

**BEFORE THE INSURANCE COMMISSIONER OF THE
STATE OF OKLAHOMA**

STATE OF OKLAHOMA ex rel.)
JOHN D. DOAK, Insurance Commissioner,)
)
Petitioner,)
)
v.)
)
GRAMERCY INSURANCE COMPANY,)
)
Respondent.)
)
)

Case No. 13-0065-DIS

FILED
FEB 13 2013
INSURANCE COMMISSIONER
OKLAHOMA

**NOTICE OF HEARING AND ORDER TO SHOW CAUSE
WITH CONDITIONAL ORDER OF DISCIPLINARY ACTION AND SUSPENSION OF
WRITING NEW BUSINESS INSTANTER**

COMES NOW the State of Oklahoma, ex rel. John D. Doak, Insurance Commissioner, having reviewed information received relating to Gramercy Insurance Company, a Texas domiciled insurance company ("the Company" or "Gramercy"), and finds and orders as follows:

JURISDICTION

1. John D. Doak is the Insurance Commissioner of the State of Oklahoma and, as such, is charged with the duty of administering and enforcing all provisions of the Oklahoma Insurance Code, 36 O.S. §§ 101 et seq. The Insurance Commissioner has jurisdiction over this matter because the Company has been authorized to do business in Oklahoma since May 5, 1992 as a property, casualty, marine, vehicle and surety insurer pursuant to Certificate of Authority Number 3433 (NAIC Number 43265).

FINDINGS OF FACT

1. An Agreed Order of Rehabilitation and Permanent Injunction have been entered against the Company with the consent of its Board of Directors in Case No. D-1-GV-12-001713, in the District Court of Travis County, Texas. A copy of this Order (“the Texas Order”) is attached as Exhibit “A.” While the Company is in rehabilitation, the Commissioner of Insurance for the State of Texas (“the Texas Commissioner”), Eleanor Kitzman, will act as Rehabilitator.

2. The Texas Commissioner designated Resolution Oversight Corporation as the Special Deputy Receiver of the Company on an interim basis. The effective date of the Special Deputy Receiver’s appointment was December 5, 2012.

3. The Court in the Texas Order found the following grounds to place the Company into rehabilitation:

- (a) The Company does not have admitted assets at least equal to all its liabilities together with the minimum surplus required to be maintained under the Texas Insurance Code;
- (b) Further transaction of the Company’s business would be hazardous to its creditors or the public;
- (c) The Company consented to the Texas Order of rehabilitation; and
- (d) The Company does not comply with Texas’ requirements for holding a Certificate of Authority because it does not have sufficient surplus.

4. For the reasons stated in the Texas Order, the Company no longer meets the requirements for the authority originally granted it in Oklahoma because of a deficiency in assets and for other reasons within the meaning of 36 O.S. § 618(2); OAC 365: 25-7-42.

5. For the reasons stated in the Texas Order, the Company is in such a financial condition as to render its further transaction of insurance in this state hazardous to its policyholders or the people of this state within the meaning of 36 O.S. § 619(A)(3); OAC 365:25-7-42.

CONCLUSIONS OF LAW

1. Pursuant to 36 O.S. §§ 618 and 619 (C) of the Oklahoma Insurance Code, the Insurance Commissioner has the authority to restrict the Company's insurance writings and suspend conduct of its insurance business in Oklahoma.

2. Pursuant to Sections 618 and 619 (C) of the Oklahoma Insurance Code, the Insurance Commissioner, based on the above Findings of Fact, concludes as a matter of law that the Company should be suspended and prohibited from writing or issuing any new or renewal insurance and suspended from conducting business in Oklahoma, except the Company may continue to service existing policies, adjust claims under existing policies and do all matters necessary to attend to existing Oklahoma business.

ORDER

IT IS THEREFORE ORDERED that Gramercy Insurance Company be prohibited from writing or issuing any new or renewal insurance and otherwise be suspended from doing business in Oklahoma from the date of the filing of this Order. However, the Company may continue to service existing policies, adjust claims under existing policies and do all matters necessary to attend to existing business in Oklahoma. The Company's actions enumerated in the Findings of Fact above constitute behavior that is a detriment to the public and constitutes a threat of immediate danger and significant, imminent and irreparable public injury that is likely

to continue if the Company is allowed to write new or renewal business; therefore, this Order shall take effect immediately.

IT IS FURTHER ORDERED that the Company may request a Hearing within thirty (30) days of receipt of this Order and Notice to determine if any reasons exist that should preclude any of the actions taken herein. Any request for Hearing should be in writing, addressed to Kelley C. Callahan, Senior Attorney, Oklahoma Insurance Department, Five Corporate Plaza, 3625 N.W. 56th, Suite 100, Oklahoma City, OK 73112, and must state the grounds for the request to set aside or modify the Order. Pending hearing this Order shall continue in full force and effect unless stayed by the Commissioner. Any such hearing shall be conducted according to the procedures for contested cases under the Oklahoma Insurance Code and 75 O.S. §§ 250-327. The allegations contained herein shall be the subject matter for the hearing, and such allegations may be amended as additional information is discovered. The Commissioner or his appointed Hearing Examiner reserves the right to impose additional or different administrative discipline at a Hearing, if warranted.

IT IS FURTHER ORDERED that if no hearing is requested within thirty (30) days of receipt of this Order and Notice, this Order shall become a Final Order.

WITNESS My Hand and Official Seal this 13th day of February, 2013.



PAUL WILKENING
Chief Deputy Insurance Commissioner
Oklahoma Insurance Department

CERTIFICATE OF SERVICE

I, Kelley C. Callahan, hereby certify that a true and correct copy of the above and foregoing document was mailed postage prepaid with return receipt requested on this 13th day of February, 2013, to:

H. Melissa Mather
Assistant Attorney General
Financial Litigation Division
P.O. Box 12548
Austin, Texas 78711-2548
Attorneys for Plaintiff
The State of Texas

Kimberly Hammer
Attorney for the Receiver
Texas Department of Insurance
P.O. Box 149104
MC 110-1A
Austin, Texas 78714-9104


Of Counsel:

Rachel Stroud
Stroud, Marrero & Welch, PLLC
11824 Jollyville Road, Suite 200
Austin, Texas 78759

Ernesto A. Garza
Resolution Oversight Corporation
P.O. Box 691852
San Antonio, Texas 78269

Alexander J. Gonzales
Winstead PC
401 Congress, Suite 2100
Austin, Texas 78701
Attorneys for Defendant
Gramercy Insurance Company

And that a copy was delivered to the Oklahoma Insurance Department Financial and Examination Division.



Kelley C. Callahan
Senior Attorney

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage \$ _____
 Certified Fee _____
 Return Receipt Fee (Endorsement Required) _____
 Restricted Delivery Fee (Endorsement Required) _____

Total Price _____

Sent To _____
 Street, Apt. or PO Box _____
 City, State _____

H. Melissa Mather
 Assistant Attorney General
 Financial Litigation Division
 P.O. Box 12548
 Austin, Texas 78711-2548
 sms/13-0065-DIS/Notice

39TH ST. STA. USPS
 Postmark Here FEB 13 2013
 OKLAHOMA CITY, OK 73112

PS Form 3800, January 2001 See Reverse for Instructions

7001 0320 0003 9967 2306

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

H. Melissa Mather
 Assistant Attorney General
 Financial Litigation Division
 P.O. Box 12548
 Austin, Texas 78711-2548
 sms/13-0065-DIS/Notice

2. Article Number (Transfer from service label) 7001 0320 0003 9967 2306

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature X Agent Addressee

B. Received by (Printed Name) _____ C. Date of Delivery _____

D. Is delivery address different from item 1? Yes No
 YES, enter delivery address below: _____

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.


4. Restricted Delivery? (Extra Fee) Yes

OKLAHOMA INSURANCE DEPARTMENT
 FEB 15 2013
 RECEIVED IN MAIL CENTER
 LEGAL DIVISION

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7001 0320 0003 9967 2191

OFFICIAL USE

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage		
Sent To	Kimberly Hammer Attorney for the Receiver Texas Department of Insurance P.O. Box 149104 MC 110-1A Austin, Texas 78714-9104 sms/13-0065-DIS/Notice	
Street, Apt. / or PO Box N		
City, State, Z		

PS Form 3800, January 2001 See Reverse for Instructions

COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Write your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, on the front if space permits.	A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee
Article Addressed to:	B. Received by (Printed Name) C. Date of Delivery
Kimberly Hammer Attorney for the Receiver Texas Department of Insurance P.O. Box 149104 MC 110-1A Austin, Texas 78714-9104 sms/13-0065-DIS/Notice	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
OKLAHOMA INSURANCE DEPARTMENT FEB 25 2013 Legal Division	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
Number (from service label)	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
7001 0320 0003 9967 2191	

3811, February 2004

Domestic Return Receipt

102595-02-M-1540

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

7001 0320 0003 9967 2184

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage &	



Sent To
 Street, Apt. No.,
 or PO Box No.
 City, State, ZIP+4

Rachel Stroud
 Stroud, Marrero & Welch, PLLC
 11824 Jollyville Road, Suite 200
 Austin, Texas 78759
 sms/13-0065-DIS/Notice

PS Form 3800, January 2001 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Rachel Stroud
 Stroud, Marrero & Welch, PLLC
 11824 Jollyville Road, Suite 200
 Austin, Texas 78759
 sms/13-0065-DIS/Notice

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 X *Andra Gardner* Addressee

B. Received by (Printed Name) *Andra Gardner* C. Date of Delivery *2/15/13*

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

FEB 21 2013

Legal Division

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
 (Transfer from service label)

7001 0320 0003 9967 2184

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

7001 0320 0003 9967 2177

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage	

Sent To
 Ernesto A. Garza
 Resolution Oversight Corporation
 P.O. Box 691852
 San Antonio, Texas 78269
 sms/13-0065-DIS/Notice

Street, Apt. No.,
 or PO Box No.
 City, State, ZIP+

PS Form 3800, January 2004



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery CASSANDRA GARZA 2/22/13</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p>Ernesto A. Garza Resolution Oversight Corporation P.O. Box 691852 San Antonio, Texas 78269 sms/13-0065-DIS/Notice</p>	<p>OKLAHOMA INSURANCE DEPARTMENT FEB 26 2013 Legal Division</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number (Transfer from service label)</p> <p>7001 0320 0003 9967 2177</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

7001 0320 0003 9967 2160

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage		
Sent To	Alexander J. Gonzales Winstead PC 401 Congress, Suite 2100 Austin, Texas 78701 sms/13-0065-DIS/Notice	
Street, Apt. No., or PO Box No.		
City, State, ZIP+		

PS Form 3800, January 2001 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>Jeremy Case</u> C. Date of Delivery <u>2-13</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p>
<p>1. Article Addressed to: <u>OKLAHOMA</u></p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> Alexander J. Gonzales Winstead PC 401 Congress, Suite 2100 Austin, Texas 78701 sms/13-0065-DIS/Notice </div> <p style="text-align: right;">FEB 21 2013 Legal Division</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input checked="" type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number (Transfer from service label) <u>7001 0320 0003 9967 2160</u></p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

Elleanor Kitzman Commissioner TDE

Cause No. D-1-GV-12-001713

Filed in The District Court
of Travis County, Texas

TJ DEC 04 2012
At 2:24 P.M.
Amalia Rodriguez-Mendoza, Clerk

THE STATE OF TEXAS,
Plaintiff

§
§
§
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§
§
§
§
§
§

IN THE DISTRICT COURT

v.

TRAVIS COUNTY, TEXAS

GRAMERCY INSURANCE COMPANY,
Defendant

53rd JUDICIAL DISTRICT

**AGREED ORDER APPOINTING REHABILITATOR
AND PERMANENT INJUNCTION**

On this day the Court heard the *Application for Order Appointing Rehabilitator and Request for Injunctive Relief* ("Application") filed by the State of Texas, at the request of the Commissioner of Insurance for the State of Texas ("Commissioner"). The Application requests an order placing Gramercy Insurance Company ("Defendant") into rehabilitation pursuant to TEX. INS. CODE Chapter 443, the *Insurer Receivership Act*, and appointing the Commissioner as Rehabilitator of Defendant (the "Rehabilitator"). The Application also requests a Permanent Injunction pursuant to TEX. INS. CODE §443.008, restraining Defendant and its agents from conducting Defendant's business, and restraining other parties from taking any actions against Defendant or its property in violation of the Insurer Receivership Act.

The State of Texas appeared by and through the Office of the Attorney General. Defendant appeared by and through its counsel of record. Having considered the Plaintiff's verified petition, the evidence presented and the arguments of counsel, the Court finds that the Application should be GRANTED, and enters this Order.

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

Exhibit A

I. FINDINGS OF FACT

- 1.1 Defendant is a "Covered Person" as defined in TEX. INS. CODE § 443.003.
- 1.2 As of March 31, 2012, Defendant's surplus was slightly more than \$11 million. Pursuant to TEX. INS. CODE § 822.054, an insurance company must have at least \$2.5 million in surplus. As of October 31, 2012, Defendant's surplus was less than \$2.5 million.
- 1.3 Defendant has waived citation and service of process, and a majority of the individuals entitled to control of Defendant have consented to the entry of this *Order*.

II. CONCLUSIONS OF LAW

- 2.1 This Court has jurisdiction over the parties and the subject matter of this action under TEX. INS. CODE § 443.005(c).
- 2.2 Grounds have been established to place Defendant into rehabilitation under TEX. INS. CODE § 443.057. These grounds include, but are not limited to:
 - (a) TEX. INS. CODE § 443.057(1), as Defendant does not have admitted assets at least equal to all its liabilities together with the minimum surplus required to be maintained under the Texas Insurance Code,

 - (b) TEX. INS. CODE § 443.057(9), as the further transaction of Defendant's business would be hazardous to its creditors or the public;
 - (c) TEX. INS. CODE § 443.057(20), as Defendant has consented to an order of rehabilitation; and
 - (d) TEX. INS. CODE § 443.057(21), as Defendant does not comply with Texas' requirements for issuance for a certificate of authority because it does not have sufficient surplus.

2.3 In accordance with TEX. INS. CODE § 443.058, Plaintiff is entitled to an order of rehabilitation, and the Commissioner must be appointed as Rehabilitator of Defendant pursuant to TEX. INS. CODE § 443.101.

2.4 The Rehabilitator shall be vested by operation of law with title to all of Defendant's property as defined in TEX. INS. CODE § 443.004(a)(20). Such property shall include property of any kind or nature, whether real, personal, or mixed, including but not limited to money, funds, cash, stock, bonds, account deposits, statutory deposits, special deposits, contents of safe deposit boxes, funds held in shared, escrow or trust accounts, retainages and retainers, letters of credit, real estate, fixtures, furniture, equipment, books, records, documents and insurance policies, intellectual property, computer software and systems, information technology, internet domain names, patents and intangible assets, whether owned individually, jointly, or severally, wherever located, and all rights, claims or causes of action belonging to Defendant, whether asserted or not, including but not limited to accounts receivable, notes, premiums, subrogation, insurance and reinsurance proceeds, and all licenses held by Defendant (collectively, "Defendant's Property"). The Rehabilitator's title shall extend to Defendant's Property, regardless of the name in which such items are held, or where such items are located.

2.5 Pursuant to TEX. INS. CODE § 443.101(a), the Rehabilitator shall be directed to take possession and control of Defendant's Property, wherever located.

2.6 The Rehabilitator may take action as he deems necessary or appropriate to perform his duties pursuant to the Insurer Receivership Act. The Rehabilitator shall have all the powers of Defendant's directors, officers and managers, and the authority of such persons is suspended except as specifically permitted by the Rehabilitator or his designees.

2.7 Defendant and Defendant's agents shall be required to cooperate with the Rehabilitator and his designees pursuant to TEX. INS. CODE § 443.010.

2.8 It is necessary for this Court to issue a permanent injunction pursuant to TEX. INS. CODE §443.008(a) to carry out the provisions of TEX. INS. CODE Chapter 443, and prevent irreparable injury, loss and damage to the general public and Defendant's creditors. A necessity exists to enjoin Defendant and Defendant's agents from conducting Defendant's business, except as specifically permitted by the Rehabilitator or his designees; to enjoin financial institutions or depositories from taking any actions in connection with Defendant's property, except as directed by the Rehabilitator or his designees; and to enjoin all claimants or creditors from asserting claims or causes of action against Defendant, except as permitted by the Insurer Receivership Act.

2.9 Pursuant to TEX. INS. CODE § 443.008(c), an automatic stay is in effect with respect to actions against Defendant or its property, effective on the commencement of this proceeding. Further, an automatic stay is in effect with respect to actions against insureds of Defendant as specified in TEX. INS. CODE § 443.008(d), commencing on the entry of this Order.

2.10 Pursuant to TEX. INS. CODE § 443.101(a), this proceeding is exempt from any dormancy requirements.

2.11 TEX. INS. CODE § 443.001(b) provides that the Insurer Receivership Act may not be interpreted to limit the powers granted to the Commissioner under other provisions of law. Accordingly, this Order shall not be construed as a limitation of the Commissioner's powers granted under such provisions.

III. APPOINTMENT OF REHABILITATOR

The Commissioner is appointed as Rehabilitator of Defendant, and granted the following powers:

- 3.1 The Rehabilitator has all powers and authority granted by the Insurer Receivership Act, specifically, without limitation, TEX. INS. CODE § 443.101 *et seq*, and any and all other powers and authority under applicable statutes and the common law of this State.
- 3.2 Pursuant to TEX. INS. CODE § 443.101(a), title to all of Defendant's Property, including but not limited to all the assets and rights described in this Order, is vested in the Rehabilitator. The Rehabilitator is authorized to take control and possession of Defendant's Property, wherever located, and remove all such property from Defendant's premises.
- 3.3 Pursuant to TEX. INS. CODE § 443.102(b), the Rehabilitator is authorized to conduct Defendant's business, and has all of the powers of Defendant's directors, officers, and managers. The Rehabilitator is authorized to direct, manage, and supervise Defendant's directors, officers, managers, employees or agents, and compensate them as he deems necessary from Defendant's funds, or to suspend or discharge such persons at his discretion.
- 3.4 The Rehabilitator has all of Defendant's rights as the customer of a financial institution. The Rehabilitator is authorized to withdraw Defendant's Property from any banks, financial institutions and other depositories, agencies of any state or the federal government, and any other entities, or continue the operation of any accounts of Defendant, at his discretion.

- 3.5 The Rehabilitator is authorized to file, prosecute, defend, or settle any action as he deems necessary, including any action to enforce the provisions of this Order.
- 3.6 Pursuant to TEX. INS. CODE §443.102, the Rehabilitator may enter into contracts as necessary to perform his duties, and may assume or reject any executory contract or unexpired lease to which Defendant is a party at his discretion pursuant to TEX. INS. CODE § 443.013.
- 3.7 The Rehabilitator is authorized to change the locks on any property owned, leased, or occupied by Defendant.
- 3.8 The Rehabilitator is authorized to exclude any person from any property owned, leased or occupied by Defendant, at his discretion.
- 3.9 The Rehabilitator is authorized to receive, collect, control, open and review all mail addressed to or intended for Defendant, or arriving at Defendant's address.
- 3.10 The Rehabilitator is authorized to approve and pay claims. The Rehabilitator is further authorized to implement procedures for handling claims consistent with the Insurer Receivership Act. The Rehabilitator is further authorized to suspend the payment of obligations under policies of insurance or annuities subject to TEX. INS. CODE §443.104(b), and suspend the payment of other obligations as he deems necessary.
-
- 3.11 Pursuant to TEX. INS. CODE §443.102(b), the Rehabilitator may cancel any and all of Defendant's policies of insurance if he determines that rehabilitation is not feasible, or that it is not possible to transfer all or part of Defendant's business, or that it is otherwise not in the best interests of the policyholders to continue coverage.

- 3.12 Pursuant to TEX. INS. CODE §443.101(b), the Rehabilitator shall file an accounting with the court within six months of the entry of this *Agreed Order Appointing Rehabilitator and Permanent Injunction*, and shall file further accountings at intervals not exceeding six months thereafter.
- 3.13 TEX. INS. CODE § 443.102(a) authorizes the Rehabilitator to appoint a Special Deputy, and employ or contract with legal counsel and other personnel as he deems necessary. Pursuant to TEX. INS. CODE §4 43.015(e), the Rehabilitator is authorized to set the compensation of any such Special Deputy or other persons as he deems necessary, and pay for such services from Defendant's funds. The Rehabilitator's designees and any Special Deputy appointed under TEX. INS. CODE § 443.102(a) shall have all the rights and powers of the Rehabilitator, subject to any limitations imposed by the Rehabilitator.
- 3.14 Pursuant to TEX. INS. CODE §443.008(m), the Commissioner is not required to file a bond in connection with this proceeding, in his capacity as Rehabilitator or otherwise.
- 3.15 In accordance with TEX. INS. CODE § 443.101(a), any successor to the Commissioner shall be appointed as the Rehabilitator of Defendant. In the event a successor is appointed to be the Commissioner, the successor shall become the Rehabilitator upon his appointment as Commissioner, and the former Commissioner shall be discharged as Rehabilitator as a matter of law.
- 3.16 The enumeration of the Rehabilitator's powers and authority in this Order shall not be construed as a limitation on the Rehabilitator to take any other action authorized by the Insurer Receivership Act or other applicable law that is not specified in this Order.

IV. PERMANENT INJUNCTION

The Clerk of this Court shall issue a Permanent Injunction against the persons and entities named below, with the following force and effect:

TO: Defendant and its agents, including but not limited to:

Defendant, its owners (including but not limited to Joan Hammer), affiliates (including but not limited to Gramercy Services Company, Inc. and Gramercy General Agency, Inc.), current and former officers, trustees and directors (including but not limited to Joan Hammer, Glenn Hammer, Antonio Ronald Barner, Alan Randall Barkowitz, Sharon Ludwig Lasch, Erin Lizabeth Feldman, Thomas Daniel Brannan, Hayden Scott Hammer, Linda Marie Toy, and Tom Brandt), underwriters, managers, employees, agents, servants, representatives, attorneys, adjusters and other persons or entities acting on behalf of Defendant;

Financial institutions, including but not limited to:

Bank New York Mellon, UBS, Wells Fargo Bank, Security National Bank, JP Morgan Chase, NBSC, Comerica Bank, U.S. Bank, Frost National Bank, Century Bank, Century Bank, SunTrust Bank, Central Bank, and Bank of New York, any and all banks, savings and loan associations; trust companies; credit unions; welfare trusts; or any other financial or depository institutions in the possession of any of Defendant's Property; and

All other parties, including but not limited to:

policyholders, creditors, claimants, reinsurers, insurers, intermediaries, attorneys and all other persons, associations, corporations, or any other legal entities asserting claims or causes of action against Defendant, or in possession of any of Defendant's Property, and the United States Postmaster.

Each of you are hereby RESTRAINED and ENJOINED from taking any and all of the following actions:

- 4.1 Doing, operating, or conducting Defendant's business under any charter, certificate of authority, license, permit, power or privilege belonging to or issued to Defendant, or exercising any direction, control, or influence over Defendant's business, except through the authority of the Rehabilitator or his designees;

- 4.2 Transacting any business of Defendant's in any manner except through the authority of the Rehabilitator or his designees;
- 4.3 Wasting, disposing of, converting, dissipating, or concealing, in any manner, any of Defendant's Property;
- 4.4 Using, releasing, transferring, selling, assigning, canceling, hypothecating, withdrawing, allowing to be withdrawn, offsetting, asserting ownership of, concealing, in any manner, or removing from this Court's jurisdiction or from Defendant's place of business, any of Defendant's Property, or any other items purchased by Defendant, or any items into which such property has been transferred, deposited or placed, or any other items owned by Defendant's, wherever located, except through the authority of the Rehabilitator or his designees;
- 4.5 Releasing, transferring, selling, assigning or asserting ownership of, in any manner, any claims, accounts receivable, or causes of action belonging to Defendant, whether asserted or not, except through the authority of the Rehabilitator or his designees;
- 4.6 Doing anything, directly or indirectly, to prevent the Rehabilitator or his designees from

gaining access to, acquiring, examining, or investigating any of Defendant's Property or any other property, books, documents, records, or other materials concerning Defendant's business, under whatever name they may be found;
- 4.7 Obstructing or interfering in any way with the conduct of this proceeding or any incidental investigation as prohibited by TEX. INS. CODE §443.010(b);
- 4.8 Intervening in this proceeding for the purpose of obtaining a payment from the receivership estate of Defendant as prohibited by TEX. INS. CODE §443.005(i);

4.9 Making any claim, charge or offset, or commencing or prosecuting any action, appeal, or arbitration, including administrative proceedings, or obtaining any preference, judgment, attachment, garnishment, or other lien, or making any levy against Defendant, Defendant's Property or any part thereof, or against the Rehabilitator, except as permitted by a rehabilitation plan approved under TEX. INS. CODE §443.103, or as otherwise permitted by the Insurer Receivership Act.

EACH OF YOU ARE FURTHER SPECIFICALLY ORDERED to make available and disclose to the Rehabilitator or his designees the nature, amount, and location of Defendant's Property, and immediately surrender all such property to the Rehabilitator or his designees.

DEFENDANT AND DEFENDANT'S AGENTS ARE FURTHER ORDERED to cooperate with the Rehabilitator or his designees as required by TEX. INS. CODE §443.010(a).

IT IS FURTHER ORDERED that the United States Postmaster and any other delivery services shall deliver to the Rehabilitator any items addressed to or intended for Defendant.

V. STAY OF PROCEEDINGS

5.1 An automatic stay is in effect with respect to actions against Defendant or its property pursuant to TEX. INS. CODE § 443.008(c). In accordance with TEX. INS. CODE § 443.008(f), such stay of actions against Defendant is in effect for the duration of this proceeding, and the stay of actions against Defendant's property is in effect for as long as the property belongs to the receivership estate.

5.2 An automatic stay is in effect with respect to actions against any insured of Defendant for which Defendant is liable under a policy of insurance, or is obligated to defend such insured, pursuant to TEX. INS. CODE § 443.008 (d). Such stay shall continue for 90 days after the date of this Order, or such further time as ordered by this Court.

VI. OTHER ORDERS

- 6.1 This Order shall issue and become effective immediately, and shall continue in full force and effect until the entry of an order by this Court terminating rehabilitation under TEX. INS. CODE § 443.104.
- 6.2 Pursuant to TEX. INS. CODE § 443.055, this Order constitutes a final judgment, provided that this Court shall retain jurisdiction to issue further orders pursuant to the Insurer Receivership Act.
- 6.3 The State of Texas and the Attorney General of Texas shall have a claim for reasonable attorneys' fees and court costs pursuant to TEX. CIV. PRAC. & REM. CODE §§ 64.051 and 66.003 and TEX. GOV'T CODE § 402.006, and the amount and payment of such claim are subject to the provisions of TEX. INS. CODE Chapter 443.
- 6.4 In accordance with TEX. INS. CODE § 443.001(b), this Order does not limit the rights of the Commissioner or the Texas Department of Insurance to take any administrative action or issue any administrative order pursuant to TEX. INS. CODE.
- 6.5 This Order does not constitute a finding of Defendant's insolvency, nor an order of liquidation of Defendant.
-
- 6.6 Notice of Plaintiff's petition and this Order shall be provided under TEX. INS. CODE § 443.052(b) by first class mail or electronic communication.
- 6.7 Pursuant to TEX. INS. CODE § 443.007(e), the Rehabilitator may provide notice of any application in the time periods prescribed in Rule 443 of the Texas Rules of Civil Procedure if he determines that an expedited hearing is necessary. In accordance with

TEX. INS. CODE § 443.007(d), the Rehabilitator may provide notice of any application by first class mail, electronic mail, or facsimile transmission, at his discretion.

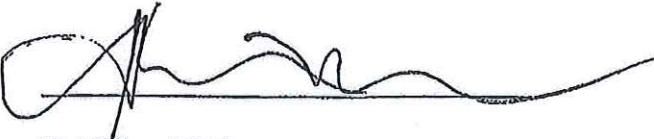
6.8 Anyone over the age of 18 whom is not a party to nor interested in the outcome of this suit may serve all citations, writs and notices in this cause.

6.9 All of the foregoing is subject to further orders of this Court.

SIGNED at Austin, Travis County, Texas, on this the 4th day of December, 2012, at 2:25 o'clock P.m.

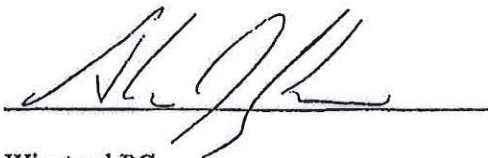

DISTRICT JUDGE PRESIDING

AGREED AS TO FORM AND SUBSTANCE this 4th day of December, 2012:

By: 

H. Melissa Mather
State Bar No. 24010216
Assistant Attorney General
Financial Litigation Division
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ATTORNEYS FOR PLAINTIFF
THE STATE OF TEXAS

By: 

Winstead PC
ATTORNEYS FOR DEFENDANT
Gramercy Insurance Company

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