

## Report for Special Master's Status Conference

July 24, 2017

### R-558 Millennium Closing Services, L.L.C. d/b/a Millennium Title

SDR: CANTILO & BENNETT, L.L.P.  
Primary Responsible Person: Susan E. Salch  
Estate Counsel: Christopher Fuller  
Receiver's Counsel: Kimberly M. Hammer  
RLO Analyst: Vicente Aguillon

#### Background on Receivership

- Date of Permanent Injunction (Liquidation): January 25, 2016
- Date of Appointment of SDR: January 26, 2016
- Claims Filing Deadline: November 15, 2016
- States where Licensed: Texas
- Lines of Business: Title Agency
- Texas Guaranty Association Triggered: Texas Title Insurance Guaranty Association ("TTIGA")
- Date of Impairment: January 25, 2016
- Early Access Distributions: N/A

#### Statement of Assets and Liabilities as of June 30, 2017

Total Assets:	\$3,866,137
Cash Assets:	\$ 772,456
Escrow Funds:	\$3,093,681
Non-Cash Assets:	\$ 0
Total Liabilities:	\$8,270,698
Negative Equity:	(\$4,404,561)

#### Asset Recovery through June 30, 2017

Premium Collected:	\$ N/A
Subrogation/Salvage:	\$ N/A
Reinsurance Collected:	\$ N/A
FF&E Sold:	\$ 11,664

## Status and Activity Since Last Status Conference

### Nancy Carroll Matters:

**Criminal Prosecution:** The SDR has not learned any new information regarding the status of the criminal prosecution. A “Supplemental Setting” was scheduled for July 14, 2017, at 11:00 a.m. The SDR presumes that Ms. Carroll has not accepted the State’s plea offer of a twenty (20) year sentence (described more fully below).

A “Consultation Setting Plea Offer Acknowledgement” was filed by the District Attorney’s Office, which recommended that Ms. Carroll agree to a sentence of twenty (20) years in the Texas Department of Corrections, agree to an unspecified amount of restitution, and agree to surrender her law, real estate, and insurance licenses permanently. The offer was originally open until May 15, 2017. The State filed its “Supplemental Disclosure of Documents, Items and Information Provided to Defendant” and produced data on hard drives and discs.

**Carroll v. PTS of America:** Ms. Carroll’s *pro se* lawsuit against the company that transported her from jail in Illinois to Texas remains pending. She claims her constitutional rights were violated during her transfer.

**Escrow Funds:** Escrow funds in the amount of \$3,093,681 are held in a receivership escrow account separate from the estate’s operating funds.

**Unclaimed Escrow Money:** The SDR holds \$179,369.56 in escrow funds for which no claim has been filed even though the claims team has notified the presumed owner of the funds (at least once) of the need to file a claim. There are 200 open items with amounts ranging from \$5.00 to \$66,298. Despite repeated e-mails, telephone calls and messages left over the course of several months, no claims to these funds were filed.

In early July, counsel retained by an underwriter sought Millennium Title’s file on a closing involving HEB Homes. The attorney was contesting a foreclosure where the lender claimed it had not received a loan payoff of approximately \$65,000 from a closing at Millennium Title. Research revealed that the loan payoff funds are in the estate’s escrow account. Millennium Title’s records do not show that a closing took place at Millennium Title. Nevertheless, it appears that the property was flipped twice since the first purported closing. Given the confused nature of the title to the property and questions surrounding entitlement to the money, the SDR has decided to recommend the receiver interplead the money and let the interested parties determine proper ownership without further involvement by (and expense to) the estate. A CBA for this matter will be submitted in July.

**IT/Data:** All pre-receivership records, both paper and electronic, have been preserved and are stored. The estate maintains access to the company’s data through a cloud-based server operated by Willow Bend Systems. Real estate transaction documents maintained in guaranty files (“GFs”) are accessible through the Ramquest system. The

SDR will maintain access to the Ramquest system for the foreseeable future. There are only a handful of paper GF files. Before receivership, it was the company's practice to scan all the closing documents into the Ramquest system and then shred the file after original documents were recorded and sent to the proper party. No documents were destroyed after the SDR was appointed.

**Employees/Staffing:** Wayne Norton, a consultant retained by the company during supervision, advises the SDR on title agency matters. He, along with a small staff of other professionals, research GFs and the Ramquest system to review and make recommendations on claims filed with TTIGA under its claims process (detailed below). Mr. Norton and his team also assist the SDR in reviewing Proofs of Claims ("POCs") on title claims filed or deemed filed with the estate.

**401(k) Plan:** The SDR is now the administrator of the Millennium Title 401(k) plan. The SDR has made the necessary filings and begun the process to dissolve the plan while safeguarding the funds.

## **Asset Recovery Activity**

**Cost Sharing with TTIGA:** The SDR and TTIGA continue to work under a cost sharing agreement similar to the agreements reached in prior title agency estates.

**Nancy Carroll and Affiliates:** The SDR's asset recovery lawsuit against Ms. Carroll, her family, certain former employees and affiliates, remains set for trial on September 25, 2017, but the SDR, TTIGA and the Hafner defendants are going to move to continue the setting. In the last quarter the SDR and TTIGA have engaged in settlement discussions with the insurance carrier and the Hafners. The temporary injunction remains in effect.

The SDR's amended lawsuit asserts claims that should be covered by Millennium Title's E&O policy and Millennium 1031 Exchange's E&O policy. The SDR is not aware of a malpractice policy for the NJC Carroll law firm. In the lawsuit, the SDR is asserting claims on behalf of all creditors pursuant to its authority under section 443.154(m). To the extent that some creditors that claim to assert only "personal" (*i.e.*, fraud) claims, which are outside the scope of section 443.154(m), they would not be covered under the E&O policies. Only the SDR is authorized to assert all other claims.

All proceeds from litigation will be allocated pursuant to the requirements of the Insurer Receivership Act, including, but not limited to, TEX. INS. CODE § 443.301. The SDR anticipates that there will be a number of creditors who may not qualify for TTIGA coverage, but nevertheless have claims against the assets of the estate. Such creditors would participate in any distributions based on their priority under TEX. INS. CODE § 443.301.

**Insurance/Bonds:** The SDR is pursuing claims against the bonds and insurance policies involving Millennium Title. The SDR's claim under the \$500,000 Escrow Security Bond

was denied by the carrier. The SDR is negotiating with the carrier and another claimant under the policy in an effort to resolve the matter before filing suit.

A different bond company has approved the SDR's claim on the \$50,000 Direct Operations bond, subject to execution of a release. The SDR and the bond company are working on appropriate releases.

## **Claims Activities**

**Filing Deadline:** The deadline for creditors to file claims with both the SDR and TTIGA was November 15, 2016. The SDR and TTIGA agreed to treat claims filed by the deadline as timely filed with both in the event a covered claim is filed with the SDR, or a non-covered claim is filed with TTIGA. As of June 30, 2017, the SDR has referred all Millennium Title POCs that could possibly be covered claims to TTIGA, which, as noted below, has completed its POC processing.

### **TTIGA Claims:**

**POCs:** TTIGA has completed processing POCs via its expedited claims processing system. There are eleven claimants who did not cash their claim checks. TTIGA is conferring with the SDR regarding the handling of these payments.

Through July 7, 2017, TTIGA received 491 POCs. Of those, 365 have been paid in whole or in part, 168 have been denied in whole or in part, and 11 which were "paid" have been reclassified as "rejected for failure to negotiate." As of that date, TTIGA has paid \$3,577,621. The association has paid out more in claims than is held by the SDR in the escrow funds account and not all of TTIGA's claims payments are matched by an amount in escrow.

### **SDR Claims:**

**POCs:** With few exceptions the SDR has completed the adjudication of all POCs and notice letters are being issued. As of June 30, 2017, the SDR had processed and issued notices of determination for 35 non-title claims. These 35 non-title POCs include seven Class 4 (employee wages), twenty Class 5 (general, non-government claims), and two Class 6 (state and local government) classification notices, as well as and six claim denial letters. The notice letters state that the claims have been adjudicated only as to classification, that the SDR does not anticipate that the estate will have sufficient funds to make distributions to Class 4 or lower priority claims, and that the claimants will be notified if the situation changes. The notice letters also inform the claimants of the forty-five (45) day deadline to object to the classification. Contrary to expectations, no former employees have objected to the classification of their POCs as of the date of this report.

**Late Claims:** Three claims were untimely filed. The first arose because the claimant's counsel sent the form to the wrong address. The second was filed as the result of a consumer complaint. The most recent was filed with TTIGA on July 3, 2017. TTIGA immediately denied the claim as untimely. The SDR will also deny it.

**Transaction Completion:** The SDR has concluded its efforts to produce title insurance policies or otherwise complete closings. All such inquiries are now directed to the title insurers, to the extent a policy was issued.

## **General Legal Activities**

**Litigation:** There are no active third party lawsuits involving the SDR or Millennium Title.

**Motions to Lift Stay:** No motions for relief from the stay were filed in the last quarter.

## **Conclusion**

### **Summary of Major Achievements:**

- Assisted TTIGA with resolution of escrow account POCs.
- Pursued settlement negotiations in asset recovery litigation against former management and affiliates.
- Negotiated with carrier and prepared to file suit on claims under Escrow Security Bond.

### **Estate Goals to achieve prior to next Status Conference:**

- Sue or settle claims under Escrow Security Bond.
- Complete notices of adjudication of SDR title and non-title claims as to priority classification and attempt to resolve appeals.
- Seek continuance of case against former management and affiliates and settle as able.
- Pursue remaining bond and insurance claims.
- Enforce stay and permanent injunction.
- Assist prosecutors.

**Estate Closing Date of Receivership:** Mid-2018

### **Identification of Factors Affecting Closing Date and Final Distribution:**

- Coordination/Cooperation with TTIGA.
- Processing TTIGA and Estate POCs and Appeals.

- Coordination/Cooperation with Criminal Prosecution.
- Asset Recovery.