit, the estate lacks funds to pursue the claims. But for the Insurance Claims, the SDR would move to close the estate, dismiss the delinquency proceeding and obtain the discharge of the Receiver and SDR. Furthermore, given that TTIGA will be the largest claimant against the estate by virtue of its payment of escrow claims, any meaningful recovery from the Insurance Claims would benefit TTIGA. Instead, the SDR has agreed, subject to Receivership Court approval, to assign all of the estate's causes of action and claims in Insurance Claims to TTIGA. The proposed Assignment is attached to this pleading as Exhibit 2. The SDR requests authority to enter into the assignment in the same or substantially similar form.

4.3 TTIGA is authorized to accept the Assignment and pursue the Insurance Claims pursuant to TEX. INS. CODE § 2602.101(b), which provides that TTIGA has standing to appear before any court in Texas that has jurisdiction over an impaired title insurance agent for which TTIGA may become obligated, and TEX. INS. CODE § 443.008(1). TTIGA is a nonprofit legal entity created by the Texas Legislature and subject to the supervision of the Commissioner of Insurance. TEX. INS. CODE § 2602.051. TTIGA was created in large part to pay escrow claims made against insolvent title insurance agents. If an impaired agent such as Esquire has assets, TTIGA is a priority creditor with respect to such assets to the extent that TTIGA incurs expenses and pays out funds to satisfy escrow claims against the estate of the agent. TEX. INS. CODE § 443.301.

4.4 TTIGA is financially able to pursue Esquire's rights in the Insurance Claims. It will incur the costs to investigate, litigate and presumably settle or try the case. Any net recoveries will reduce TTIGA's claims against the estate. TTIGA's claims against the estate are classified as Class 1 (a) (2) and Class 2 (a) under the priority statute of the Insurer Receivership Act, TEX. INS. CODE § 443.303. Any amounts recovered in excess of TTIGA's claims and litigation expenses will be paid to the Commissioner of Insurance.

4.5 The proposed Assignment will ensure that estate assets- the Insurance Claims - will be liquidated at a fair value and their value not reduced due to the estate's financial condition. The estate's largest creditor, TTIGA, has the legal standing, the financial means to pursue the claims and the financial incentive to realize the highest possible value. The proposed Assignment further provides that TTIGA's existing claims and causes of action under the Policy are not merged with the assigned claims and that TTIGA shall act in its sole discretion regarding which claim, in whole or in part, it chooses to pursue.

V. LEGAL AUTHORITY

5.1 The SDR is authorized to enter into the Assignment pursuant to the terms of the Permanent Injunction and the provisions of TEX. INS. CODE § 443.154. Specifically, TEX. INS. CODE § 443.154(y) provides:

- (y) The liquidator may hypothecate, encumber, lease, sell, transfer, abandon or otherwise dispose of or deal with any property of the insurer, settle or resolve any claim brought by the liquidator on behalf of the insurer, or commute or settle any claim of reinsurance under any contract or reinsurance, as follows:
 - (1) if the property or claim has a market or settlement value that does not exceed the lesser of \$1 million or 10 percent of the general assets of the estate as shown on the receivership's financial statements, the liquidator may take action at the liquidator's discretion, provided that the receivership court may,

- upon petition of the liquidator, increase the threshold upon a showing that compliance with this requirement is burdensome to the liquidator in administering the estate and is unnecessary to protect the material interests of creditors;
- (2) in all instances other than those described in Subdivision (1), the liquidator may take the action only after obtaining approval of the receivership court as provided by Section 443.007;
 - (3) the liquidator may, at the liquidator's discretion, request the receivership court to approve a proposed action as provided by Section 443.007 if the value of the property or claim appears to be less than the threshold provided by Subdivision (1) but cannot be ascertained with certainty, or for any other reason as determined by the liquidator; and
 - (4) after obtaining approval of the receivership court as provided in Section 443.007, the liquidator may, subject to Subsection (z), transfer rights to payment under ceding reinsurance agreements covering policies to a third-party transferee.

5.2 The SDR asserts that, in its business judgment, the proposed Assignment is in the best interests of the estate and its creditors because, among other reasons, the SDR preserves the limited assets of the estate and avoids the expense, uncertainty and delay of litigation. A net recovery by TTIGA will reduce its claims against the assets of the estate.

5.3 Nothing in this Application or any related agreement or transaction nor the relief sought herein shall affect, in any way, the Receiver's or the SDR's immunities from suit or give rise to any right to sue or create any causes of action against the Receiver or the SDR. The automatic stay and the provisions of the Permanent Injunction remain in effect unless expressly modified herein. The SDR expressly does not waive, release and/or settle any claims against any parties.

VI. NOTICE

6.1 The SDR has served this Application to all known parties at interest and to counsel and representatives of Gemini Insurance Company, the insurance carrier, by e-mail or other means as provided for in the Court's *Order Granting SDR's Application to*

Use Electronic Service of Pleadings and Notices.

VII. OFFER OF PROOF AND VERIFICATION

7.1 This Application is verified by the affidavit and certification pursuant to TEX. INS. CODE §443.017(b) of Joseph West, Partner in Cantilo & Bennett, L.L.P., Special Deputy Receiver of Esquire Title, LLC.

VIII. NOTICE OF ELECTRONIC SERVICE REQUIREMENT

8.1 Pursuant to the *Order Granting SDR's Application to Use Electronic Service of Pleadings and Notices* all pleadings filed in response to this Application or in regards to this estate shall be served by e-mail on the undersigned counsel and all parties shown in the attached Certificate of Service.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Special Deputy Receiver respectfully requests that this Court:

1. grant this Application;
2. authorize the SDR to execute such agreements as may be necessary to carry out this Court's authorization to the SDR;
3. approve the SDR's assignment of the Insurance Claims to TTIGA and rule that TTIGA succeeds to all rights, title and interest held by Esquire in that certain policy of insurance issued by Gemini Insurance Company, Policy No. VPPL001461, (the "Policy") including but not limited to any and all claims asserted by Esquire under the Policy and all common law, statutory and contractual rights held by Esquire as a consequence of being an insured under said Policy;

4. Rule that the Order and the proposed Assignment do not operate to merge TTIGA's existing claims and causes of action under the Policy with the assigned claims and that TTIGA shall act in its sole discretion regarding which claim, in whole or in part, it chooses to pursue; and
5. grant the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

By: /s/Christopher Fuller
Christopher Fuller
Texas Bar No. 07515500
4612 Ridge Oak Drive
Austin, Texas 78731
Tel. (512)470-9544
Fax (512)374-0957
cfuller@fullerlaw.org
Attorney for Cantilo & Bennett, L.L.P.,
Special Deputy Receiver of Esquire Title
Company

CERTIFICATE OF SERVICE

I certify that on July 28, 2011 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 email, except as specifically noted.

/s/Christopher Fuller
Christopher Fuller

Jeffrey A. Goldwater
Lewis, Brisbois, Bisgaard & Smith, LLP
550 West Adams Street, Ste. 300
Chicago, Ill 60661
jgoldwater@lbbslaw.com
Via Fax: 312-345-1778

Counsel for Vela

K. W. Crull
Vela Insurance Services
8805 Chambery Blvd., Stre 300, #108
Kpjmstpm. OA 50131
kknull@velains.com
Vela Claims Representative

Vela Insurance Services LLC
11516 Nicholas Street, Ste 301
Omaha, NE 68154
claims@vela-ins.com
Via Fax: 402-492-3283
Servicing Agent for Gemini
Vela Insurance Services
200 W. Madison Street
Chicago, Illinois 60606
Attn: Claims department
velaclaims@velains.com
manderson@velains.com
Service Address under the Policy

David W. Dodge, Esq.
McCathern | Mooty L.L.P.
3710 Rawlins Street, Suite 1600
Dallas, Texas 75219
ddodge@mm-llp.com
Attorney for the Plaintiff

Tom Collins, Special Master
c/o Ms. Jean Sustaita
P.O. Box 149104
Mail Code 305-1D
Austin, Texas 78701
Jean.Sustaita@tdi.state.tx.us

Mitchell, Williams, Selig, Gates & Woodyard, PLLC
Attorneys for the Texas Title Insurance Guaranty Association
P.O. Box 2212
Austin, Texas 78768-2212
bburner@mwlaw.com
bmccandless@mwlaw.com

Catherine Fryer, Esq.
Bickerstaff Heath Delgado Acosta LLP

816 Congress Avenue, Suite 1700
Austin, Texas 78701-2443
cfryer@bickerstaff.com

Mr. Joshua Godbey
Assistant Attorney General
Financial Litigation Division
P.O. Box 12548
Austin, Texas 78711-2548
joshua.godbey@oag.state.tx.us

Mark Mosley, Esq.
Attorney & Counselor at Law
1410 G Avenue, Suite 400
Plano, Texas 75074
i_c_law@sbcglobal.net

Ms. Jo Ann Howard
Jo Ann Howard & Associates, P.C.
P.O. Box 160130
Austin, Texas 78716
iamanrd3@aol.com

Internal Revenue Service
Special Procedures Branch
P.O. Box 250
300 East 8th Street, Suite 352
Mail Stop 5022A
Austin, Texas 78701

Angel Garrett, Director
Texas Department of Insurance
Financial/Rehabilitation & Liquidation Oversight Division
333 Guadalupe, Mail Code 305-1D
Austin, Texas 78701
Angel.Garrett@tdi.state.tx.us

Ms. Rachel Giani
Texas Department of Insurance
Financial/Rehabilitation & Liquidation Oversight Division
333 Guadalupe, Mail Code 305-1D
Austin, Texas 78701
Rachel.Giani@tdi.state.tx.us

Christopher L. Kurzner, Esq.
Kurzner PC

1700 Pacific Avenue, Suite 3800
Dallas, Texas 75201
ckurzner@kurzner.com

Silvia Tiller, Esq.
14090 Southwest Freeway, Suite 300
Sugar Land, Texas 77478
stiller@tillerandassociatespc.com
Attorney for Esquire Title, LLC

Terence Norman, Esq.
6069 Broadway Street
Pearland, Texas 77581
tcnorman@lawyer.com
Attorney for Eraka Childs and Chris Watson

Ms. Eraka Childs
8325 Broadway, Suite 202
Pearland, Texas 77584
erakachilds@gmail.com

Yolanda Bartee, Esq.
The Law Office of Yolanda Molock Bartee, P.L.L.C.
P.O. Box 180446
Arlington, Texas 76096-0446
Ybartee_esq@hotmail.com

Texas Workforce Commission
Regulatory Enforcement Division
101 E. 15th Street
Austin, Texas 78778-0001

Ms. Leanne Layne
Texas Department of Insurance
Financial/Rehabilitation & Liquidation Oversight Division
333 Guadalupe, Mail Code 305-1D
Austin, Texas 78701
Leanne.Layne@tdi.state.tx.us

Mr. John Walker
Texas Department of Insurance
Financial/Rehabilitation & Liquidation Oversight Division
333 Guadalupe, Mail Code 305-1D
Austin, Texas 78701
John.Walker@tdi.state.tx.us

Ms. Jemmie Russell
Texas Department of Insurance
Financial/Rehabilitation & Liquidation Oversight Division
333 Guadalupe, Mail Code 305-1D
Austin, Texas 78701
Jemmie.Russell@tdi.state.tx.us

Henry L. Campbell, III, Esq.
Attorney and Counselor at Law
1700 Commerce, Suite 1555
Dallas, Texas 75201
Via First Class Mail:
Mr. Dwayne Hines
411 Eules Drive
Cedar Hill, Texas 75104-3190

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 is set for written submission before the Special Master, Tom Collins, on August 15, 2011.

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 email by such date on:
 - (a) The Special Master's Docket Clerk, Ms. Jean Sustaita at Jean.Sustaita@tdi.state.tx.us;
 - (b) The undersigned counsel, Christopher Fuller at cfuller@fullerlaw.org; and
 - (c) 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.

/s/ Christopher Fuller
Christopher Fuller

STATE OF TEXAS,
Plaintiff

v.

ESQUIRE TITLE, LLC,
Defendant

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261st JUDICIAL DISTRICT

**ORDER GRANTING SPECIAL DEPUTY RECEIVER'S APPLICATION
FOR AUTHORITY TO ENTER INTO AN ASSIGNMENT
(Texas Title Insurance Guaranty Association)**

The Court considered the Application for Authority to enter into an Assignment [Texas Title Insurance Guaranty Association] (the “Application”) filed by Cantilo & Bennett, L.L.P., solely in its capacity as Special Deputy Receiver of Esquire Title, LLC (the “SDR” and “Esquire,” respectively), Having considered the Application, the Court finds as follows:

1. The *Order of Reference to Master* (“Order of Reference”) entered by this Court on August 22, 2008 provides that applications filed pursuant to TEX. INS. CODE § 443.007 are referred to the Special Master appointed in this proceeding;
2. The Application was submitted to the Special Master in accordance with the Order of Reference;
3. Notice of the Application was provided in accordance with TEX. INS. CODE §443.007 (d) and the *Order of Reference*, and no objections to the Application were filed;
4. The Texas Title Insurance Guaranty Association (“TTIGA”) filed its acknowledgement of notice and waiver of objection to the Application.
5. The Special Master has issued a recommendation that the Application

should be granted pursuant to Rule 171 of the Texas Rules of Civil Procedure;

6. The Court has jurisdiction over the Application and the parties affected hereunder; and

7. The Application should be GRANTED in all respects.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1. The Application is GRANTED.
2. The Special Deputy Receiver is authorized to execute any documents and take such actions necessary to effectuate the purposes of the Application.
3. The SDR is authorized to enter into the Assignment described in the application in the same or substantially similar form as attached to the Application.
4. TTIGA succeeds to all rights, title and interest held by Esquire in that certain policy of insurance issued by Gemini Insurance Company, Policy No. VPPL001461, (the "Policy") including but not limited to any and all claims asserted by Esquire under the Policy and all common law, statutory and contractual rights held by Esquire as a consequence of being an insured under said Policy.
5. The claims and causes of action held by TTIGA prior to the Assignment shall not be merged into the claims and causes of action assigned by the SDR pursuant to this Order.
6. TTIGA is not required to pursue the claims and causes of action assigned by the SDR pursuant to this Order if, in its sole discretion, it chooses not pursue the assigned claims, in whole or in part.
7. This Order constitutes a final judgment fully resolving all issues relating to the Application, provided that this Court shall retain jurisdiction to issue further

orders pursuant to TEX. INS. CODE Chapter 443. This Order does not modify any of the terms or provisions of this Court's Permanent Injunction.

Signed on _____, 2011.

JUDGE PRESIDING

GEMINI INSURANCE COMPANY

A STOCK COMPANY
(herein called "the Company")

COMMON POLICY DECLARATIONS

Policy No.: VPPL001461

Renewal/Rewrite of: NEW

Named Insured and Mailing Address

ESQUIRE TITLE LLC
7322 SOUTHWEST FREEWAY
SUITE 755
HOUSTON, TX 77074

Policy Period: From 4/14/2008 to 4/14/2009 at 12:01 A.M. Standard Time at the address of the Named Insured as stated herein

THE NAMED INSURED IS: Individual Partnership Corporation Joint Venture LLC Other

PROFESSIONAL SERVICES: See attached VP0275

IN RETURN FOR THE PAYMENT OF THE PREMIUM AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGES FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

Professional Liability Coverage \$ 3,950.00

TOTAL ADVANCE PREMIUM \$ 3,950.00

Form (s) and Endorsements (s) made a part of this policy at inception.

See attached schedule:

This policy is not binding unless sealed and countersigned by GEMINI INSURANCE COMPANY or its Authorized Representative.

Countersigned On: 04/09/2008

At: Greenwich, Connecticut


by _____

Authorized Representative

PROFESSIONAL LIABILITY COVERAGE PART
DECLARATIONS

THIS IS A CLAIMS MADE AND REPORTED POLICY

Policy: VPPL001461

Effective date: 4/14/2008

Named insured: ESQUIRE TITLE LLC

LIMITS OF INSURANCE

General Aggregate Limit \$1,000,000.00
Each Claim Limit \$1,000,000.00

Retroactive Date 3/14/2007

Deductible \$ 5000 Each Claim including Claim Expenses

PREMIUM

Classification	Code No.	Rate	Advance Premium
TAP - TITLE AGENT	00019	Flat	\$3,950.00

Total Advance premium : \$3,950.00

Minimum Term Premium : \$3,950.00

Rate

Comments:

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD



Professional Lines Underwriting Specialists, Inc.
The premier D&O and E&O broker in the Southwest

PO Box 2105, Austin, TX 78767-2105,
Fax: (512) 474-0505, Phone: (512) 474-0404, Toll Free Phone: (800) 880-1019

SURPLUS LINES TAX AND GUARANTY FUND DISCLOSURE NOTICE

RE: **INSURED:** Esquire Title, LLC
COMPANY: Gemini Insurance Company
POLICY NO.: VPPL001461

In consideration of the premium charged, it is hereby agreed and understood that the wording below is attached to and made part of the policy/cover note/binder:

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a surplus line coverage pursuant to the Texas insurance statutes. The State Board of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and this insurer is not a member of the property and casualty insurance guaranty association created under Article 21.28-C, Insurance Code. Article 1.14-2, Insurance Code, requires payment of 4.85 percent tax on gross premium."

All other terms and conditions remain unchanged.

Premium:	\$3,950.00
Terrorism Premium:	
State Taxes:	\$206.13
Surplus Line Fee:	\$2.55
Fee(s): Producer Policy Fee	\$150.00
Broker Fee	\$150.00

Total: \$4,458.68

Ref.no.:9915327
(To Fax:())

SCHEDULE OF FORMS

Named Insured: ESQUIRE TITLE LLC

POLICY NO.: VPPL001461

FORM NUMBER	End. #	TITLE
AI 00 18 03 98		SCHEDULE OF FORMS
VP 00 06 07 07		PROFESSIONAL LIABILITY COVERAGE FORM
VE 4402 08 07	01	SERVICE OF SUIT
VP 0275 12 07	02	NAMED INSUREDS PROFESSIONAL SERVICES DESCRIPTION ENDORSEMENT
VP0325 0707	03	SUPPLEMENTARY PAYMENTS ENDORSEMENT
VP0326 0707	04	SPOUSAL EXTENSION COVERAGE ENDORSEMENT
VE 6606 08 07	05	SERVICE OF SUIT - STATE OF TEXAS
CL MN OT 06 99	06	IMPORTANT NOTICE
VP0319 0707	07	ORGANIC GROWTH EXCLUSION
VP0344 1207	08	TITLE AGENTS ENDORSEMENT

Policy Number: VPPL001461
Insured Name:ESQUIRE TITLE LLC
Number:

VP 00 06 07 07

Effective Date: 04/14/2008

PROFESSIONAL LIABILITY INSURANCE POLICY

THIS IS A CLAIMS MADE AND REPORTED POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY SHALL BE REDUCED AND MAY BE COMPLETELY EXHAUSTED BY PAYMENT OF CLAIM EXPENSES.

PLEASE REVIEW THIS POLICY CAREFULLY WITH YOUR INSURANCE BROKER OR ADVISOR.

In consideration of the payment of the premium, the undertaking of the Insured to pay the Deductible herein and in reliance upon all statements made and information in the Application, which is attached hereto and made a part of this Policy, and subject to all the terms and conditions of this Policy, the Company agrees with the Insureds as follows:

I. INSURING AGREEMENT

The Company will pay on behalf of the Insured any Loss and Claim Expenses in excess of the Deductible not exceeding the Limit of Liability to which this coverage applies that the Insured shall become legally obligated to pay because of Claims first made against the Insured during the Policy Period, for Wrongful Acts of an Insured which occurred on or after the Retroactive Date, provided that:

- 1) written notice of such Claim is received by the Company during the Policy Period or within sixty (60) days thereafter; and
- 2) prior to the inception date of this Policy, no Insured knew, nor could have reasonably foreseen, that the Wrongful Acts might result in a Claim.

II. DEFENSE AND SETTLEMENT

The Company has the right and duty to select counsel and to defend any Suit covered by this Policy even if any of the allegations are groundless, false or fraudulent.

If applicable law gives the Insured the right to select defense counsel, then the Insured may select independent defense counsel, subject to the consent of the Company. Such counsel shall have at least ten (10) years of experience in the defense of similar Suits in the area where the Suit is being defended and shall maintain errors and omissions insurance coverage. The Insured and independent defense counsel shall provide full information, documentation and cooperation with respect to the defense, investigation and settlement of any Suit. The Company shall be liable only for reasonable and necessary defense costs at rates customarily paid by the Company for the defense of similar Suits in the area where the Suit is being defended. Any such defense costs shall be considered Claim Expenses.

The Company, at its option, may investigate and defend any Claim which does not constitute a Suit, as it deems expedient.

The Company is not obligated to appeal from any judgment entered against any Insured. The decision to appeal from a judgment entered against any Insured is solely at the discretion of the Company.

The Company is not obligated to pay any Claim Expenses or to investigate or defend any Claims after the Limit of Liability has been exhausted by payment of Loss or the Company has tendered the Limit of Liability to, or on behalf of, the Insured, or to a court of competent jurisdiction.

The Company has the right to negotiate the settlement of any Claim as it deems expedient, with the Named Insured's consent, which consent shall not be unreasonably withheld. If the Named Insured refuses to consent to any settlement recommended by the Company, all Insureds shall thereafter be obligated to negotiate and defend such Claim independently of the Company, and the Company's duty to defend and pay Claim Expenses ceases. Subject to the Limit of Liability, the liability of the Company for any such Claim is limited to the amount in excess of the Deductible which the Company would have contributed to the settlement had the Named Insured consented to settlement at that time, plus Claim Expenses covered by the Policy incurred up to the date of such refusal to settle.

No Insured will make any payment, assume any obligation, incur any expense, or settle any Claim without the advance written consent of the Company, except at the sole expense of the Insured. Loss and Claim Expenses incurred without the prior written consent of the Company are not recoverable under this Policy.

After knowledge of a Claim, potential Claim or Loss, no Insured will agree to arbitration, or other form of alternative dispute resolution, without the prior written consent of the Company.

All Insureds will cooperate with the Company, and provide such assistance and information as the Company may request. Upon the Company's request, all Insureds shall submit to examination and interrogation by a representative of the Company, under oath if required, and shall attend hearings, depositions, and trials and shall assist in the investigation and defense of Claims, including, but not limited to, effecting settlement, securing and giving evidence, obtaining the attendance of witnesses, giving written statements to the Company's representatives and meeting with such representatives for the purpose of investigation and/or defense, all of the above without charge to the Company. The Insureds further agree not to take any action which may increase the Insureds' exposure for Claim Expenses or Loss.

III. DEFINITIONS

- A) "Application" means all signed applications, including attachments and other materials submitted therewith or Incorporated therein, submitted by any Insured to the Company for this Policy or for any Policy of which this Policy is a direct or indirect renewal or replacement.
- B) "Arising Out Of" means connected to, incidental to, originating from or growing out of, directly or indirectly resulting from.
- C) "Claim" means:
1. A written demand for Loss or non-monetary relief against an Insured because of a Wrongful Act;
 2. Any Suit.
- D) "Claim Expenses" means reasonable costs, charges, fees (including attorney's fees and expert fees) and expenses (but does not include salaries, wages, overhead, benefit, or expenses of any Insured), incurred by the Company or with the Company's prior written consent, resulting from the investigation, defense and appeal of a Claim. Claim Expenses also includes:

1. premiums on appeal bonds required if the Company appeals from any judgment entered in any Suit to which this Policy applies, but only for that portion of the judgment which is for Loss covered by this Policy and which does not exceed the applicable Limit of Liability. The Company will also pay the premiums on bonds in amounts up to the applicable Limit of Liability to release attachments in any Suit defended by the Company. The Company has no obligation to apply for or furnish any bond;
 2. post-judgment interest on that portion of any judgment which is for Loss covered by this policy, and which does not exceed the applicable Limit of Liability, which accrues until the Company has paid, or tendered to the plaintiff, or deposited in court, the amount of such Loss plus post-judgment interest accrued until the time of such payment, tender or deposit.
- E) "Company" means the Insurer identified In the Declarations Page.
- F) "Insured" means:
1. The Named Insured as listed on the Declarations Page including any partner, director, officer or employee of the Named Insured while rendering Professional Services on behalf of the Named Insured;
 2. Any former partner, director, officer or employee of the Named Insured while rendering Professional Services on behalf of the Named Insured;
 3. The estate or legal representatives in the event of death, incompetency, insolvency or bankruptcy of any Insured.
- G) "Loss" means a monetary and compensatory judgment or award which the Insured Is legally obligated to pay because of any covered Wrongful Act, but does not include: punitive or exemplary damages, fines, penalties, the multiplied portion of any judgment or award, or any matter uninsurable under the law pursuant to which this Policy will be construed, nor the return of fees or charges for Professional Services rendered or to be rendered.
- H) "Named Insured" means the Named Insured listed on the Declarations Page.
- I) "Personal Injury" means the following offenses: Publication of oral or written material that violates a person's right of privacy or publicity or which libels or slanders a person or organization.
- J) "Policy Period" means the time period specified in Item I. of the Declarations Page.
- K) "Professional Services" means only those professional services listed in Item III. of the Declarations Page as performed by or on behalf of the Named Insured for others for a fee or other form of compensation.
- L) "Related" means logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.
- M) "Suit" means any civil judicial, administrative or arbitration proceeding initiated against an Insured because of a Wrongful Act seeking Loss or non-monetary relief against an Insured.
- N) "Wrongful Act" means any negligent or unintentional breach of duty imposed by law, or Personal Injury, committed solely in the rendering of Professional Services by an Insured.

IV. EXCLUSIONS

This Policy does not apply to any Claim or Claim Expenses Arising Out Of any actual or alleged:

- A) criminal, fraudulent, dishonest or knowingly wrongful act or omission committed by or with the knowledge of any Insured. However, the Company agrees that such insurance as would otherwise be afforded under this Policy shall be applicable with respect to an individual Insured, other than the Named Insured, who did not participate or acquiesce in or remain passive after having knowledge of such conduct.
- B) the gaining by any Insured of any personal profit, gain or advantage to which any Insured was not legally entitled.
- C) bodily injury, sickness, disease or death of any person, or emotional distress, mental anguish, or other similar injury or damage, or any injury to, or destruction of, any tangible property, or loss of use thereof.
- D) infringement of any copyright, trademark, trade dress, trade name, service mark, service name, title, slogan, patent, or other intellectual property rights.
- E) discrimination, including, but not limited to, violation of any municipal, state or federal civil rights or other law, regulation or ordinance.
- F) violation or alleged violation of the Securities Act of 1933 as amended, or the Securities Exchange Act of 1934 as amended, or any State Blue Sky or securities law or similar state or federal statute and any regulation or order issued pursuant to any of the foregoing statutes.
- G) liability of others assumed by the Insured under any oral or written contract or agreement, unless such liability would have attached to the Insured even in the absence of such agreement.
- H) breach of any express contract, warranty or guaranty.
- I) failure of any Insured to procure or maintain adequate insurance or bonds, or any Insured's failure to comply with any law with respect to the Insured's employees concerning Workers' Compensation, Unemployment Insurance, Social Security or Disability Benefits or any similar law.
- J) violation of or failure to comply with the Employee Retirement Income Security Act of 1974 (ERISA) or similar provisions of any Federal, State or local statutory law or common law.
- K) violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 at seq., (RICO) and any amendments thereto, or any rules or regulations promulgated thereunder, or any similar State or local law.
- L) actual or threatened discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, lead, liquids or gases, waste materials, or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water, whether or not such actual, alleged or threatened discharge, dispersal, release or escape is sudden, accidental or gradual in nature, or any cost or expense arising out of any governmental direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any pollutants.
- M) fee dispute or suit for fees initiated by any Insured against any past or current client or customer of any Insured.

N) unsolicited sending of information or advertising by fax, electronic mail (e-mail), or via any other means where prohibited by law.

O) Claim by or on behalf of any Insured, or any present or former shareholder, partner, officer, director, or employee of any Insured, against any other Insured.

P) Cost guarantee or estimates of probable costs or cost estimates being exceeded.

V. LIMIT OF LIABILITY AND DEDUCTIBLE

A) The Company's maximum limit of liability for all Loss from each Claim first made during the Policy Period shall not exceed the Each Claim Limit of Liability set forth in Item IV.B. of the Declarations Page, which amount shall be part of and not in addition to the amount stated in Item IV.A. of the Declarations Page.

B) The Company's maximum aggregate limit of liability for all Loss from all Claims first made during the Policy Period shall not exceed the aggregate Limit of Liability set forth in Item IV.A. of the Declarations Page, regardless of the number of Claims.

C) Claim Expenses are part of and not in addition to the Limits of Liability set forth in Item IV. of the Declarations Page, and payment by the Company of Claim Expenses shall reduce and may exhaust such Limits of Liability.

D) The Deductible amount stated in the Declarations Page shall apply to Loss and Claim Expenses and shall apply to each and every Claim. The Company shall only be liable to pay, subject to the Limit of Liability provisions stated above, for Loss and Claim Expenses in excess of such Deductible and such Deductible shall not be Insured under this Policy. In the event that the Company, in its sole discretion, decides to pay amounts within the Deductible, the Named Insured, and any other Insureds against whom the Claim is made, shall be jointly and severally liable to repay the Company such amounts within (30) thirty days of a request by the Company.

E) One or more Claims Arising Out Of the same Wrongful Acts, or Related Wrongful Acts, shall be considered a single Claim subject to the Each Claim Limit of Liability.

VI. MULTIPLE CLAIMS AND WRONGFUL ACTS

One or more Claims Arising Out Of the same Wrongful Acts, or Related Wrongful Acts, shall be considered a single Claim.

All such Claims, whenever made, will be deemed first made at the time the earliest such Claim was first made. All such Claims will be covered, if at all, only under the Policy, if any, in effect if and when the earliest such Claim was first made and reported to the Company. Subsequent policies will not apply to any such Claims.

Two or more Related Wrongful Acts shall be deemed one Wrongful Act which occurred at the time the earliest such Wrongful Act occurred.

VII. TERRITORY

The Insurance afforded applies to Wrongful Acts worldwide, provided that Claim is made within the United States, its territories, possessions or Canada.

VIII. EXTENDED REPORTING PERIOD

A) If this Policy is either terminated or not renewed for any reason other than nonpayment of premium, any Insured shall have the right to purchase an Extended Reporting Period for twelve (12) months, for payment of 75% of the Premium stated in Item VII. of the Declarations Page, or twenty four (24) months, for payment of 125% of the Premium stated in Item VII. of the Declarations Page, or thirty six (36) months, for payment of 175% of the Premium stated in Item VII. of the Declarations Page. This right to purchase an Extended Reporting Period shall lapse unless written notice of election to purchase the Extended Reporting Period, together with payment of the additional premium due, is received by the Company within 30 days after the end of the Policy Period.

B) If the Extended Reporting Period is purchased, then coverage otherwise afforded by this Policy will be extended to apply to Loss from Claims first made and reported to the Company during such Extended Reporting Period, but only for Wrongful Acts committed before the end of the Policy Period. The entire additional premium for the Extended Reporting Period shall be deemed fully earned at the inception of such Extended Reporting Period. The Limit of Liability for the Extended Reporting Period shall be part of and not in addition to the applicable Limits of Liability for the Policy Period.

IX. CLAIM REPORTING PROVISIONS

A) If a Claim is made against any Insured, the Insured shall provide immediate notice to the Company, and shall forward, as soon as practicable, every demand, notice, summons, complaint or other process or documents received by the Insureds or their representatives.

B) If, during the Policy Period, an Insured becomes aware of a Wrongful Act which may reasonably be expected to subsequently give rise to a Claim, and during the Policy Period, the Insured gives the Company written notice of such Wrongful Act, including a description of the Wrongful Act in question, the identities of the potential claimants, the consequences which have resulted or may result from the Wrongful Act, the Loss which may result from the Wrongful Act, and the circumstances by which the Insured first becomes aware of the Wrongful Act, and requests coverage under this Policy for any subsequently resulting Claim for such Wrongful Act, then the Company will treat any such

subsequently resulting Claim as if it had been made against the Insured and reported during the Policy Period, provided that written notice of such Claim is immediately given to the Company after it is first made.

C) Notice to the Company is not effective until received by the Company. All notices shall be sent to: Vela Insurance Services, 200 W. Madison Street, Chicago, Illinois 60606, Attn: Claims Department, Fax: (402) 492-3283 or (866) 360-1813, E-Mail: velaclaims@velains.com or manderson@velains.com.

No insurance agent or broker is authorized to act as the Company's agent to receive reports or notices hereunder, and any reports or notices to an insurance agent or broker shall not constitute compliance with the terms and conditions of this Policy.

Timely and adequate notice are conditions precedent to coverage, and failure to timely or adequately report a Claim or potential Claim may result in denial of coverage.

X. CANCELLATION/NON-RENEWAL

A) The Named Insured may cancel this Policy by surrender thereof to the Company, or by mailing to the Company written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the Policy Period. Delivery of such written notice shall be equivalent to mailing.

B) The Company may cancel this Policy by mailing or delivering to the Named Insured written notice stating when, not less than 60 days thereafter, such cancellation shall be effective. However, if the Company cancels this Policy because the Insured has failed to pay a premium when due, this Policy may be canceled by the Company by mailing or delivering a written notice of cancellation to the Named Insured stating when, not less than (10) days thereafter, such cancellation shall be effective. The notice of cancellation shall state the reason for cancellation. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the Policy Period. Delivery of such written notice by the Company shall be equivalent to mailing.

C) If this Policy is canceled pursuant to Clause A. hereinabove, the Company shall retain the customary short rate portion of the premium hereon. If this Policy is canceled pursuant to Clause B. hereinabove, the Company shall retain the pro rata portion of the premium hereon. Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of cancellation.

D) If the Company decides not to renew this Policy, the Company shall mail or deliver written notice to the Named Insured at least sixty (60) days before the end of the Policy Period. The notice of non-renewal shall state the reason for non-renewal.

XI. OTHER INSURANCE

This Policy is excess over any other applicable insurance whether such insurance is primary, excess, contributory, contingent, or otherwise and whether such insurance is collectible or not, unless such other insurance is written to be specifically excess over the insurance provided by this Policy. Other insurance includes other insurance policies, benefits under a risk retention group, any self-insured retention or plan, or indemnification agreement.

XII. REPRESENTATIONS

In issuing this Policy, the Company has relied upon the statements, representations and information in the Application. All of the Insureds acknowledge and agree that all such statements, representations and information are true, and accurate are made or provided in order to induce the Company to issue this Policy and are material to the Company's acceptance of the risk to which this Policy applies.

XIII. ASSIGNMENT

The interests or rights hereunder of any Insured are not assignable. If the Insured shall die or be adjudged incompetent, such insurance shall cover the Insured's legal representative as the Insured as would be permitted by this Policy.

XIV. SUBROGATION

In the event of any payment under this Policy, the Company shall be subrogated to all the Insured's rights of recovery therefore against any person or organization, or any other insurer which may provide coverage, for any Loss or Claim Expenses, and the Insureds shall execute and deliver instruments and papers and do whatever else is necessary to secure and enforce such rights. The Insureds shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to Loss and Claim Expenses paid by the Company, and third to the each Claim Deductible. Any additional amounts recovered shall be paid to the Named Insured.

XV. CHANGES

Notice to any agent or knowledge by any agent or broker shall not effect a waiver or change in any part of this Policy or stop the Company from asserting any right under the terms of this Policy, nor shall the terms of this Policy be waived or changed except by an endorsement, in writing, issued to and forming a part of this Policy.

XVI. ACTION AGAINST THE COMPANY

A) No action shall lie against the Company unless as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, and until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual and contested trial on the merits, or by written agreement of the Insured, the Claimant or the Claimant's legal representative, and the Company.

B) Any person or the legal representatives thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or entity shall have any right under this Policy to join the Company as a party to any action against the Insured or their legal representatives. Bankruptcy or insolvency of the Insured or their successors in interest shall not relieve the Company of its obligations hereunder.

XVII. MERGERS AND ACQUISITIONS

If, during the Policy Period, either of the following events occur:

A) The acquisition of any Named Insured, or all or substantially all of its assets, by another entity or the merger or consolidation of any Named Insured into or with another entity such that the Named Insured is not the surviving entity;

B) The appointment of a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official, for or with respect to any Named Insured;

Then coverage under this Policy will continue in full force and effect with respect to Claims for Wrongful Acts committed before such event, but coverage will cease with respect to Claims for Wrongful Acts committed after such event. After any such event, this Policy may not be canceled by the Named Insured and the entire premium for this Policy will be deemed fully earned.

XVIII. VALUATION AND CURRENCY

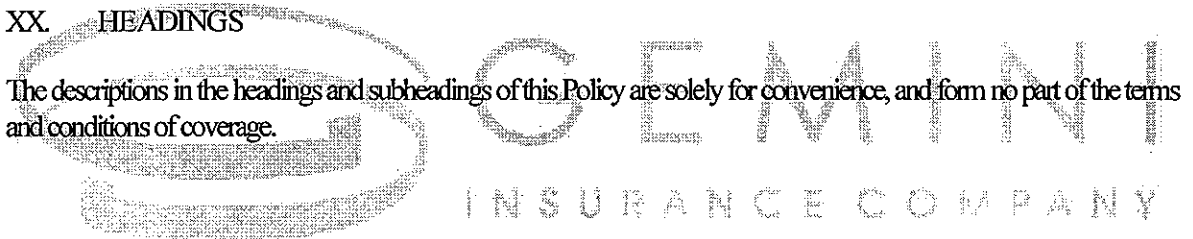
All premiums, limits, deductible, Loss and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of Loss under this Policy is stated in a currency other than United States dollars or if Claim Expenses are paid in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the Wall Street Journal on the date the judgment becomes final or payment of the settlement or other element of Loss is due or the date such Claim Expenses are paid.

XIX. AUTHORIZATION

By acceptance of this Policy, the Insureds agree that the Named Insured will act on their behalf with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

XX. HEADINGS

The descriptions in the headings and subheadings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.



Policy Number: VPPL001461
Insured Name: ESQUIRE TITLE LLC
Number: 01

VE 4402 08 07
Effective Date: 04/14/2008

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GEMINI INSURANCE COMPANY

SERVICE OF SUIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART

It is understood and agreed that in the event of the failure of the Insurer hereon to pay any amount claimed to be due hereunder, the Insurer will submit to the jurisdiction of any court of competent jurisdiction within the United States or Canada, will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court. Nothing in this Endorsement constitutes or should be understood to constitute a waiver of the Insurer's rights to commence an action in any court of competent jurisdiction in the United States or Canada, to remove any action to a United States District Court, or to seek a transfer of an action to another court as permitted by law.

It is further agreed that service of process in such suit may be made upon Carol J. LaPunzina, Vice President and General Counsel of Gemini Insurance Company, 475 Steamboat Road, Greenwich, CT 06830, or his/her designee, and that in any suit instituted against any one of them upon this contract, the Company will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above named is authorized and directed to accept service of process on behalf of the Insurer in any such suit and/or upon the request of the Insured or (Reinsured) to give a written undertaking to the Insured (or Reinsured) that it or they will enter a general appearance upon the Insurer's behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America or province of Canada, which makes provision therefore, the Insurer hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for the purpose in the statute, or his/her successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and the insurer hereby designated the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

Policy Number: VPPL001461
Insured Name:ESQUIRE TITLE LLC
Number: 02

VP0275 12 07

Effective Date: 04/14/2008

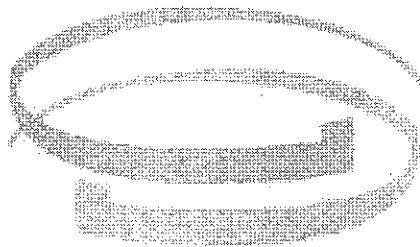
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NAMED INSUREDS PROFESSIONAL SERVICES DESCRIPTION ENDORSEMENT

In consideration of the premium charged, it is hereby understood and agreed that the **Named Insured's Professional Services**, shall read as follows:

Solely in the performance of services as a title agent, for others for a fee.

All other terms and conditions of this Policy remain unchanged. This endorsement is a part of your Policy and takes effect on the effective date of your Policy unless another effective date is shown.



G E M I N I
I N S U R A N C E C O M P A N Y

Policy Number: VPPL001461
Insured Name:ESQUIRE TITLE LLC
Number: 03

VP0325 07 07

Effective Date: 04/14/2008

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SUPPLEMENTARY PAYMENTS ENDORSEMENT

In consideration of the premium charged, it is hereby understood and agreed that **Section V. LIMIT OF LIABILITY AND DEDUCTIBLE** is amended to include the following:

F. Supplementary Payments

The **Company** will pay reasonable expenses incurred, including actual and verifiable loss of wages, if the **Insured** is required by the **Company** to attend proceedings or trial in the defense of a covered **Claim**. Such payments are subject to the following:

1. The maximum reimbursement for such expenses shall not exceed \$250 per day for each Insured who attends such proceedings at the **Company's** request;
2. The **Company's** maximum total liability for reimbursement shall not exceed \$5,000 per **Claim** regardless of the number of **Insureds** who attend such proceedings at the **Company's** request;
3. Such payment shall reduce the available **Limit of Insurance** shown as **Item IV** on the **Declarations Page**.

All other terms and conditions of this Policy remain unchanged. This endorsement is a part of your Policy and takes effect on the effective date of your Policy unless another effective date is shown.

Policy Number: VPPL001461
Insured Name:ESQUIRE TITLE LLC
Number: 04

VP0326 07 07

Effective Date: 04/14/2008

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPOUSAL EXTENSION COVERAGE ENDORSEMENT

In consideration of the premium charged, it is hereby understood and agreed that **Section III. DEFINITIONS, Part F. INSURED**, is amended to include the following:

4. The lawful spouse of an **Insured** for any **Claim** made against such spouse solely by reason of spousal status or ownership interest in marital property or marital assets that are sought as recovery for such **Claim**, but only if **Claim** does not allege any **Wrongful Act** or omission by the spouse.

All other terms and conditions of this Policy remain unchanged. This endorsement is a part of your Policy and takes effect on the effective date of your Policy unless another effective date is shown.



GEMINI
INSURANCE COMPANY

Policy Number: VPPL001461
Insured Name: ESQUIRE TITLE LLC
Number: 05

VE 6606 08 07

Effective Date: 04/14/2008

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SERVICE OF SUIT STATE OF TEXAS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PROFESSTIONAL LIABILITY COVERAGE PART

It is agreed that, as an eligible surplus lines insurance company in the state of Texas, Gemini Insurance Company ("Gemini") accepts the irrevocable appointment of the Secretary of State as binding on Gemini and its successors in interest, to be the lawful attorney for the service of Gemini. The Secretary of State may be served with any process, notice, or demand arising out of doing an insurance business in Texas by Gemini, except in an action, suit, or proceeding by the State Board of Insurance or by the state of Texas. Gemini further agrees that legal process served in the above manner shall have the same legal force and validity as personal service of process in Texas on Gemini or its successor in interest.

In the event service is tendered to the Secretary of State, service of process in such suit may be made by the Commissioner upon Carol J. LaPunzina, Vice President and General Counsel of Gemini Insurance Company, 475 Steamboat Road, Greenwich, CT 06830, or his/her designee.

Policy Number: VPPL001461
Insured Name: ESQUIRE TITLE LLC
Number: 06

CL MN OT 06 99

Effective Date: 04/14/2008

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call Managing General Agent's toll-free telephone number for Information or to make a complaint at

1-800-832-0137

You may contact the Texas Department of Insurance to obtain Information on companies, coverages, rights or complaints at

1-800-252-3439

You may write the Texas Department of Insurance

P.O. Box 149104
Austin, TX 78714-9104
Fax No. (512) 475-1771

PREMIUM OR CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim you should contact the Managing General Agent first. If the dispute is not resolved, you may contact the Texas Department in Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de Managing General Agent para informacion o para someter una queja al

1-800-832-0137

Puede comunicarse con el Departamento de Seguros de Texas para obtener Informacion acerca de companies, coberturas, derachos o quejas al

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas

P.O. Box 149104
Austin, TX 78714-9104
Fax No. (512) 475-1771

DISPUTAS SOBRE PRIMAS O RECLAMOS: Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el Managing General Agent primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

Policy Number: VPPL001461
Insured Name:ESQUIRE TITLE LLC
Number: 07

VP0319 07 07

Effective Date: 04/14/2008

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ORGANIC GROWTH EXCLUSION

In consideration of the premium charged, it is hereby understood and agreed that **Section IV. EXCLUSIONS** is amended to add the following provisions:

- Formation, growth, presence, release, dispersal, containment, removal, testing for, or detection or monitoring of any molds, fungi, spores or other similar growths or organic matter, including but not limited to aspergillus, penicillium, or any strain or type of Stachybotris, collectively referred to as "Black Molds".

All other terms and conditions of this Policy remain unchanged. This endorsement is a part of your Policy and takes effect on the effective date of your Policy unless another effective date is shown.



GEMINI
INSURANCE COMPANY

Policy Number: VPPL001461
Insured Name:ESQUIRE TITLE LLC
Number: 08

VP0344 12 07

Effective Date: 04/14/2008

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TITLE AGENTS ENDORSEMENT

In consideration of the premium charged, it is hereby understood and agreed that **Section IV, EXCLUSIONS** is amended to add the following provisions:

- Opinion of title;
- Rendering of or failure to render **Professional Services** as an Attorney by any **Insured**;
- Defect in title not disclosed in public records of which any **Insured** had knowledge on the date of issuance of such title;
- Escrow activities or closing activities, including, but not limited to, the handling or disbursement of funds; provided that the exclusion contained herein shall not apply if the **Insured's** annual revenue from escrow and closing services does not exceed 35% of the **Insured's** total annual revenue;
- Intentional breach of underwriting authority by any **Insured** in that **Insured's** capacity as a Title Insurance Agent;
- Notarized certification or acknowledgement of a signature without the physical appearance at the time of said notarization before such notary public, as **Insured** hereunder, of the person who is or claims to be the person signing the instrument;
- Insolvency or bankruptcy of any title insurance company;
- Fraudulent kickbacks of premium, unearned fees, business referrals, splitting charges, controlled business schemes, secret profits, premium sharing, referral fee sharing or captive reinsurance schemes, including but not limited to any violations of the federal prohibition against kickbacks and unearned fees as defined by the Real Estate Settlement and Procedures Act, 12 USC; 2607.
- Any Subprime or Predatory Loans.

All other terms and conditions of this Policy remain unchanged. This endorsement is a part of your Policy and takes effect on the effective date of your Policy unless another effective date is shown.

darwin

Application for Miscellaneous Professional Liability Insurance Policy

THIS IS AN APPLICATION FOR A CLAIMS MADE POLICY. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES.

This application must be completed in full, including all required attachments. Attach a separate sheet of paper if more space is needed to answer any question. We treat all applications as confidential.

1. Named Insured: Esquire T, He, LLC
 DBA (if any): _____
 Mailing Address: 7322 Southwest Freeway, Suite 755
 Physical Address: Houston, TX 77074
 Phone: 713 664 9711 FAX: 713 715 7539 EMAIL: echilds@esquirethe.com
 Additional Locations: _____

2. Date Business Established: 2005
 Geographic Area in which You provide service(s):
 Local Regional (Multi-state) _____ National _____ International _____

3. Are You owned by, or affiliated with other companies, or do You have any subsidiaries?
 If Yes, please advise: Yes No

Name of Entity	Nature of Operations	% of Ownership

For which of these do You wish to extend coverage? _____

4. A. Within the past three years, have You changed Your name, acquired any business, or have You merged or consolidated with any entity? If yes, please provide the following information (if more space is needed advise by attachment).

Yes No

Revenues, sales, fees, or commissions for the: (circle the appropriate basis)

<u>Previous 12 months</u>	<u>Current 12 months</u>	<u>Estimate for the Coming Year</u>
\$	\$ 9,000,000.00	\$

B. What percentage of the above amounts was derived from operations outside the United States?

<u>Previous 12 months</u>	<u>Current 12 months</u>	<u>Estimate for the Coming Year</u>
% 0	% 0	% 0

C. Do You have a physical presence (e.g. office, staff, independent contractors) outside of the United States? If yes, indicate which countries and describe operations. Yes No

8. Do You use independent contractors or subcontractors for the services described in Question 6 above? Yes No

A. If yes, provide the estimated percentage of time used _____ %

B. If yes, describe the services they perform and provide sample agreements utilized with those parties.

9. A. Do You use a written contract or agreement describing the services You will provide? If yes, attach representative contracts, work orders, license agreements or letters of agreement You use with Your clients. If no, please explain how You determine and document rights and responsibilities with Your clients, customers or other parties regarding the services to be insured, then proceed to Question 10. Yes No

B. Provide the percentage of time You use the written contracts and agreements describing Your services.

0 %

C. Do Your contracts contain the following:

Hold Harmless or Indemnity Agreement inuring to Your benefit? Yes No

Hold Harmless or Indemnity Agreement inuring to the benefit of others? Yes No

Guarantees or warranties?
Disclaimers inuring to Your benefit?

Yes No
Yes No

10. A. Have any claims, suits or proceedings been made during the past three years against any of You or any of Your predecessors in business, subsidiaries or affiliates or against any of their past or present partners, owners, officers, sales persons or employees? If yes, complete a Supplemental Claims Information Form for each claim.

Yes No

If an insurance policy is issued, it will not insure any claims, suits or proceedings made against You or any past partner, owner, officer, sales person or employee before the effective date of the policy or any subsequent claims, suits or proceedings arising there from.

B. Are any of You aware of any actual or alleged fact, circumstance, situation, error or omission which may reasonably be expected to result in a claim being made against You or any of the persons or entities described in Section 10. A above? If yes, explain in an attachment.

Yes No

If an insurance policy is issued, it will not insure any claims, suits or proceedings that can reasonably be expected to arise from any actual or alleged fact, circumstance, situation, error or omission known to any of You before the effective date of the policy.

C. Have You or any of Your predecessors in business, subsidiaries or affiliates or any of their past or present partners, owners, officers, sales persons or employees been investigated and/or cited by any regulatory agency for violations arising out of Your or their activities or services? If yes, explain in an attachment.

Yes No

11. A. Provide the following information for similar insurance, if any, carried during the last three years.

<u>Company</u>	<u>Limit Policy Term</u>	<u>Retention</u>	<u>Premium</u>
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B. Provide the current retroactive date (if claims made coverage) _____

12. A. Provide the following information for Commercial General Liability coverage currently in force:

<u>Company</u>	<u>Limit Policy Term</u>
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B. Does the above policy include coverage for Products/Completed Operations hazards?

Yes No

C. Does the above policy include coverage for Advertising Injury and Personal Injury perils?
Yes No

THE UNDERSIGNED AUTHORIZED OWNER, PARTNER, DIRECTOR, OR OFFICER AGREES THAT IF THE INFORMATION SUPPLIED ON THIS APPLICATION CHANGES BETWEEN THE DATE THE APPLICATION IS EXECUTED AND THE TIME THE PROPOSED INSURANCE POLICY IS BOUND OR COVERAGE COMMENCES, THE NAMED INSURED WILL IMMEDIATELY NOTIFY DARWIN IN WRITING OF SUCH CHANGES. DARWIN RESERVES ITS RIGHTS TO MODIFY OR WITHDRAW ITS PROPOSAL.

THE UNDERSIGNED AUTHORIZED OWNER, PARTNER, DIRECTOR, OR OFFICER REPRESENTS AND WARRANTS ON BEHALF OF THE NAMED INSURED AND ALL PERSONS/ENTITIES FOR WHOM INSURANCE IS BEING SOUGHT THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF AFTER DILIGENT INQUIRY, THE STATEMENTS SET FORTH HEREIN AND ATTACHED HERETO ARE TRUE. IT IS UNDERSTOOD THAT THE STATEMENTS IN THIS APPLICATION, INCLUDING MATERIALS SUBMITTED TO OR OBTAINED BY THE UNDERWRITER ARE MATERIAL TO THE ACCEPTANCE OF THE RISK, AND RELIED UPON BY THE UNDERWRITER.

NOTICE TO ARKANSAS, MINNESOTA, AND OHIO APPLICANTS: ANY PERSON WHO, WITH INTENT TO DEFRAUD OR KNOWING THAT HE/SHE IS FACILITATING A FRAUD AGAINST AN INSURER, SUBMITS AN APPLICATION OR FILES A CLAIM CONTAINING A FALSE OR DECEPTIVE STATEMENT IS GUILTY OF INSURANCE FRAUD, WHICH IS A CRIME.

NOTICE TO COLORADO APPLICANTS: IT IS UNLAWFUL TO KNOWINGLY PROVIDE FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE COMPANY. PENALTIES MAY INCLUDE IMPRISONMENT, FINES, DENIAL OF INSURANCE, AND CIVIL DAMAGES. ANY INSURANCE COMPANY OR AGENT OF AN INSURANCE COMPANY WHO KNOWINGLY PROVIDES FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO A POLICY HOLDER OR CLAIMANT FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE POLICY HOLDER OR CLAIMANT WITH REGARD TO A SETTLEMENT OR AWARD PAYABLE FROM INSURANCE PROCEEDS SHALL BE REPORTED TO THE COLORADO DIVISION OF INSURANCE WITHIN THE DEPARTMENT OF REGULATORY AGENCIES.

NOTICE TO DISTRICT OF COLUMBIA, MAINE, TENNESSEE, AND VIRGINIA APPLICANTS: IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE, OR MISLEADING INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING THE COMPANY. PENALTIES MAY INCLUDE IMPRISONMENT, FINES, OR A DENIAL OF INSURANCE BENEFITS.

NOTICE TO FLORIDA APPLICANTS: ANY PERSON WHO, KNOWINGLY AND WITH INTENT TO INJURE, DEFRAUD, OR DECEIVE ANY EMPLOYER OR EMPLOYEE, INSURANCE COMPANY, OR SELF-INSURED PROGRAM, FILES A STATEMENT OF CLAIM OR AN APPLICATION CONTAINING ANY FALSE OR MISLEADING INFORMATION IS GUILTY OF A FELONY OF THE THIRD DEGREE.

NOTICE TO KENTUCKY APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY, OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE CONTAINING ANY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME.

NOTICE TO LOUISIANA AND NEW MEXICO APPLICANTS: ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.

NOTICE TO MARYLAND APPLICANTS: ANY PERSON WHO, WITH INTENT TO DEFRAUD OR KNOWING THAT HE/SHE IS FACILITATING A FRAUD AGAINST AN INSURER, SUBMITS AN APPLICATION OR FILES A CLAIM CONTAINING A FALSE OR DECEPTIVE STATEMENT MAY BE GUILTY OF INSURANCE FRAUD.

NOTICE TO NEW JERSEY APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR SUCH VIOLATION.

NOTICE TO OKLAHOMA APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO INJURE, DEFRAUD, OR DECEIVE ANY INSURER, MAKES ANY CLAIM FOR THE PROCEEDS OF AN INSURANCE POLICY CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION IS GUILTY OF A FELONY.

NOTICE TO OREGON AND TEXAS APPLICANTS: ANY PERSON WHO MAKES AN INTENTIONAL MISSTATEMENT THAT IS MATERIAL TO THE RISK MAY BE FOUND GUILTY OF INSURANCE FRAUD BY A COURT OF LAW.

NOTICE TO PENNSYLVANIA APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES.

A POLICY CANNOT BE ISSUED UNLESS THIS APPLICATION IS PROPERLY SIGNED AND DATED.

Signature of Applicant:



(MUST be signed by an Owner, Partner, Director, or Officer of the Named Insured.
It is agreed the signer has authority to act on behalf of all insureds.)

Printed Name of Applicant:

Spencer Childs Title President

Date:

2/19/08



P.O. Box 2103
Austin, TX 78767-2103
(800) 280-1079
(512) 474-0404
Fax (512) 474-0303

ASSIGNMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Cantilo & Bennett, L.L.P., solely in its capacity as the duly-appointed Special Deputy Receiver (“SDR”) of Esquire Title, LLC in liquidation (“Esquire”), for Ten Dollars (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, by means of this instrument grants and conveys to the Texas Title Insurance Guaranty Association (“TTIGA”) all of Esquire’s rights, title and interest in that certain policy of insurance issued by Gemini Insurance Company, Policy No. VPPL001461, (the “Policy”) including but not limited to any and all claims asserted by Esquire under the policy and all common law, statutory and contractual rights held by Esquire as a consequence of being an insured under said policy. This Assignment (the “Assignment”) specifically includes all right, title and interest in all claims, potential claims, suits, demands, causes of action, charges or grievances of any kind or character, regardless of the nature or extent held by the SDR whether arising in tort, contract, by statute or otherwise, and including claims for breach of fiduciary duty (hereinafter collectively referred to as the “Insurance Claims”). It is the intent of the Parties to this Assignment to convey all legal and equitable rights held by the SDR, whether or not specifically identified herein, to TTIGA.

This Assignment is made subject to the following terms:

1. **NO WARRANTY OR GUARANTY.** The SDR makes this assignment without any warranty, express, implied, or statutory and without any guarantees.

2. **NO MERGER.** The assignment shall not constitute or be deemed a merger of the causes of action held by TTIGA against the Policy with the causes of action and claims conveyed by the SDR under this Assignment.

3. **NO SETTLEMENT BY ASSIGNOR.** The SDR has not and will not settle or compromise any of the Insurance Claims, or give any release or discharge of liability, without the express written consent of TTIGA.

4. **STATUS OF CLAIMS.** The SDR has asserted claims under the Policy, which remain pending with Gemini.

5. **NO LIABILITIES TO THIRD PARTIES.** TTIGA accepts no liabilities to third parties under this Assignment. The SDR accepts no liabilities to third parties under this Assignment

6. **NO INDEMNIFICATION.** TTIGA does not indemnify or hold harmless the SDR or Ameritrust for any liabilities whatsoever as a result of this Assignment. The SDR does not indemnify or hold harmless TTIGA for any liabilities whatsoever as a result of this Assignment.

7. **CREDIT ON CLAIM.** TTIGA agrees to and shall credit any net recovery from the Insurance Claims, after deducting for the costs of prosecution of the Insurance Claims, to its claim in the Esquire receivership in the following order: first, to its Class 1 administrative claim and then to its Class 2 claims and last to its claims, if any, with a lower priority. TTIGA agrees to pay the excess of any recovery net of costs of prosecution and its allowed claims in the Esquire receivership to the Commissioner of Insurance, in his/her capacity as the successor/assignee of Esquire's unliquidated assets. However, nothing in this Assignment obligates TTIGA to pursue the Insurance Claims if, in the exercise of TTIGA's sole judgment, such pursuit would not be in TTIGA's best interest.

8. **BINDING EFFECT.** This Agreement, and all of its terms and conditions, are binding on the SDR and its successors and assigns, and on TTIGA and its successors and assigns.

9. **NO RELEASES:** No Party to this Assignment releases, settles, novates or in any other manner waives any claim against any other Party to this Assignment.

10. The Parties further agree to perform any further acts and execute any documents that may be reasonably necessary to carry out this Assignment, specifically including but not necessarily limited to any filing to be made in the Receivership Court in connection with obtaining the Receivership Court's approval of this Assignment.

11. Nothing in this Assignment or any related proceeding or filing shall affect, in any way, the Receiver's or the SDR's immunities from suit and shall not give rise to any right to sue or create any causes of action against the Receiver or the SDR other than a cause of action to enforce the terms of this Agreement. The automatic stay and the provisions of the Liquidation Order remain in affect unless expressly modified herein.

12. This Assignment is made and entered into in the State of Texas, and shall in all respects be interpreted, enforced and governed under the laws of the State of Texas. The Parties hereto agree that sole and exclusive venue and jurisdiction for any disputes relating to or arising out of this Assignment will be solely in the Receivership Court, the 261st District Court of Travis County, Texas.

SIGNED AND DELIVERED on _____, 2011.

Cantilo & Bennett, L.L.P.

By: _____

Joseph West
Cantilo & Bennett, L.L.P. solely in its
capacity as Special Deputy Receiver of
Esquire Title LLC
11401 Century Oaks Terrace, Suite 300
Austin, Texas 78758-8702

SUBSCRIBED AND SWORN TO BEFORE ME on _____, 2011, by Joseph West, on behalf of Cantilo & Bennett, L.L.P., solely in its capacity as the Special Deputy Receiver of Esquire Title LLC in receivership.

Notary Public

TEXAS TITLE INSURANCE GUARANTY ASSOCIATION

By: _____

Larry Parks
Attorney for TTIGA
106 East Sixth Street, Suite 300
Austin, Texas 78701

**SPECIAL DEPUTY RECEIVER'S CERTIFICATION PURSUANT TO
TEXAS INSURANCE CODE SECTION 443.017(b)
AFFIDAVIT OF JOSEPH N. WEST**

State of Texas

County of Travis

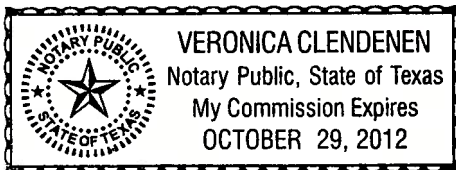
BEFORE ME, the undersigned authority appeared Joseph N. West, who after being by me duly sworn, stated the following under oath:


1. My name is Joseph N. West. 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 Esquire Title, LLC (the "SDR" and "Esquire"). 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 section 443.017(b), are true and correct copies of records created by and filed with the SDR's office in connection with the receivership of this delinquent insurer, and are held by the SDR in its official capacity.
4. I further state that I have read the statements contained in the attached Application and that 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:


Joseph West

SUBSCRIBED AND SWORN TO BEFORE ME on July 26, 2011, by Joseph N. West, on behalf of CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Esquire Title, LLC in receivership.




Notary Public