BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

Case File No. 144415

Order No. O-05-020

***EX PARTE* EMERGENCY ORDER TO CEASE AND DESIST THE UNAUTHORIZED AND UNLAWFUL TRANSACTION OF THE BUSINESS OF TITLE INSURANCE IN THE STATE OF COLORADO**

IN RE GREAT AMERICAN ASSURANCE COMPANY

Respondent.

This matter comes before Doug Dean, the Commissioner of Insurance of the State of Colorado (the "Commissioner"), pursuant to the provisions of the Regulation of Unauthorized Insurance Act, §§ 10-3-901 through 10-3-910, C.R.S., wherein the Commissioner is authorized to issue an *ex parte* emergency cease and desist order regarding the unauthorized transaction of the business of insurance in Colorado.

STATEMENT OF CHARGES

The Commissioner makes the following charges:

1. The Commissioner has jurisdiction over Respondent and the subject matter of this *Ex Parte* Emergency Order to Cease and Desist the Unauthorized and Unlawful Transaction of the Business of Insurance in the State of Colorado (the "Order") pursuant to §§ 10-3-901 through 910, C.R.S. In addition, the Commissioner has jurisdiction over Respondent because Respondent is authorized to conduct the following lines of insurance in the State of Colorado: credit, crop, fidelity and surety, general casualty, general property, motor vehicle and workers compensation.

2. The Commissioner has the duty and responsibility to supervise the business of insurance in the State of Colorado, and to investigate and enforce Colorado insurance laws and regulations, as set forth in § 10-1-108, C.R.S.

3. When the Commissioner believes that an unauthorized person is engaging in the transaction of the business of insurance in violation of §§ 10-3-105 or 903, C.R.S., or any rule or regulation promulgated under authority of Colorado insurance laws, and when it appears to the Commissioner that such unauthorized person's conduct is fraudulent, or creates an immediate danger to the public safety, or is causing or can be reasonably expected to cause significant, imminent and irreparable public injury, the Commissioner may issue an *ex parte* emergency cease and desist order to such unauthorized person to cease and refrain from such unlawful conduct, pursuant to § 10-3-904.5, C.R.S.

4. The subject of the Order is an insurance product issued by Respondent as a "Mortgage Originator's Errors & Omissions Insurance" policy, identified by Respondent as form ACE-5701(12/99) (the "Mortgage E&O Policy").

5. The Mortgage E&O Policy insures the "Insured", defined as the mortgagee, for "all sums incurred by the Insured in damages as a result of an incident, and all liabilities contractually assumed by the Insured under a mortgage agreement as a result of an incident…" (p.1). An "incident" is defined as an "act, error, omission, personal injury or breach of duty by the Insured in their mortgage lending activities." (p. 7) "Mortgage lending activities" are defined as including "performing or failing to perform title searches, courthouse searches or other record searches in conjunction with the origination of a mortgage agreement." (Coverage N—Affiliated Title Search Activities). "Mortgage lending activities" are further defined to "include the process of identifying all legally superior rights, encumbrances and security positions to the mortgage agreement other than superior positions." "Mortgage lending activities" are further defined "to specifically include the verification and reliance upon the accuracy of the Owner's Affidavit with respect to superior rights, encumbrances or security position to the mortgage agreement other than superior positions." (Coverage J—Validation of Owners Affidavit).

6. Colorado law provides that "no company shall underwrite or issue a policy of title insurance or otherwise engage in the business of title insurance in this state unless authorized by the provisions of this article to transact such a business." § 10-11-103, C.R.S.

7. The Title Insurance Code of Colorado defines title insurance as "insuring, guaranteeing, or indemnifying owners of real property *or others interested therein* against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to said property." § 10-11-102(8), C.R.S. (emphasis added).

8. The Title Insurance Code of Colorado further provides that title insurers "shall not:…[t]ransact, underwrite, or issue any kind of insurance other than title insurance…." § 10-11-108(1)(b), C.R.S.

9. Respondent is currently authorized to transact the following lines of insurance: credit, crop, fidelity and surety, general casualty, general property, motor vehicle and workers compensation.

10. Respondent is not authorized to transact the business of title insurance in Colorado.

11. Issuance of the Mortgage E&O Policy constitutes the transaction of title insurance business as defined in §§ 10-11-103, 10-11-102(8), C.R.S. since it indemnifies the mortgagee who holds an interest in the property from loss suffered by reason of liens, encumbrances, defects and unmarketability of the title to the property.

12. Since Respondent does not hold a license to conduct the business of title insurance, its conduct constitutes the transaction of insurance business as defined by the Regulation of Unauthorized Insurance Act, §§ 10-3-903(1)(g) and (h), C.R.S., and it is subject to the provisions of the Act.

13. Since Respondent holds licenses to conduct other lines of insurance business, it cannot obtain a license to transact the business of title insurance pursuant to § 10-11-108(1)(b), C.R.S. Respondent's issuance of the Mortgage E&O Policy is an attempt to evade the provisions of the title insurance statutes and Respondent is therefore subject to the provisions of the Regulation of Unauthorized Insurance Act under § 10-3-903(g), C.R.S.

14. Respondent has failed to comply with the statutory requirements in the Title Insurance Code of Colorado, and regulation 3-5-1 promulgated pursuant to the Code. These laws afford significant consumer protections to sellers and buyers of real property, as well as to those with ownership or other interests in the real property. In addition, the Code has specific premium reserve requirements designed to ensure insurer solvency. Therefore, Respondent's conduct constitutes an immediate threat to public safety, and can be reasonably expected to cause significant, imminent, and irreparable public injury.

15. The Commissioner is authorized to issue an *ex parte* emergency cease and desist order to Respondent because: (i) Respondent is "an unauthorized person…engaging in the business of insurance in violation of the provisions of section…10-3-903…and [i]t appears to the commissioner that the alleged conduct is fraudulent, creates an immediate danger to the public safety, or…can be reasonably expected to cause significant, imminent, and irreparable public injury." See § 10-3-904.5(1), C.R.S.

16. The Commissioner finds that this Order is reasonable and necessary to protect the people of Colorado. Further, the Commissioner finds that the immediate issuance of this Order is imperatively necessary for the preservation of public health, safety, and welfare, and observance of the requirements of § 24-4-105, C.R.S., would be contrary to the public interest.

ORDER

1. Respondent, jointly and severally, and its officers, directors, employees, managers, members, partners, investors, affiliates, associates, agents and all other persons with actual knowledge of this Order, regardless of relation or corporate or other form, are HEREBY ORDERED to CEASE AND DESIST from marketing, offering or contracting for the insurance product described in this order in the State of Colorado, or otherwise transacting insurance business regarding the insurance product defined in this order in the State of Colorado, as defined in § 10-3-903, C.R.S., until such time as they are properly authorized to do so, with the sole exception that the respondent shall continue to be responsible for the payment of claims, and otherwise for the timely fulfillment of its contractual obligations to each subscriber, member, beneficiary, and provider until all Colorado claims have been paid or until further action or order of the Division. Respondent shall use its assets, including reserves, for the payment of claims. For the protection of the public, and to preserve books, records and assets of the Respondent, neither it nor its officers, directors, managers, members, stockholders, trustees, subscribers, agents, employees, or affiliates shall take or permit any action that might waste, conceal or otherwise dispose of the assets, property, books, records, and accounts of the Respondent.

2. Respondent shall make a reasonable effort to replace the coverage of each client, consumer, and person or entity afforded coverage under a policy or contract which is described in this order with substantially comparable coverage provided by a Colorado licensed title insurer.

3. Respondent shall forthwith notify, in writing, each and every producer, broker, salesperson, and other marketing outlet that is presently or that has in the past been used to solicit, sell, or deliver the insurance product defined in this order in Colorado of the cessation of Colorado business related to this product because it is unlicensed, and due to this emergency order, and shall also inform such persons and entities that no further applications may be accepted or contracts issued regarding the insurance product identified in this order. .

4. Respondent shall furnish for approval or edit a draft of such notification, or proof of such notification to the Division within three (3) days of this emergency order. If applicable, Respondent, thereafter, within three (3) days of receipt by mail or by fax of the Division's approval or edits, shall mail such letter (in revised form if edited by the Division) to all such producers, brokers, sales persons, and other marketing outlets, and shall immediately thereafter file the sworn attestations that there has been full compliance with this provision.

OTHER MATTERS

1. Pursuant to § 10-3-904.6(1), C.R.S., Respondent may contest this Order and request a hearing in accordance with § 24-4-105(12), C.R.S.

2. Pursuant to § 10-3-904.6(5), C.R.S., the Commissioner may impose a civil penalty of $25,000.00 for each violation of this Order, and/or direct restitution.

3. Pursuant to § 10-3-906, C.R.S., Respondent's insurance contracts that are currently in place remain valid and enforceable by Respondent's insureds pursuant to the terms of such contracts. In addition, Respondent may be liable for the full amount of the claims or loss in the manner provided by the provisions of the insurance contracts in accordance with § 10-3-906, C.R.S.

4. This Order is effective immediately upon execution by the Commissioner or his designee.

SO ORDERED, this _____ day of August, 2004

_____
Doug Dean
Commissioner of Insurance

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within *EX PARTE* EMERGENCY ORDER TO CEASE AND DESIST THE UNAUTHORIZED AND UNLAWFUL TRANSACTION OF THE BUSINESS OF TITLE INSURANCE IN THE STATE OF COLORADO, upon all parties herein by depositing copies of same in the United States mail, **by certified mail, return receipt requested and postage prepaid and by regular mail,** at Denver, Colorado, this _____ day of August 2004, addressed to the last known addresses of Respondent, as follows:

Carl Lindner, III
President
Great American Assurance Company
580 Walnut St.
Cincinnati, OH 45202

CT Corporation
1675 Broadway, Suite 1200
Denver, CO 80202

Christopher L. Wise
Great American Insurance Companies
26 Belvidere Road
Hainsville, IL 60030

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Caryn Berumen
Compliance Analyst