

NO. \_\_\_\_\_

IN RE: THE ESTATE OF

IN THE PROBATE COURT

\_\_\_\_\_, SUCCESSOR  
ADMINISTRATOR OF THE ESTATE OF  
\_\_\_\_\_, DECEASED

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Plaintiff §

NUMBER \_\_\_ OF

vs.

\_\_\_\_\_ and  
\_\_\_\_\_ SURETY COMPANY,

Defendants §

\_\_\_\_\_ COUNTY, TEXAS

**FINAL DEFAULT JUDGMENT**

On this date came on to be considered the Original Complaint filed herein on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, Successor Administrator of the Estate of \_\_\_\_\_, Deceased, (“Plaintiff”), against \_\_\_\_\_ [name of former administrator] and \_\_\_\_\_ Surety Company [name of former administrator’s bond company], Defendants (“Defendants”), as well as Plaintiff’s and \_\_\_\_\_ Surety Company’s Motion for Default Judgment against \_\_\_\_\_ [name of former administrator].

After considering said Motion and the papers on file in this cause, the Court finds that \_\_\_\_\_ [name of former administrator] was duly served with process herein of both the *Original Complaint* and of \_\_\_\_\_ *Surety Company’s Cross-Claim Against* \_\_\_\_\_ [name of former administrator], but has failed to file an answer or otherwise make an appearance herein. The Court further finds that the citations with officer’s returns thereon have been on file with the papers of this Court in excess of the time required by law, and that Defendant \_\_\_\_\_ [name of former administrator] has accordingly admitted the allegations of the *Original Complaint* and of \_\_\_\_\_ *Surety Company’s Cross-Claim Against* \_\_\_\_\_ [name of former administrator].

The Court has read the pleadings and the papers on file, and has heard and reviewed the evidence presented at trial, and is of the opinion that the allegations in Plaintiff’s *Original Complaint* have been admitted and proven on good and sufficient evidence presented to this Court.

The Court further finds that Defendant \_\_\_\_\_ [name of former administrator] is liable for actual damages to Plaintiff in the sum of \$ \_\_\_\_\_, plus prejudgment interest at the highest rate allowed by law.

The Court further finds that Defendant \_\_\_\_\_ [name of former administrator] has breached his/her fiduciary duties to the Plaintiff and in addition to actual damages, Plaintiff is entitled to recover, as exemplary damages from Defendant \_\_\_\_\_ [name of former administrator] in the sum of \$ \_\_\_\_\_.

The Court further finds that as a result of Defendant \_\_\_\_\_ [name of former administrator] breaching his/her fiduciary duties to the Plaintiff, Plaintiff is entitled to post judgment interest from Defendant \_\_\_\_\_ [name of former administrator], at the highest rate allowed by law, from the date of this judgment until paid, together with all costs of court in this behalf expended.

The Court further finds that Plaintiff shall recover a reasonable attorney’s fee as against Defendant \_\_\_\_\_ [name of former administrator], which the Court finds to be \$ \_\_\_\_\_, and that \_\_\_\_\_ Surety Company shall recover a reasonable attorney’s fee as against Defendant \_\_\_\_\_ [name of former administrator] which the Court finds to be \$ \_\_\_\_\_.

The Court has also finds that it has approved the settlement between \_\_\_\_\_ Surety Company and Plaintiff which provides for an assignment of the judgment to be awarded herein to \_\_\_\_\_ Surety Company, to the extent of the sum paid by \_\_\_\_\_ Surety Company to the Plaintiff. Accordingly, the Court awards judgment as set forth below.

**IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED THAT:**

**A. Judgment for Plaintiff**

1. Defendant \_\_\_\_\_ [*name of former administrator*] is liable for actual damages and SHALL pay to Plaintiff the sum of \$\_\_\_\_\_, plus prejudgment interest at the highest rate allowed by law;
2. Defendant \_\_\_\_\_ [*name of former administrator*] has breached his fiduciary duties to the Plaintiff and in addition to actual damages, Plaintiff SHALL recover against Defendant \_\_\_\_\_ [*name of former administrator*] as exemplary damages, the sum of \$\_\_\_\_\_;
3. Defendant \_\_\_\_\_ [*name of former administrator*] has breached his fiduciary duties to the Plaintiff, and that Plaintiff SHALL recover post judgment interest from Defendant, \_\_\_\_\_ [*name of former administrator*] at the rate of FIVE percent (5.00%) per annum from the date of this judgment until paid, together with all costs of court in this behalf expended;
4. Plaintiff SHALL recover a reasonable attorney's fee as against Defendant \_\_\_\_\_ [*name of former administrator*] which the Court finds to be \$\_\_\_\_\_;
5. Plaintiff IS allowed such writs and processes as may be necessary in the enforcement and collection of this judgment.
6. **It is further Ordered** that of the judgment awarded above to Plaintiff, a portion of such judgment in the sum of \$\_\_\_\_\_ is hereby assigned to Western.

**B. Judgment for \_\_\_\_\_ Surety Company**

In addition to the assignment to \_\_\_\_\_ Surety Company of a portion of the judgment rendered in favor of Plaintiff against \_\_\_\_\_ [*name of former administrator*], the Court renders the following judgment in favor of \_\_\_\_\_ Surety Company against \_\_\_\_\_ [*name of former administrator*].

**IT IS HEREBY ORDERED** that \_\_\_\_\_ Surety Company is awarded judgment against \_\_\_\_\_ [*name of former administrator*] on its indemnity claim against \_\_\_\_\_ [*name of former administrator*] as follows:

1. The principal sum of \$\_\_\_\_\_; plus
2. Reasonable attorney's fees and related expenses incurred through the date of this judgment in the amount of \$\_\_\_\_\_, plus
3. Post-judgment interest at the rate of five percent (5%) per annum from the date of this judgment until paid; plus
4. All costs of court.
5. \_\_\_\_\_ Surety Company IS allowed such writs and processes as may be necessary in the enforcement and collection of this judgment.

The \$\_\_\_\_\_ sum awarded to \_\_\_\_\_ Surety Company herein on its indemnity claim is awarded jointly and severally with the \$\_\_\_\_\_ sum assigned by Plaintiff, such that in the event such amount is paid by \_\_\_\_\_ [*name of former administrator*] to Western, it shall be credited to the judgment awarded to \_\_\_\_\_ Surety Company on its indemnity claim as well as the assigned portion of the judgment.

**IT IS FURTHER ORDERED** that \_\_\_\_\_ Surety Company recover judgment against \_\_\_\_\_ [*name of former administrator*] for additional attorney's fees of \$\_\_\_\_\_ in the event this matter is appealed to the Texas Court of Appeals, and the further sum of \$15,000.00 in the event this matter is appealed to the Texas Supreme Court, and conditioned on \_\_\_\_\_ [*name of former administrator*] not ultimately prevailing on such appeal.

This judgment disposes of all claims between the parties hereto and is intended to be a final judgment as to the parties herein. All relief not expressly granted herein with respect to any claims or issues not otherwise disposed of herein is hereby denied.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Judge Presiding