9/21/2015 3:45:42 PM
Velva L. Price
District Clerk
Travis County
D-1-GV-12-001713
Jonathan Sanders

CAUSE NO. D-1-GV-12-001713

THE STATE OF TEXAS	**§**	**IN THE DISTRICT COURT OF**
	§	
VS.	**§**	**TRAVIS COUNTY, TEXAS**
	§	
GRAMERCY INSURANCE COMPANY	**§**	**53RD JUDICIAL DISTRICT**

APPLICATION FOR AUTHORITY TO OBTAIN RELEASE OF NEW MEXICO STATUTORY DEPOSIT

TO THE HONORABLE JUDGE OF THIS COURT:

Comes now Resolution Oversight Corporation, Special Deputy Receiver of Gramercy Insurance Company (the SDR and Gramercy, respectively), and files this *Application for Authority to Obtain Release of New Mexico Statutory Deposit* (the Application), and in support thereof would respectfully show the Court as follows:

I. AUTHORITY

1. Gramercy was placed in receivership in this proceeding on December 4, 2012. The Court entered an *Agreed Order Appointing Rehabilitator and Permanent Injunction* (Rehabilitation Order) on December 4, 2012, appointing the Texas Commissioner of Insurance as Rehabilitator (the Rehabilitator). The Rehabilitator designated Resolution Oversight Corporation as interim SDR of Gramercy on December 7, 2012, and as SDR on February 15, 2013. On August 26, 2013, the Court entered an *Order Appointing Liquidator and Permanent Injunction* (the Liquidation Order), placing Gramercy in liquidation and appointing the Commissioner as Liquidator of Gramercy.

2. The SDR is authorized to enter into an agreement with the New Mexico Superintendant of Insurance pursuant to TEX. INS. CODE ANN. §443.154(u) and approval by this Court of the agreement proposed herein is required by New Mexico Statute. The subject matter

of this Application has been referred to the Special Master appointed in this proceeding in accordance with the Supplemental Order of Reference to Master entered on August 26, 2013.

II.

3. At the time of receivership, Gramercy had a statutory special deposit (the Deposit) with the Insurance Department of the State of New Mexico. The Deposit has a current market value of $335,000.00 as of September 3, 2015. This mandatory deposit was placed in trust for the benefit of the New Mexico policyholders and creditors of Gramercy. This court set a claim filing deadline of February 26, 2015. The New Mexico Insurance Guaranty Association (NMIGA) has paid $100,178.51 in loss claims and loss adjustment expenses and $ 5,461.62 in administrative expenses on behalf of New Mexico residents and has no other open claims. The SDR and the New Mexico Superintendent of Insurance (the Superintendent) have reached an agreement to use the Deposit to pay: (1) the claims of NMIGA; (2) the administrative expenses approved by the Superintendent; and (3) release the remaining balance of the Deposit to the SDR (the Deposit Proceeds). This release is conditioned upon the approval of this Court. A copy of this agreement is attached here to as Exhibit "A" (Receiver's Agreement). Under the Receiver's Agreement, the Superintendent has the right to direct payment of claims of New Mexico residents or as maybe required by NMIGA in the same manner as if the Deposit had not been released up to the amount of the Deposit Proceeds. The treatment of the Deposit under the Receiver's Agreement is consistent with the treatment of a special deposit held by a domiciliary receiver under §443.402 (c) of the Code.

4. The SDR requests authority to enter into the Receiver's agreement and seeks an order authorizing the release of the Deposit to pay the claims of NMIGA, the administrative expenses approved by the Superintendent, and the Deposit Proceeds to the SDR.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Special Deputy Receiver respectfully requests that this Court enter an order:

1. Authorizing the Special Deputy Receiver to enter into the Receiver's Agreement, attached as Exhibit "A" or one substantially similar thereto, and ordering the release of the Deposit to pay the claims of NMIGA, the administrative expenses of the Superintendent and the balance to the SDR;

2. Authorizing the Special Deputy Receiver to execute any documents to effect the actions authorized herein; and

3. Granting the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

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By: *_/s/ Rachel J. Stroud_*
Rachel J. Stroud
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Attorneys for the Special Deputy Receiver

APPLICANT'S NOTICE OF SUBMISSION

Pursuant to the terms of the Supplemental Order of Reference to Master entered by the District Court in this cause, the SDR's *Application for Authority to Obtain Release of New Mexico Statutory Deposit* is hereby set for written submission before the Special Master, Tom Collins, on **Monday, October 5, 2015**.

The Special Master has established the following rules pursuant to Rule 171 of the Texas Rules of Civil Procedure:

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 email by such date on:

(a) The Special Master's Docket Clerk at specialmasterclerk@tdi.texas.gov;
(b) The undersigned counsel. Rachel Stroud at rstroud@thestroudfirm.com; and
(c) All interested parties, including those listed on the Applicant's Certificate of Service.

3. 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.

4. If a matter is set for submission, an objecting party shall expeditiously coordinate with Applicant's counsel and the special master's docket clerk (specialmasterclerk@tdi.texas.gov) to obtain an oral hearing, unless the master determines that an oral hearing is not necessary. The objecting party shall serve a Notice of Oral Hearing on applicant's counsel and all interested parties, including those listed on the Applicant's Certificate of Service.

5. 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.

6. Any Acknowledgment of Notice and Waiver to be filed by a Guaranty Association or other interested party should be filed at least three (3) calendar days before the submission or hearing date.

/s/ *Rachel J. Stroud*
Rachel J. Stroud

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 21st day of September 2015.

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NEW MEXICO SPECIAL DEPOSIT RELEASE AGREEMENT

THIS AGREEMENT is made as of _____, 2015 by and between the New Mexico Superintendent of Insurance ("Superintendent") and the Texas Commissioner of Insurance in his capacity as domiciliary Liquidator for Gramercy Insurance Company, a Texas Insurance corporation ("Insurer"), acting through Resolution Oversight Corporation as Special Deputy Receiver (“SDR”).

RECITALS

WHEREAS, Insurer is subject to delinquency proceedings in its state of domicile, styled *The State of Texas v. Gramercy Insurance Co.*, District Court for Travis County, Texas, 53rd Judicial District (the ”Receivership Court“), cause No. D-1-GV-12-001713 (“receivership proceeding”); and

WHEREAS, the Receivership Court duly appointed and authorized the SDR to administer, manage and control Insurer, its assets and its receivership estate, and among other things to enter into this Agreement and to carry out all of its terms and conditions; and

WHEREAS, Insurer made a special deposit in trust for the benefit of New Mexico policyholders and creditors, pursuant to Section 59A-5-19 NMSA 1978 and other applicable New Mexico law; said special deposit is being held in the form of a U.S. Treasury Bill, Cusip No. 912796GC7, due 9/3/2015, the face value of which is $335,00.00, and shall be held thereafter in such form as the parties hereto shall agree (the “special deposit security”); and

WHEREAS, the special deposit security is held in the custody of the Superintendent; and

WHEREAS, New Mexico has sufficient assets to justify establishment of an ancillary receivership, and to pay fees, wages, expenses and costs of the ancillary receivership's administration; and

WHEREAS, the SDR has provided necessary information regarding New Mexico claims against Insurer;

WHEREAS, there is only one known New Mexico claim of any priority class, which claim was paid by the New Mexico Property and Casualty Insurance Guaranty Association (the "Association”) and is subject to reimbursement from the special deposit proceeds; and

WHEREAS, in reliance on the SDR’s information, the Superintendent has entered into this Agreement for the purposes of paying the Association’s claim, releasing and turning over the special deposit security, and paying the Superintendent’s administrative expenses in connection

therewith, including but not limited to bank fees, attorneys' fees, expenses and costs, as well as wire transfer and express courier charges; and

WHEREAS, the parties desire to avoid the expense of establishing an unnecessary ancillary receivership in the state of New Mexico;

AGREEMENT

NOW, THEREFORE, in reliance upon the foregoing and in consideration of the mutual terms, conditions, covenants and obligations of this Agreement, the parties agree as follows:

1. The Superintendent shall liquidate Insurer's special deposit and any accrued unpaid interest, and shall pay/distribute the proceeds to satisfy:

(a) any unpaid bank trust/custodial charges;

(b) any penalties for early liquidation/withdrawal;

(c) the Superintendent's administrative fees and expenses, including but not limited to attorney's fees, expenses and costs, as well as wire transfer or express courier charges;

(d) a $1,500 trust deposit to be held in the Superintendent's designated counsel's trust account to be applied to unpaid bills and expenses, with the unused balance to be refunded to the SDR;

(e) the Association's claim(s);

(f) the Superintendent's other reasonable fees and expenses, whether like or unlike the foregoing; and

(g) the remaining balance to the SDR.

2. The remaining balance released to the SDR as per 1(g) shall remain subject to New Mexico claims as set forth in Section 3.

3. The Superintendent or Association shall have access to the balance of special deposit proceeds to pay any previously unpaid New Mexico claims of which the Association or Superintendent notifies the SDR, and/or to refund to the Superintendent, upon demand, an aggregate amount up to the amount received by the SDR in 1 (g) above to satisfy:

(a) all amounts needed to administer, adjust, defend and/or pay unpaid New Mexico claims against Insurer, as estimated and demanded by the Superintendent in his sole discretion; and

(b) all amounts to administer, defend and/or pay federal priority claims relating to Insurer, whether made against the State of New Mexico, the Superintendent, the Office of the Superintendent of Insurance or otherwise, or against their employees, representatives, counsel or agents, as demanded by the Superintendent in his sole discretion.

4. Claim payment and refund obligations under Section 3 shall be on an absolute first-priority basis up to the full amount returned to the SDR in 1(g). It is specifically understood and agreed that the obligations set forth in Section 3 are not contingent upon or subject to any pro-rata allocations which may be made in connection with other non-New-Mexico receivership claims of the same or any other priority, nor are they contingent on the availability of sufficient funds to pay in full federal priority or other non-New-Mexico claims in the Insurer receivership proceeding, but rather constitute a first lien on the returned special deposit proceeds for the benefit of the Superintendent and New Mexico claimants, until the Final Report and Application to make Final Distributions is filed in the receivership proceeding, at which time the provisions of Sections 2 and 3 become null and void.

5. The Recitals are contractual and not mere recitals.

6. This written Agreement sets forth the entire agreement of the parties. All prior or contemporaneous agreements, written or oral, are merged herein. All agreements not set forth in this written Agreement are void, and of no force and effect.

7. This Agreement may be amended only in writing executed by all parties.

8. This Agreement may be executed in counterparts, each of which shall be considered an original if all signatures are original signatures, and all of which shall constitute one document.

9. This Agreement is binding on the official successors-in-interest of the parties.

10. This Agreement may not be assigned.

11. This Agreement shall be construed in accordance with the substantive law of New Mexico, disregarding choice-of-law principles.

12. Disputes arising in connection with this Agreement may be resolved in the Santa Fe County District Court or any other court of competent jurisdiction. The SDR consents to the jurisdiction of the Santa Fe County District Court and agrees to accept service by certified mail,

return receipt. In any such proceeding the prevailing party shall be awarded its attorney's fees, expenses and costs.

13. This Agreement shall not be binding or effective until it is approved by the Receivership Court by order entered in the receivership proceeding.

SPECIAL DEPUTY RECEIVER

Hon. David Mattax
Texas Commissioner of Insurance, as
Liquidator of Gramercy Insurance Company

By: _____ Date: _____, 2015
Ernesto A. Garza, President
Resolution Oversight Corporation
Special Deputy Receiver

SUPERINTENDENT

By: _____ Date: _____, 2015
Hon. John G. Franchini
New Mexico Superintendent
of Insurance

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