

CAUSE NO. D-1-GN-23-001549

THE TEXAS DEPARTMENT OF INSURANCE, <i>Plaintiff,</i>	§ § § § § § § § §	IN THE DISTRICT COURT OF    TRAVIS COUNTY, TEXAS    345th JUDICIAL DISTRICT
v.		
FRIDAY HEALTH INSURANCE COMPANY, INC. <i>Defendant.</i>		

**APPLICATION FOR AUTHORITY TO  
DESTROY RECORDS  
(SMART DATA SYSTEMS)**

**TO THE HONORABLE JUDGE OF SAID COURT:**

CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Friday Health Insurance Company, Inc. (the “SDR” and “FHIC” respectively), files this *Application for Authority to Destroy Records (Smart Data Systems)* (the “Application”).

**I. INTRODUCTION**

1.1 The SDR files this Application for authority to destroy records that are no longer useful to the administration of the receivership.

**II. AUTHORITY**

2.1 The SDR is authorized to file this Application pursuant to TEX. INS. CODE § 443.354 (a), which provides for the destruction of records that are no longer useful to the administration of the receivership with the approval of this Court.

2.2 This Court has original jurisdiction over all matters arising under TEX. INS. CODE Chapter 443 or arising in or related to the receivership as the court in which these proceedings are pending under TEX. INS. CODE § 443.005(c).

2.3 Venue in Travis County is mandatory under TEX. INS. CODE §443.005(g).

2.4 The subject matter of this Application is referred to the Special Master appointed in this proceeding in accordance with Paragraph III of the *Agreed Order of Reference to Master* entered on March 23, 2023.

### **III. BACKGROUND**

3.1 On March 23, 2023, the Court entered the *Agreed Order Appointing Liquidator, Permanent Injunction, and Notice of Automatic Stay* (the “Permanent Injunction”). The Permanent Injunction appointed the Texas Commissioner of Insurance as Liquidator of FHIC. On that same date, the Texas Commissioner of Insurance appointed CANTILO & BENNETT, L.L.P. as SDR of FHIC.

3.2 Upon commencement of these receivership proceedings, the SDR was vested with title to all of the books, documents, claim files and all records of the insurer, of whatever nature, and in whatever medium, and wherever located, regardless of whether the records were in the control of FHIC at the time of the receivership pursuant to TEX. INS. CODE §443.017 of the Code.

3.3 FHIC was a virtual insurance company. All of its functions were managed by its parent, Friday Health Plan Management Services Company, Inc. (“FHPMSC”), under the terms of a Management Services Agreement, as amended. In the regular course of business before receivership, none of the Friday Health Plans affiliated insurance companies, including FHIC, stored or kept any paper claim documents.

3.4 FHIC, through FHPMSC, did not maintain any paper records for the claims submitted on its health insurance plans. The majority of claims are submitted electronically. Any paper claim documents and related submissions are sent to a third-party vendor, Smart Data Systems (“SDS”). SDS converts the images into standard CMS forms with standardized codes, which are then fed into the FHPMSC claims system. All paper records are also imaged with optical

character recognition (“OCR”) by SDS and uploaded into its storage where FHPMSC can access them via an online portal. Under its contract, SDS maintains the imaged records on its own servers for 10 years. After being imaged, SDS holds the paper records for 90 days (for the benefit of both scanning company and the client) and then they are destroyed.

3.5 Under the agreement between FHPMSC and SDS, after conversion and imaging, all of FHIC’s paper documents are commingled in the same boxes with the paper records of other FHP affiliates and up to forty unrelated companies, which are on the same 90-day shredding schedule. The materials in the boxes contain Private Health Information (“PHI”) from a number of sources, therefore, SDS cannot allow the boxes containing the other companies’ documents to be reviewed and culled for FHIC documents.

3.6 This Application only seeks authority for the SDR to authorize FHPMSC to authorize SDS to destroy paper claim records after they are imaged and uploaded onto FHPMSC’s servers on the current schedule under its contract with FHPMSC. By this Application, the SDR does not intend to, and does not, seek authority to destroy any other paper records at this time. The SDR has recovered some other paper records from company offices in Denver and Alamosa, Colorado. The materials have been shipped to Austin and will be catalogued by subcontractor, Inquest Resources. The SDR is establishing a separate estate cloud storage environment for estate data that will contain copies of all the FHIC claim images held on the SDS portal.

3.7 The SDR has determined that the paper records held by SDS are no longer useful to the administration of the receivership after they are imaged and uploaded.

#### **IV. REQUESTED RELIEF**

4.1 The SDR requests authority to authorize the destruction of paper claim records and other paper documents in the established course of business after they are imaged, coded, and

uploaded to the claims system and the SDS portal. TEX. INS. CODE § 443.007(e) places the burden of proof on the objecting party to show why the receivership court should not accept the SDR's proposed determination. This Court reviews the Special Deputy Receiver's actions for abuse of discretion. See *American Benefit Life Ins. Co. v. Hill Country Life Ins. Co.*, 582 S.W.2d 227, 228 (Tex. Civ. App. —Fort Worth 1979, writ refused n.r.e.); *Tucker v. Universal Ins. Exch.*, 2010 Tex. App. LEXIS 6348, 2010 WL 3059201 (Tex. App. - Austin, August 5, 2010, Case No. 03-09-00390-CV, no writ).

## **V. NOTICE**

5.1 The SDR has served this Application to all known parties at interest and all individuals and entities identified by the SDR in the Certificate of Service by e-mail and, as noted, by mail or overnight delivery to certain state and federal agencies.

5.2 The Application is set for submission before the Special Master on May 30, 2023.

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

6.1 This Application is verified by the affidavit and certification pursuant to TEX. INS. CODE § 443.017(b) of Susan E. Salch, designated representative of CANTILO & BENNETT, L.L.P., in its capacity as Special Deputy Receiver of Friday Health Insurance Company, Inc.

## **VII. NOTICE OF ELECTRONIC SERVICE REQUIREMENT**

7.1 All pleadings filed in response to this Application shall be served by e-mail on the undersigned counsel and all parties shown in the attached Certificate of Service.

## **PRAYER**

WHEREFORE, PREMISES CONSIDERED, CANTILO & BENNETT, L.L.P., in its capacity as Special Deputy Receiver of Friday Health Insurance Company, Inc., respectfully prays that this Court enter an order:

1. Granting the Application in all respects;
2. Authorizing the Special Deputy Receiver to destroy the records described herein in the manner described in the Application;
3. Authorizing the Special Deputy Receiver to take any actions necessary to implement the Order;
4. Finding that the Order constitutes a final order fully resolving all issues relating to this Application, provided that this Court shall retain jurisdiction to issue further orders pursuant to TEX. INS. CODE Chapter 443; and
5. Granting the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

/s/ Greg Pierce  
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P.O. Box 40  
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[gpierce@gpiercelaw.com](mailto:gpierce@gpiercelaw.com)

-and-

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**Attorneys for CANTILO & BENNETT, L.L.P.,  
Special Deputy Receiver of  
Friday Health Insurance Company, Inc.**

## APPLICANT'S NOTICE OF SUBMISSION

Pursuant to the terms of the Agreed Order of Reference to Master entered by the District Court in this cause, the *Application for Authority to Destroy Records* is hereby set for written submission before the Special Master, Tom Collins, on **May 30, 2023**.

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 e-mail 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

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of the *Application for Authority to Destroy Records* was sent in accordance with TEX. INS. CODE § 443.007(d) on May 11, 2023 to:

*Via Email:* [specialmasterclerk@tdi.texas.gov](mailto:specialmasterclerk@tdi.texas.gov)

Tom Collins, Receivership Master  
c/o Special Master's Clerk  
RLO MC-FRD  
PO Box 12030  
Austin, TX 78711-2030

*Via e-Service:* [Brian.Riewe@tdi.texas.gov](mailto:Brian.Riewe@tdi.texas.gov)

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*Via Email:* [Mark.Levy@tdi.texas.gov](mailto:Mark.Levy@tdi.texas.gov)

Mark Levy  
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Office of Financial Counsel  
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*Via e-Service:* [Zachary.Rhines@oag.texas.gov](mailto:Zachary.Rhines@oag.texas.gov)

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General Litigation Division  
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*Counsel for the Texas Life and Health  
Insurance Guaranty Association*

*Via e-Service:* [sstrickland@mwlaw.com](mailto:sstrickland@mwlaw.com)

Stanton Strickland  
MITCHELL, WILLIAMS, SELIG, GATES &  
WOODYARD, P.L.L.C.  
500 W. 5th Street, Ste. 1150  
Austin, Texas 78701  
*Counsel for Friday Health Insurance, Inc.*

*Via First Class Mail*

INTERNAL REVENUE SERVICE  
Special Procedures Branch  
300 East 8<sup>th</sup> Street, Suite 352  
Mail Stop 5026AUS  
Austin, Texas 78701

*Via Email:* [Brian.Hansen@hcahealthcare.com](mailto:Brian.Hansen@hcahealthcare.com)

Brian Hansen

HCA HEALTHCARE

One Park Plaza, Building 1-2E

Nashville, TN 37203

*/s/ Greg Pierce*

\_\_\_\_\_  
Gregory A. Pierce



**SPECIAL DEPUTY RECEIVER'S VERIFICATION AND CERTIFICATION  
PURSUANT TO TEX. INS.CODE ANN. §443.017(b)**

**AFFIDAVIT OF SUSAN E. SALCH**

State of Texas

County of Travis

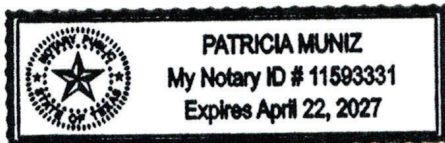
BEFORE ME, the undersigned authority appeared Susan E. Salch, who after being by me duly sworn, stated the following under oath:

1. "My name is Susan E. Salch. I am of sound mind, capable of making this affidavit, and am competent to testify to the matters contained in this affidavit.
2. I am a partner in CANTILO & BENNETT, L.L.P., the Special Deputy Receiver of Friday Health Insurance Company, Inc. (the "SDR" and "FHIC" respectively), I am duly authorized to make this Affidavit on behalf of the SDR.
3. I have reviewed the *Application for Authority to Destroy Records (Smart Data Systems)* and the facts stated therein are true and correct based on my personal knowledge, my review of estate records and my consultation with the staff and subcontractors.
4. I certify that the exhibits, books, accounts, records, papers, correspondence, and/or other records and documents attached hereto were produced pursuant to TEX. INS. CODE § 443.017, are either true and correct copies of records of FHIC and were received from the custody of FHIC or found among its effects, or were created by and filed with the Receiver's office in connection with the receivership of this delinquent company, and are held by the Special Deputy Receiver in its official capacity."

By: Susan E. Salch  
Susan E. Salch

**SUBSCRIBED AND SWORN TO BEFORE ME** on May 10, 2023, by Susan E. Salch, Special Deputy Receiver of Friday Health Insurance Company, Inc.

Patricia Muniz  
Notary Public



THE TEXAS DEPARTMENT OF INSURANCE, <i>Plaintiff,</i>	§ § § §	IN THE DISTRICT COURT OF
v.	§	TRAVIS COUNTY, TEXAS
FRIDAY HEALTH INSURANCE COMPANY, INC. <i>Defendant.</i>	§ § §	345th JUDICIAL DISTRICT

**ORDER GRANTING APPLICATION  
FOR AUTHORITY TO DESTROY RECORDS  
(SMART DATA SYSTEMS)**

On this date, the Court heard the *Application for Authority to Destroy Records (Smart Data Systems)* (the “Application”) filed by CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Friday Health Insurance Company, Inc. (the “SDR” and “FHIC” respectively). The Special Deputy Receiver appeared by and through its counsel.

Having considered the Application, the Court finds as follows:

1. The *Order of Reference to Master* (“Order of Reference”) provides that motions filed pursuant to TEX. INS. CODE § 443.007 and § 443.354 are referred to the Special Master appointed in this proceeding;
  2. Notice of the Application was provided in accordance with TEX. INS. CODE §443.007 (d) and the *Order of Reference to Master*;
  3. No objections to the Application were filed;
  4. The Texas Life and Health Insurance Guaranty Association has filed its acknowledgement and waiver;
  5. The Court has jurisdiction over the Application and the parties affected hereunder;
- and

6. The SDR's Application should be granted in all respects.

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

1. The Application is GRANTED in all respects.
2. The Special Deputy Receiver is authorized to destroy the records described in the Application in the manner described therein pursuant to TEX. INS. CODE § 443.354.
3. The Special Deputy Receiver is authorized to take any actions necessary to implement the Order.
4. This Order constitutes a final order 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.

SIGNED: \_\_\_\_\_, 2023.

\_\_\_\_\_  
JUDGE PRESIDING

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Greg Pierce on behalf of Greg Pierce

Bar No. 15994250

gpierce@gpiercelaw.com

Envelope ID: 75555351

Filing Code Description: Motion (No Fee)

Filing Description: APPLICATION FOR AUTHORITY TO DESTROY RECORDS (SMART DATA SYSTEMS)

Status as of 5/11/2023 3:33 PM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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Gregory Alan Pierce	15994250	gpierce@gpiercelaw.com	5/11/2023 3:07:52 PM	SENT
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Brian Falligant		bfalligant@inquestresources.com	5/11/2023 3:07:52 PM	SENT

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#### Associated Case Party: FRIDAY HEALTH INSURANCE COMPANY, INC

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