

BEFORE THE INSURANCE COMMISSIONER OF THE
STATE OF OKLAHOMA

FILED

JUL 25 2014

INSURANCE COMMISSIONER
OKLAHOMA

IN RE: Request for Disclaimer of)
 Affiliation by Mt. Whitney)
 Securities, Inc., Relating to) Case No. 14-0503-TRN
 Oklahoma Specialty Insurance)
 Company, a Domestic)
 Oklahoma Insurer)

**ORDER ALLOWING DISCLAIMER OF INTEREST UPON APPLICANT MEETING
CERTAIN CONDITIONS**

COMES NOW the State of Oklahoma, ex rel. John D. Doak, Insurance Commissioner, and makes the following findings of fact, conclusions of law and orders relating to the request of Mt. Whitney Securities, Inc. to disclaim an interest in Oklahoma Specialty Insurance Company ("the Domestic Insurer"):

JURISDICTION

1. John D. Doak is the Insurance Commissioner of the State of Oklahoma ("the Insurance Commissioner") 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. Under 36 O.S. §§ 1651 and 1654 (i), the Insurance Commissioner has the authority to review and allow or disallow requests for disclaimers of interest as a "control person" as that term is defined and used in 36 O.S. § 1651. Under this Section of the Oklahoma Insurance Code, a person or entity is deemed to have "control" of an Oklahoma domestic insurer if it owns, directly or indirectly, 10% or more of such insurer.

2. The Domestic Company is an insurer authorized to conduct business in the State of Oklahoma pursuant to Certificate of Authority Number 0401 (NAIC CoCode 14175).

3. The Domestic Insurer is a wholly-owned subsidiary of The Westaim Corporation and therefore belongs to an insurance company holding system.

FINDINGS OF FACT

1. Mt. Whitney Securities, Inc. (the “Applicant”) is affiliated with Everest Re Group, Ltd. (the “Group”). It is an investment entity that manages and holds the portfolios of affiliated companies that comprise the Group and operates separate from the Group’s insurance and reinsurance operating affiliates.

2. The Applicant acquired a limited partnership interest of approximately 17.22 % in the Westaim HIIG Limited Partnership (LP) resulting in a 12.19% interest in Houston International Insurance Group Ltd. (HIIG). Westaim HIIG GP, Inc. is the general partner to the Westaim HIIG Limited Partnership. The Westaim Corporation acquired the Domestic Insurer in connection with the acquisition of the Domestic Insurer’s parent company Houston International Insurance Group Ltd. (HIIG). The Westaim HIIG Limited Partnership owns 70.8% interest in HIIG.

3. The limited partnership agreement grants general partner Westaim HIIG GP, Inc. full control of the Westaim HIIG Limited Partnership and prohibits Applicant from directing, managing or supervising the business activities of the Westaim HIIG Limited Partnership. In addition, doing so will violate the Province of Ontario laws governing the limited partnership agreement.

4. The Applicant’s position is an investment position and not operational nor made for the purpose of seeking to manage or direct HIIG’s business of insurance. The Applicant does have limited voting rights, certain preemptive rights to purchase additional limited partnership interest for sale and certain redemption rights.

5. If Applicant exercises its preemptive right to purchase shares of any additional partnership interests offered for sale and another limited partner declines to purchase their pro rata shares or purchases less than their allotment, that offering will be offered to other existing partners. As a result, the Applicant's initial 17.22 % interest ownership may increase over time.

CONCLUSIONS OF LAW

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. Under 36 O.S. §§ 1651 and 1654 (i), the Insurance Commissioner has the authority to review and allow or disallow requests for disclaimers of interest as a "control person" as that term is defined and used in 36 O.S. § 1651. Under this Section of the Oklahoma Insurance Code, a person or entity is deemed to have "control" of an Oklahoma domestic insurer if it owns, directly or indirectly, 10% or more of such insurer.

2. Title 36, Section 1651(c) of the Oklahoma statutes states:

(c) Control. The term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact in the manner provided in Section 4(i). The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

3. The burden of proof is on the person or entity disclaiming control. O.A.C. 365:25-7-29(e) (1).

4. The Insurance Commissioner finds the Oklahoma statutory presumption of control is and will be rebutted in this circumstance if the Applicant now and in the future meets the following conditions:

- a. **Does not purchase the common or preferred stock of the Domestic Insurer;**
- b. **Does not use any direct or indirect means to cause the direction, or attempt to direct or cause the direction of the management policies of the Domestic Insurer;**
- c. **Remains a passive investor during the initial five year term of the limited partnership agreement and thereafter;**
- d. **Provides notification to the Commissioner in the event Applicant's initial interest ownership of 17.22% in the Westaim HIIG Limited Partnership increases in percentage for any type of reason in the future.**

5. Upon review of said notification, if the Commissioner finds the Oklahoma statutory presumption of control does exist due to the increased percentage amount, the Commissioner may disallow Applicant's disclaimer of interest and require Applicant to file a Form A Change of Control in Oklahoma.

ORDER

IT IS THEREFORE ORDERED that the request for disclaimer of affiliation by Mt. Whitney Securities, Inc. with the Domestic Insurer is allowed pursuant to Mt. Whitney meeting and continuing to observe the following conditions:

- a. **Does not purchase the common or preferred stock of the Domestic Insurer;**
- b. **Does not use any direct or indirect means to cause the direction, or attempt to direct or cause the direction of the management policies of the Domestic Insurer;**
- c. **Remains a passive investor during the initial five year term of the limited partnership agreement and thereafter;**

d. Provide notification to the Commissioner in the event Applicant's initial interest ownership of 17.22% in the Westaim HIIG Limited Partnership increases in percentage for any type of reason in the future.

IT IS FURTHER ORDERED that upon review of said notification, if the Commissioner finds the Oklahoma statutory presumption of control does exist due to the increased percentage amount, the Commissioner may disallow Applicant's disclaimer of interest and require Applicant to file a Form A Change of Control in Oklahoma.

WITNESS My Hand and Official Seal this 25th day of July, 2014.



A handwritten signature in black ink that reads "James A. Mills".

JAMES MILLS
Chief of Staff
Oklahoma Insurance Department

CERTIFICATE OF MAILING

I, Julie Meaders, hereby certify that a true and correct copy of the above foregoing document was mailed postage prepaid with return receipt requested on this 25th day of July, 2014 to:

Mt. Whitney Securities, Inc.
c/o Sanjoy Mukherjee
Everest Reinsurance Company
477 Martinsville Road
P.O. Box 830
Liberty Corner, NJ 07938-0830


Certified Mail No.
7001 0320 0004 4249 4343

J. Angela Ables
201 Robert S. Kerr Ave., Suite 600
Oklahoma City, Oklahoma 73102
Attorney for The Westaim Corporation

Certified Mail No.
7001 0320 0004 4249 4350

and a copy was delivered to:

John McCarter
Oklahoma Insurance Department Financial and Examination Division



Julie Meaders
Deputy General Counsel

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Mt. Whitney Securities, Inc.
 c/o Sanjoy Mukherjee
 Everest Reinsurance Company
 477 Martinsville Road
 P.O. Box 830
 Liberty Corner, NJ 07938-0830
 rg/14-0503-TRN/Ord. Allowing Disc.

PS Form 3800, January 2001

SENDER: COMPLETE THIS SECTION

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- 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:

Mt. Whitney Securities, Inc.
 c/o Sanjoy Mukherjee
 Everest Reinsurance Company
 477 Martinsville Road
 P.O. Box 830
 Liberty Corner, NJ 07938-0830
 rg/14-0503-TRN/Ord. Allowing Disc.

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 X K. C. G.

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 K. Chrisch 7-28-14

D. Is delivery address different from item 1? Yes No
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 AUG 01 2014
 Legal Division

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Kerr, Irvine, Rhodes and Ables, P.C.
 ATTN: J. Angela Ables, Esq.
 201 Robert S. Kerr Ave., Suite 600
 Oklahoma City, OK 73102-4267
 rlg/14-0503-TRN/Ord. Allowing Disc.

PS Form 3800, January 2001

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 type="checkbox"/> Addressee</p> <p><i>X Caroline Chapman</i></p> <p>B. Received by (Printed Name) <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>Caroline Chapman</i></p> <p>C. Date of Delivery</p> <p><i>07/20/14</i></p> <p>RECEIVED OKLAHOMA INSURANCE DEPARTMENT JUL 30 2014 Legal Division</p> <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input 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>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>1. Article Addressed to:</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> Kerr, Irvine, Rhodes and Ables, P.C. ATTN: J. Angela Ables, Esq. 201 Robert S. Kerr Ave., Suite 600 Oklahoma City, OK 73102-4267 rlg/14-0503-TRN/Ord. Allowing Disc. </div>	
<p>2. Article Number (Transfer from service label)</p> <p>7001 0320 0004 4249 4350</p>	
<p>PS Form 3811, February 2004</p>	<p>Domestic Return Receipt 102595-02-M-1540</p>