

CAUSE NO. D-1-GN-19-000723

THE STATE OF TEXAS  
*Plaintiff,*

v.

CAPSON PHYSICIANS INSURANCE  
COMPANY,  
*Defendant.*

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

250<sup>TH</sup> JUDICIAL DISTRICT

**SPECIAL DEPUTY RECEIVER’S  
APPLICATION FOR APPROVAL OF FEES AND EXPENSES**

TO THE HONORABLE JUDGE OF SAID COURT:

CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Capson Physicians Insurance Company (the “SDR” and “CPIC” respectively), files its *Application for Approval of Fees and Expenses* (the “Application”).

**I. BACKGROUND**

1.1. On February 11, 2019, the Court entered an *Agreed Order Appointing Rehabilitator, Permanent Injunction, and Notice of Automatic Stay* appointing the Texas Commissioner of Insurance as Receiver for Rehabilitation (the “Rehabilitator”). Effective February 11, 2019, the Texas Commissioner of Insurance, as Rehabilitator, designated CANTILO & BENNETT, L.L.P. as Special Deputy Receiver of CPIC.

**II. JURISDICTION**

2.1. This Court has jurisdiction over the subject matter of this Application and of the parties herein pursuant to TEX. INS. CODE § 443.005.

**III. STATUTORY AUTHORITY**

3.1 The SDR is authorized to file this Application pursuant to TEX. INS. CODE § 443.015, which provides for the approval of the SDR’s expenses and compensation by the Court.

3.2 The subject matter of this Application has been referred to the Special Master appointed in this proceeding in accordance with the Order of Reference to Master entered on February 21, 2019.

#### **IV. BASIS FOR APPLICATION**

4.1 TEX. INS. CODE § 443.015(c)(1) requires the Receiver to submit an application for the approval of the terms of compensation of a contractor when the Receiver reasonably expects that the total amount of compensation to be paid over the course of the proceeding will exceed Two Hundred Fifty Thousand Dollars (\$250,000), or such another amount established by the Court. In addition, TEX. INS. CODE § 443.015(d) permits the Receiver, at his discretion, to submit an application to approve any compensation, anticipated expenses, or incurred expenses not described by Subsection (c)(1).

4.2 The SDR files this Application to request approval of proposed fees and expenses. At this time, the SDR anticipates that the compensation paid to some contractors may exceed \$250,000 for the duration of this proceeding. The rates for compensation for all contractors are shown on Exhibit A, which is attached hereto and incorporated by reference. The SDR requests the Court to approve such rates pursuant to TEX. INS. CODE § 443.015(d), effective as of February 11, 2019, the effective date CANTILO & BENNETT, L.L.P., was designated as SDR. These rates have been approved by the Rehabilitator in accordance with TEX. INS. CODE § 443.102(a).

4.3 The SDR requests that the Court approve the SDR's Application for Approval of Fees and Expenses for the individuals and entities identified on the attached Exhibit A.

4.4 TEX. INS. CODE § 443.015(g) provides that on a quarterly basis, or as otherwise provided by this Court, the Receiver shall submit to the Court a summary of expenses incurred during the period. The SDR requests the Court to confirm quarterly reporting periods that coincide with the State of Texas fiscal year. The SDR further requests that such reports be filed by the 15th

day of the month following the end of the quarterly reporting period and commence with the quarter ending May 31, 2019.

#### **V. OFFER OF PROOF AND VERIFICATION**

5.1 This Application is verified by the affidavit and certification pursuant to TEX. INS. CODE § 443.017(b) by Joseph N. West, Partner in CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Capson Physicians Insurance Company.

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Capson Physicians Insurance Company, prays that after notice and hearing, this Court grant this Application and grant the SDR such other and further relief to which it may justly entitled.

Respectfully submitted,

/s/ Greg Pierce  
Gregory A. Pierce  
State Bar No. 15994250  
P.O. Box 40  
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-and-

Christopher Fuller  
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**Attorneys for CANTILO & BENNETT, LLP,  
Special Deputy Receiver of  
Capson Physicians Insurance Company**

**CERTIFICATE OF SERVICE**

I certify that on March 4, 2019 the foregoing *SDR's Application for Fees & Expenses* was served pursuant to the Order of Reference to Master, the Texas Rules of Civil Procedure and TEX. INS. CODE § 443.007(d) on the following by electronic mail, except as specifically noted:

***Via Email:*** [specialmasterclerk@tdi.texas.gov](mailto:specialmasterclerk@tdi.texas.gov)  
Special Master's Clerk  
Rehabilitation & Liquidation Oversight  
TEXAS DEPARTMENT OF INSURANCE  
PO Box 149104  
Austin, Texas 78714-9104

***Via e-Service:*** [James.Kennedy@tdi.texas.gov](mailto:James.Kennedy@tdi.texas.gov)  
James Kennedy  
TEXAS DEPARTMENT OF INSURANCE  
PO Box 149104  
Austin, Texas 78714-9104

***Via Email:*** [John.Alexander@tdi.texas.gov](mailto:John.Alexander@tdi.texas.gov)  
John Alexander  
Rehabilitation & Liquidation Oversight  
TEXAS DEPARTMENT OF INSURANCE  
P.O. Box 149104  
Austin, Texas 78714-9104

***Via Email:*** [kathy.gartner@tdi.texas.gov](mailto:kathy.gartner@tdi.texas.gov)  
Kathy Gartner  
Rehabilitation & Liquidation Oversight  
TEXAS DEPARTMENT OF INSURANCE  
P.O. Box 149104  
Austin, Texas 78714-9104

***Via e-Service:*** [Kaitlyn.Yost@oag.texas.gov](mailto:Kaitlyn.Yost@oag.texas.gov)  
Kaitlyn M. Yost  
Assistant Attorney General  
Financial Litigation Division  
OFFICE OF THE TEXAS ATTORNEY GENERAL  
P.O. Box 12548  
Austin, Texas 78711-2548  
Fax: (512) 477-2348  
*Counsel for Plaintiff State of Texas*

***Via e-Service:*** [jthompson@thompsoncoe.com](mailto:jthompson@thompsoncoe.com)  
Jay A. Thompson  
THOMPSON COE  
701 Brazos, Suite 1500  
Austin, Texas 78701  
*Counsel for Defendant  
Capson Physicians Insurance Company*

/s/ Greg Pierce  
Gregory A. Pierce

## 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 SDR's *Application for Approval of Fees and Expenses* is hereby set for written submission before the Special Master, Tom Collins, on March 18, 2019.

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, at [specialmasterclerk@tdi.texas.gov](mailto:specialmasterclerk@tdi.texas.gov);
  - (b) The undersigned counsel, Greg Pierce at [gpierce@gpiercelaw.com](mailto:gpierce@gpiercelaw.com); and
  - (c) All interested parties, including those listed on the SDR's Certificate of Service.
3. The objecting party shall coordinate with the SDR's counsel and the Docket Clerk [(512) 676-6915]] 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. **Please note that if an objection is not filed as described in the Notice of Submission, the Master may consider the Application without a hearing.**
6. **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.**
7. 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/ Greg Pierce  
Gregory A. Pierce



**APPLICATION FOR APPROVAL OF FEES AND EXPENSES**  
**EXHIBIT A - FEE SCHEDULE**

**CANTILO & BENNETT, L.L.P.**

*Special Deputy Receiver*

<u>Position</u>	<u>Hourly Rate</u>
Primary Responsible Person/SDR Administration, Partner	\$220.00
SDR Administration, Partner	\$220.00
SDR Administration, Associate	\$170.00
Receivership Specialist	\$130.00
Law Clerk	\$110.00
Administrative/Clerical	\$ 30.00

**GREG PIERCE, ATTORNEY AT LAW**

*Legal/Litigation Services Subcontractor*

Attorney/SDR Counsel	\$250.00
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**FULLER LAW GROUP**

*Legal/Litigation Services Subcontractor*

Attorney/SDR Counsel	\$260.00
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**INQUEST RESOURCES**

*Legal Support Services Subcontractor*

Paralegal	\$ 80.00
Receivership Specialist I	\$ 80.00
Paralegal	\$ 70.00
Receivership Specialist II	\$ 50.00
Administrative Assistant	\$ 30.00
Clerical	\$ 30.00

**PETROSEWICZ & Co., INC.**

*Accounting Services Subcontractor*

C.P.A., Attorney	\$190.00
C.P.A.	\$180.00

Staff Accountant	\$105.00
Clerical Staff	\$ 35.00

**THARP AND ASSOCIATES, INC.**

*Reinsurance Subcontractor*

Chief Executive Officer	\$225.00
Chief Financial Officer	\$225.00
Chief Information Officer	\$185.00
Controller	\$185.00

**MILFORD CONSULTING, LLC**

*Claims Services Subcontractor*

Receivership Specialist I	\$140.00
Reinsurance Specialist	\$125.00
Receivership Specialist II	\$115.00
IT Specialist	\$ 95.00
Receivership Specialist III	\$ 90.00
Clerical	\$ 35.00

**EMKAY ASSOCIATES, INC.**

*Information Technology/Data Processing/Receivership Operations Subcontractor*

Claims Management and Consulting, Site Management	\$ 95.00
Claims and IT	\$ 95.00
Claims Representative, Administrative	\$ 95.00
Claims and Database Administration	\$ 45.00