

LM MAR 08 2013

At 9:33 A.M.
Amalia Rodriguez-Mendoza, Clerk

Cause No. D-1-GV-13-000204

THE STATE OF TEXAS,
Plaintiff

v.

SANTA FE AUTO INSURANCE COMPANY,
Defendant

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

419th JUDICIAL DISTRICT

**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 Santa Fe Auto 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:



I. FINDINGS OF FACT

- 1.1 Defendant is a "Covered Person" as defined in TEX. INS. CODE § 443.003.
- 1.2 Pursuant to TEX. INS. CODE § 822.054, an insurance company must have at least \$2.5 million in capital and \$2.5 million in surplus. Pursuant to Commissioner Order No. 07-0283, Defendant must have \$6 million in policyholder surplus. As of September 30, 2012, Defendant's policyholder surplus was approximately \$1.4 million.
- 1.3 Defendant has received service of process.

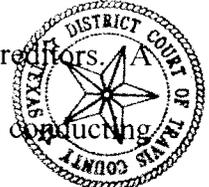
II. CONCLUSIONS OF LAW

- 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(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.
- 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 *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 Director and employ or contract with legal counsel and other personnel as he deems necessary.



Pursuant to TEX. INS. CODE §443.015(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 Alpha Partners, Ltd., James Thornton Maxwell, James Doug Maxwell, ZVN, Inc.), affiliates (including but not limited to CSi, Inc., DepoWeb, Inc., smKnowledge, LLC), current and former officers, trustees and directors (including but not limited to James Thornton Maxwell, James Doug Maxwell, Gregory Steible, Lisa Maxwell Steible,



John Eric Maxwell, Todd Henry Ridley, Linda Kay Morgan and Holly Pace Maxwell), 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:

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 (including, but not limited to Bank of Albuquerque, First National Bank of Santa Fe, Frost Bank, Charles Schwab, and US Bank); 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.



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.

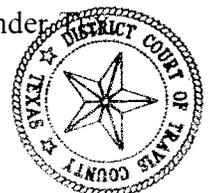
V. STAY OF PROCEEDINGS

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 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 the Texas Insurance 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 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 who 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 8th day of March, 2013 at 9:26 o'clock A.m.


DISTRICT JUDGE PRESIDING

I, AMALIA RODRIGUEZ-MENDOZA, District Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 3-8-2013



AMALIA RODRIGUEZ-MENDOZA

DISTRICT CLERK

By Deputy:



