

Cause No. \_\_\_\_\_

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
SANTA FE AUTO	§	
INSURANCE COMPANY,	§	
Defendant	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION,  
APPLICATION FOR ORDER APPOINTING REHABILITATOR  
AND REQUEST FOR INJUNCTIVE RELIEF**

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

NOW COMES the State of Texas, by and through the Office of the Attorney General of Texas (hereinafter "Plaintiff"), at the request of the Commissioner of Insurance for the State of Texas (hereinafter "Commissioner"), complaining of Santa Fe Auto Insurance Company (hereinafter "Defendant"), and would respectfully show the Court the following:

**I. DISCOVERY LEVEL**

1.1 Plaintiff intends to conduct discovery under Level 2 of the TRCP Rule 190.

**II. NATURE OF SUIT**

2.1 This suit is brought at the request of the Commissioner pursuant to TEX. INS. CODE Chapter 443, the *Insurer Receivership Act*. Unless otherwise indicated, all statutory references are to the Insurer Receivership Act.

2.2 Plaintiff seeks to obtain an order designating the Commissioner as Rehabilitator of Defendant under TEX. INS. CODE § 443.101 *et seq.*

2.3 Plaintiff further seeks to obtain a Temporary Restraining Order, Temporary Injunction and Permanent Injunction pursuant to TEX. INS. CODE § 443.008(a), restraining

Defendant from conducting the business of insurance, except as directed by the Rehabilitator, and restraining other parties from taking any actions against Defendant or its property.

2.4 Plaintiff further seeks to recover from Defendant all the fees, taxes, fines, penalties, and forfeitures provided by law for the acts complained of, including, but not limited to, all of the taxes, fines, penalties, and forfeitures provided by TEX. CONST. ART. IV § 22, and TEX. CIV. PRAC. & REM. CODE ANN. §§ 64.051 and 66.003, and reasonable attorneys' fees and court costs provided by TEX. GOV'T CODE ANN. § 402.006, subject to the provisions of TEX. INS. CODE § 443.301(a).

### **III. DEFENDANT**

3.1 Santa Fe Auto Insurance Company is an insurer domiciled and doing business in the State of Texas. Defendant is a "Covered Person" as is defined in TEX. INS. CODE § 443.003.

3.2 Service of process on Defendant may be obtained by serving Todd Ridley at 13702 Gamma Road, Dallas, Texas 75244, or by leaving a copy at its principal place of business located at such address pursuant to TEX. INS. CODE §§ 804.101(b)(1) and (2).

### **IV. JURISDICTION AND VENUE**

4.1 This Court has jurisdiction over this action pursuant to TEX. CONST. art. IV, §22, TEX. CIV. PRAC. & REM. CODE ANN. §§ 64.001 and 66.001, and TEX. INS. CODE §§ 443.005.

4.2 This suit must be brought against Defendant in Travis County, Texas pursuant to TEX. INS. CODE §§ 443.005(g) and 443.051.

### **V. FACTS**

5.1 Pursuant to TEX. INS. CODE § 822.054, an insurance company must maintain a surplus of at least \$2.5 million and capital of at least \$2.5 million. The sum of capital and surplus is commonly referred to as "policyholder surplus."

5.2 In Commissioner's Order No. 07-0283, Defendant agreed that it would not write any business in Texas until it had increased its policyholder surplus to \$6 million and that thereafter it would at all times maintain a policyholder surplus of at least \$6 million. *See Exhibit A.* Defendant's Certificate of Authority ("COA") to engage in the business of insurance in Texas also includes this requirement. *See Exhibit B.*

5.3 As of September 30, 2012, Defendant's policyholder surplus was approximately \$1.44 million. *See Defendant's Quarterly Statement for the quarter ended September 30, 2012, page 3, line 37 attached here as Exhibit C.*

## **VI. GROUNDS FOR ORDER OF REHABILITATION**

6.1 Grounds exist to place Defendant into rehabilitation pursuant to 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.

6.2 Pursuant to TEX. INS. CODE § 443.058, if any of the grounds provided in § 443.057 are established, the court shall issue the order of rehabilitation requested in the petition.

## **VII. APPOINTMENT OF REHABILITATOR**

7.1 TEX. INS. CODE § 443.101(a) provides that an order of rehabilitation must appoint the Commissioner as the Rehabilitator. Pursuant to TEX. INS. CODE § 443.101 *et seq* Plaintiff requests that this Court issue an order appointing the Commissioner as Rehabilitator of Defendant, and grant him all powers under the statutes and the common law of the State of Texas, including but not limited to TEX. INS. CODE § 443.101 *et seq*, to conduct the business of the Defendant, and take any other actions as he deems necessary.<sup>1</sup> Pursuant to TEX. INS. CODE §

---

<sup>1</sup> The Commissioner would inform the Court that the holding company of Defendant, Alpha Partners, Ltd. has entered into bankruptcy proceedings in the United States Bankruptcy Court, Northern District of Texas, Cause No. 13-30266. This bankruptcy proceeding, and the stay that it imposes, does not affect the authority of this Court to grant the State's requested relief. The Bankruptcy Code, at 11 U.S.C. § 362 (b)(4), provides that the Court and the Commissioner may exercise control over a debtor's property without violating a bankruptcy stay when acting to "enforce such governmental unit's or organization's police and regulatory power".

443.008(m), Plaintiff further requests that the Rehabilitator not be required to file a bond.

7.2 Plaintiff further requests that, pursuant to TEX. INS. CODE § 443.101(a), this Court issue an order finding that all of Defendant's property of any kind or nature, wherever situated, whether real, personal, or mixed, and whether held in Defendant's name or for Defendant's benefit, including but not limited to cash, accounts, funds, stocks, bonds, statutory deposits (including deposits made by Defendant with any agency of a state or the federal government), trust funds, letters of credit, safe deposit boxes, notes, books, records, documents, furniture, equipment, real estate, retainages and retainers, and rights or causes of actions of any kind, including, but not limited to, accounts receivables, contract rights, premiums, insurance and reinsurance proceeds, and all licenses held by Defendant, be vested in the Rehabilitator .

### **VIII. STAY OF PROCEEDINGS**

8.1 Pursuant to TEX. INS. CODE § 443.008(c), the commencement of this proceeding operates as a stay against the commencement or continuation of a judicial, administrative, or other action or proceeding or process against Defendant or its property. Further, pursuant to TEX. INS. CODE § 443.008(d), the commencement of this proceeding operates as a stay with respect to actions against insureds of Defendant for 90 days after the date of the order appointing the Rehabilitator, or such further time ordered by this Court. Plaintiff requests that this Court enter any additional stays under TEX. INS. CODE § 443.008(a) as may be necessary.

### **IX. INJUNCTIVE RELIEF**

9.1 This Court may grant injunctive relief as necessary or appropriate to carry out the provisions of the Insurer Receivership Act pursuant to TEX. INS. CODE § 443.008(a). Plaintiff requests that this Court enter a temporary restraining order, temporary injunction, and upon final hearing a permanent injunction as set forth herein pursuant to TEX. INS. CODE § 443.008(a) to

prevent immediate and irreparable injury, loss and damage to the State of Texas, the general public, and Defendant's creditors.

9.2 Plaintiff would show that, unless restrained by this Court, Defendant will continue to operate in a hazardous financial condition. Plaintiff therefore requests that this Court enter an order enjoining Defendant's current and former officers, directors, underwriters, managers and employees (including but not limited to: James Thornton Maxwell, James Doug Maxwell, Gregory Steible, Lisa Maxwell Steible, John Eric Maxwell, Todd Henry Ridley and Holly Pace Maxwell); owners and affiliates (including but not limited to Alpha Partners, Ltd., James Thornton Maxwell, James Doug Maxwell, ZVN, Inc., CSi, Inc., DepoWeb, Inc., and smKnowledge, LLC.); local recording agents, managing general agents, agents, third party administrators, representatives, associates, servants, adjusters, attorneys and accountants (including but not limited to those acting in concert with them) from conducting business on behalf of Defendant, except as directed by the Rehabilitator, and from wasting, transferring, selling, assigning, canceling, concealing, claiming, hypothecating or disposing of, in any manner, any of Defendant's property. Plaintiff further requests that this Court order Defendant and Defendant's agents to cooperate with the Rehabilitator as required by TEX. INS. CODE § 443.010.

9.3 Plaintiff would further show that all financial institutions and depositories (including but not limited to Bank of Albuquerque, First National Bank of Santa Fe, Frost Bank, Charles Schwab, and US Bank ) and any other parties that receive actual notice should be restrained from taking unauthorized actions in connection with Defendant's property. Plaintiff therefore requests that this Court issue an order pursuant to TEX. INS. CODE § 443.008(a) enjoining any parties from releasing, transferring, concealing, withdrawing, allowing to be withdrawn, or affecting, in any manner, any of Defendant's property, as further described herein, or other asset to the credit of Defendant on deposit with them or in their possession, except as

authorized by the Rehabilitator or his designees, and that such parties be ordered to produce and deliver to the Rehabilitator or his designees such assets, money, deposits, or other items they have in their custody.

9.4 Plaintiff would further show that in order to avoid the dissipation or loss of Defendant's assets or records, and prevent any creditors or claimants from obtaining any preferences in violation of the Insurer Receivership Act, an injunction should be issued against any and all parties asserting claims or causes of action of any kind against Defendant. Plaintiff therefore requests that this Court enjoin any parties from commencing or prosecuting any action against the Rehabilitator or Defendant, including, but not limited to, arbitration, administrative proceedings, lawsuits or appeals, and from obtaining any preference, judgment, attachment, garnishment, lien or levy against the Rehabilitator, Defendant or Defendant's property, except by doing so as permitted by the Insurer Receivership Act. Plaintiff further requests that this Court order that the United States Postmaster deliver to the Rehabilitator any items addressed to Defendant.

## **X. OTHER RELIEF**

10.1 Plaintiff requests that this Court award the Office of the Attorney General all costs incurred in this proceeding, including but not limited to reasonable attorneys' fees, investigative costs, and court costs, pursuant to TEX. CIV. PROC. & REM. CODE §§ 64.051 and 66.003 and TEX. GOV'T CODE § 402.006, subject to the provisions of TEX. INS. CODE § 443.301.

10.2 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. Plaintiff requests that this Court find that an order granting relief requested in this petition shall not be construed as a limitation of the Commissioner's powers granted under such provisions.

## PRAYER

WHEREFORE, PREMISES CONSIDERED, the Plaintiff prays:

1. that the Court grant the Application and the relief requested;
2. that the Court enter a Temporary Restraining Order, Temporary Injunction, and a Permanent Injunction enjoining Defendant and Defendant's agents, financial institutions and depositories, and all other persons from taking any action in connection with Defendant's business and property, except as directed by the Rehabilitator, and from taking any action against Defendant or the Rehabilitator, except as permitted by the Insurer Receivership Act;
3. that the Court immediately appoint the Commissioner as Rehabilitator to conduct Defendant's business and take charge of Defendant's property as described herein, and that the Rehabilitator be given all equitable powers under the statute and the common law of the State of Texas that authorize the appointment of a receiver;
4. that the Court vest the Rehabilitator with title to Defendant's property;
5. that the Office of the Attorney General be awarded all costs incurred in this proceeding, including but not limited to reasonable attorneys' fees, investigative costs, and court costs, pursuant to TEX. CIV. PROC. & REM. CODE ANN. §§ 64.051 and 66.003 and TEX. GOV'T CODE ANN. § 402.006, subject to the provisions of TEX. INS. CODE §443.301;
6. that no bond be required of the Commissioner or the Rehabilitator; and
7. for any and further relief, both general and specific, in law and in equity, to which the Plaintiff may be entitled.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

DANIEL T. HODGE  
First Assistant Attorney General

DAVID C. MATTAX  
Deputy Attorney General for Defense Litigation

ROBERT O'KEEFE  
Division Chief  
Financial Litigation, Tax and Charitable Trusts  
Division



---

JOSHUA R. GODBEY  
State Bar No. 24049996  
Assistant Attorney General  
Financial Litigation, Tax and Charitable Trusts  
Division  
P.O. Box 12548  
Austin, Texas 78711-2548  
TEL: (512) 475-4209  
FAX: (512) 477-2348

*Attorney for the State of Texas*



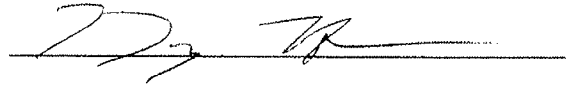
**AFFIDAVIT**

STATE OF TEXAS  
COUNTY OF TRAVIS

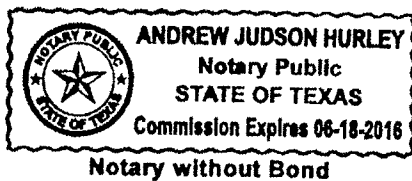
§  
§  
§

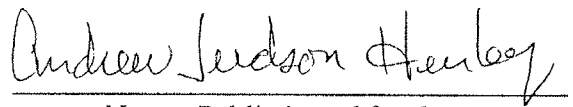
BEFORE ME, the undersigned authority, on this day personally appeared Doug Hartz, the Director of the Rehabilitation, Liquidation and Oversight Section of the Texas Department of Insurance, who, after by me being duly sworn, upon oath deposed and said:

“I am over the age of eighteen, have never been convicted of a felony, and am competent to make this affidavit. I am the Director of the Rehabilitation, Liquidation and Oversight Section of the Texas Department of Insurance. I have carefully read the allegations contained in the foregoing *Plaintiff’s Original Petition, Application for Order Appointing Rehabilitator and Request for Injunctive Relief*, and state that each and every one of the allegations of facts is true and correct, and is made on my personal knowledge.”



SUBSCRIBED AND SWORN to before me this the 27 day of February, 2013 to certify which, witness my hand and seal of office.



  
Notary Public in and for the  
State of Texas