

NO. D1-GN-06-002366

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

VERIFIED FINAL ACCOUNTING AND APPLICATION TO TERMINATE RECEIVERSHIP AND DISCHARGE RECEIVER AND SPECIAL DEPUTY RECEIVER AS TO AMERICAN FOUNDERS FINANCIAL CORPORATION ONLY

TO THE HONORABLE JUDGE OF SAID COURT:

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

I. RELIEF REQUESTED

1. On April 25, 2022, this Court entered its *Order Granting Application to Approve Final Report of Claims and Make Final Distribution as to American Founders Financial Corporation Only* (Distribution Order). The SDR has completed the distribution of assets under the Distribution Order and submits this final accounting. The SDR requests that the Court

terminate this proceeding and discharge the Texas Commissioner of Insurance (Commissioner), and any predecessors, as Receiver of AFFC, and the SDR. This Application will not affect the receivership proceedings of Vesta Fire Insurance Corporation (Vesta Fire), Shelby Casualty Insurance Company, The Shelby Insurance Company, Texas Select Lloyds Insurance Company, and Select Insurance Services, Inc., which remain pending.

II. AUTHORITY

2. The SDR is authorized to file this Application under § 443.352 of the Texas Insurance Code (the Code). The subject matter of this Application has been referred to the Special Master appointed in this proceeding under the *Order of Reference to Master* entered on June 28, 2006 in light of the administrative consolidation of the case in this Court's order of December 20, 2007.

III. BACKGROUND

3. AFFC was an insurance holding company rather than an insurer in its own right. On October 2, 2007, AFFC was placed into liquidation. This receivership was administratively consolidated into the current case on December 20, 2007. On March 26, 2009, the Court entered its *Order Granting Application to Approve Notice and Set Claims Filing Deadline (AFFC)*. On November 23, 2009, the Court entered its *Order Approving Special Deputy Receiver's First Report of Claims and Application to Make Partial Distribution (AFFC)*. This order approved a dividend of 15% on allowed Class 5 claims. Subsequently, the Distribution Order increased the dividend to 26.914%.

IV. FINANCIAL STATEMENTS

4. The following final financial statements are attached to this Application:
 - (a) Statement of Net Assets, Exhibit A;
 - (b) Statement of Net Liabilities, Exhibit B; and
 - (c) Sources and Uses of Cash, Exhibit C.

V. EXPENSES

5. The Distribution Order approved a closing budget for the payment of administrative expenses in the amount of \$31,224 through the termination of the receivership. Attached as Exhibit D is the final statement of expenses submitted under § 443.015 of the Code, which reflects the incurred expenses and accrued expenses for completion of the closing budget items. No guaranty association coverage or expenses are involved in this liquidation because AFFC is a holding company rather than an insurer.

VI. DISTRIBUTION

6. Under the Distribution Order, the SDR issued wire transfers to the approved Class 5 non-affiliate creditors, Greenberg Traurig and Baker Hostetler, and a funds transfer to the one affiliate Class 5 creditor, Vesta Fire, which increased the distribution to Class 5 approved claimants from 15% to 26.914%. An accounting of the final distribution transfers of \$651,429.45 is attached as Exhibit E. The AFFC receivership did not involve guaranty association coverage.

VII. FEDERAL INCOME TAX RETURNS

7. AFFC has filed income tax returns with the Internal Revenue Service through tax year 2021. The SDR will file a short year 2022 tax return for all 2022 activity before the SDR is discharged after the order is entered but before the order is final. No taxes are owed to the Internal Revenue Service by the AFFC receivership estate.

VIII. CHARTER

8. AFFC did not issue any policies because it is not an insurance company, but rather is an affiliate of an insurance company holding a corporate charter. Under § 443.153 of the Code, the dissolution of AFFC shall be deemed “complete by operation of law upon discharge of the liquidator,” because AFFC is insolvent.

VIX. ASSIGNMENTS

9. The Distribution Order authorized the SDR to assign any remaining undistributed funds, non-cash assets and unknown assets of AFFC to the Commissioner. Attached as Exhibit F to the Affidavit of Craig A. Koenig is a copy of the executed assignment to the Commissioner. This approach aligns with § 443.352 of the Code.

X. RECORDS

10. The Distribution Order authorized the SDR to destroy certain records of AFFC in Receivership that were no longer required for the administration of the receivership. The remaining records of AFFC have been transferred to the Commissioner. The SDR requests that this Court authorize the Commissioner to dispose of any or all records transferred to them at their discretion under § 443.354 of the Code.

XI. TERMINATION AND DISCHARGE AS TO AFFC ONLY

11. The SDR requests that this Court issue an order terminating the receivership estate and discharging the Receiver, and any predecessors, and the SDR as to AFFC under § 443.352 of the Code. This Application only deals with the wind-up and closing of AFFC.

XII. OFFER OF PROOF

12. The Affidavit of Craig A. Koenig is filed with this Application and incorporated into this Application by reference for all purposes. This Affidavit authenticates Exhibits A through F. The Court is requested to admit the Affidavit of Craig A. Koenig and its exhibits into evidence.

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

- a) Granting the Application in all respects;
- b) Admitting the Affidavit of Craig A. Koenig and its exhibits into evidence;
- c) Approving the transfer of the unclaimed distributions shown on Exhibit F to the Commissioner;
- d) Authorizing the Commissioner to destroy the remaining records at the Commissioner's discretion;
- e) Finding that the discharge order shall dissolve the corporate charter of AFFC;
- f) Discharging the Receiver, and any predecessors, and the SDR;
- g) Terminating this proceeding;
- h) Authorizing the SDR to sign the final tax returns and other closing documents; and
- i) Granting the Receiver and the SDR other relief to which they may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all interested parties in accordance with the Texas Rules of Civil Procedure and TEX. INS. CODE ANN. §443.007(d) this 15th day of August, 2022.

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

American Founders Financial Corporation
Statement of Net Liabilities
06/30/22

Line		06/30/22
1	Secured Claims	
2	APF Loan	
3	Special Deposit Claims	
Administrative Claims - Class 1		
4	Administrative Claims - State/Receiver	
	Special Deputy Receiver, Subcontractors Fees & Expenses	
	Liquidation Oversight	
	Special Master's Fees	
5	Administrative Claims - Guaranty Assns	
	Administrative Expense Paid	
	Administrative Expense Reserves	
6	LAE - Guaranty Assns	
	LAE Paid	
	LAE Reserves	
Policy Claims - Class 2		
7	Loss Claims - Guaranty Assns	
	Loss Claims Paid	
	Loss Claims Reserves	
8	Loss Claims - Other	
	Other Loss Claims Paid	
	Other Loss Claims Reserves	
9	LAE - Other	
10	Unearned & Advance Premium Claims - GA	
11	Unearned & Advance Premium Claims - Other	
Other Liabilities		
12	Class 3 Claims	
13	Class 4 Claims	
14	Class 5 General Unsecured Creditor Claims	3,996,170
15	Class 5 Reinsurance Related Unsecured Claims	
16	Class 6 Claims	
17	Class 7 Claims	
18	Class 8 Claims	
19	Class 9 Claims	
20	Class 10 Interest	
21	Class 11 Claims	
22	Other Liabilities	
	Total Liabilities	3,996,170
23	Total Equity/(Deficit) Excess (Deficiency) of Assets over Liabilities	(3,996,170)
	Total Liabilities & Equity	0

NOTES

Ref. No.

14 Reflects unpaid claims as a result of insufficient cash remaining in the receivership.

R-535

American Founders Financial Corp.
Sources & Uses of Cash
Inception to June 30, 2022

EXHIBIT C

Beginning Cash	\$	3,535,028
Sources of Cash		
Investment Interest/Dividends		59,235
Cash Deposit Interest		51,179
Total Cash Receipts		<u>110,414</u>
Uses of Cash		
SDR Fees & Expenses		142,993
Legal Fees & Expenses		74,270
Subcontractor Administrative Fees & Expenses		18,140
First Report of Claims Distributions		820,165
Sagicorp Post-Closing Disbursement approved by the Court on April 10, 2008		1,500,000
Smith v. AFFC release of funds approved by the Court on December 21, 2007		375,000
POC - Vesta Fire Insurance Corp		594,119
POC - Greenberg Traurig, LLP		3,846
POC - Baker Hostetler, LLP		53,464
Other Disbursements		<u>63,445</u>
Ending Cash		<u><u>\$0</u></u>

R-535 American Founders Financial Corporation (AFFC)
Statement of Expense - Closing Administrative Expenses
EXHIBIT D

	<u>SDR Expenses</u>	
SDR Fees		\$14,135
	<u>General Admin Expenses</u>	
Bank Charges, Wiring Fees & Treasury Account		236
Records Storage and Disposal		250
Records Shredding		1,181
IT/Computer Expense		1,450
Copies, Faxes, Postage/Courier		25
Liquidation Oversight Allocated Expenses		2,039
	Subtotal	5,181
	<u>Subcontractor Fees & Expenses</u>	
Accounting Fees		3,209
Legal Fees		8,693
Legal Expenses		6
	Subtotal	11,908
Total Actual Expenses Incurred		<u>\$31,224</u>

EXHIBIT E

FINAL DISTRIBUTION:

Proof of Claim	Claimant	Distribution Amount
535004	Greenberg Traurig, LLP	\$ 3846.53
535005	Vesta Fire Ins. Corp. as Assignee	\$ 594,118.65
535006	Baker Hostetler, LLP	<u>\$ 53,464.27</u>
	Total:	\$ 651,429.45

NO. D1-GN-06-002366

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

ASSIGNMENT OF AMERICAN FOUNDERS FINANCIAL CORPORATION ASSETS TO THE COMMISSIONER

1. Prime Tempus, Inc. is the Special Deputy Receiver of American Founders Financial Corporation (AFFC) in the above-captioned case.
2. The Special Deputy Receiver is authorized to assign all known and unknown assets to the Commissioner of Insurance (Commissioner) at the closing of the AFFC receivership estate, under Tex. Ins. Code §443.352.
3. This assignment is intended to deal with any unknown, contingent, undistributed or unrecovered assets of AFFC.
4. The Special Deputy Receiver, on behalf of the Commissioner as Receiver of AFFC, assigns all right, title and interest to any unknown, contingent, undistributed and unrecovered assets of AFFC to the Commissioner or the Commissioner's successors. This assignment is intended to include, but is not limited to, property, causes of action, judgments, claims, unclaimed property deposits, tort claims, contract claims, statutory claims, contract rights, rights to recovery or to distribution, unknown claims, unrecovered claims and as-yet-undiscovered claims and assets.
5. This Assignment is intended to grant to the Commissioner the authority to demand and receive payments, to collect assets, to pursue causes of action, to assert contract and distribution rights, to collect contingent, liquidated and unliquidated assets, and to include all assets, past, present and future.

Assignment of AFFC Assets to the Commissioner

Should the Commissioner after closing receive assets sufficient to permit a further distribution to approved claimants after consideration of the cost of distribution, the Commissioner may make such a distribution without further order of this Court, after deducting from the funds the reasonable costs of administration and expense as to each such distribution. Tex. Ins. Code §§ 443.008 and 443.252. The Commissioner may also in the alternative seek to re-open the AFFC estate for the purpose of making distributions under Tex. Ins. Code § 443.353. If any amount so collected cannot be distributed economically, then any such funds may be deposited in accordance with Tex. Ins. Code § 443.304(c).

6. This document is intended to be a final and integrated expression of the rights assigned in this Assignment.
7. The Commissioner will have the authority to execute all documents that the Commissioner deems necessary or advisable to implement or effectuate this Assignment.

So assigned on this 15 day of August, 2022.

Prime Tempus, Inc., as Special Deputy Receiver of American Founders Financial Corporation

S. A. Koenig
Craig A. Koenig, President and not individually