

# Fenley & Bate, LLP

Curtis (Curt) W. Fenley, III +  
Warren T. McCollum

Curtis W. (Bill) Fenley, Jr. Of Counsel+  
Herman E. Bate Of Counsel + +  
Constance T. Slocomb Of Counsel+

## FACSIMILE TRANSMITTAL SHEET

SENT TO:

FROM: Curtis (Curt) Fenley, III/tjm

Ms. Melissa Mather (512) 477-2348  
Asst. Attorney General

Mr. Alexander J. Gonzales (512) 370-2850  
Winstead, P.C.

RE:

The State of Texas v. Gramercy Insurance Co.; Cause  
No. D-1-GV-12-001713; In the 53<sup>rd</sup> District Court of  
Travis County, Texas

SENDER'S REFERENCE NUMBER:

Matter No. 5861.001

ORIGINALS TO FOLLOW BY MAIL

No  Yes  Certified

NUMBER OF PAGES:

Date: December 17, 2012

URGENT  FOR REVIEW  PLEASE COMMENT  PLEASE REPLY  PLEASE RECYCLE

### CONFIDENTIAL ATTORNEY/CLIENT INFORMATION

The pages comprising this facsimile transmission contain confidential information from Fenley and Bate, L.L.P. this information is intended solely for the use by the individual entity named as recipient hereof. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents of this transmission is prohibited. If you have received this transmission in error, please notify us by telephone immediately so we may arrange to retrieve this transmission at no cost to you.

Lufkin Office  
224 E. Lufkin Avenue  
Lufkin, Texas 75902-0450  
TPN: (936) 634-3346  
FAX: (936) 639-5874

ATTORNEYS AT LAW  
office@fenley-bate.com  
www.fenley-bate.net

Livingston Office  
415 N. Washington, Suite B  
Livingston, Texas 77351  
TPN: (936) 327-1100  
FAX: (936) 327-1107

# Fenley & Bate, LLP

Curtis (Curt) W. Fenley, III +  
Warren T. McCollum

Curtis W. (Bill) Fenley, Jr. Of Counsel +  
Herman B. Bate Of Counsel + +  
Constance T. Stocomb Of Counsel +

December 17, 2012

Ms. Amalia Rodriguez,  
Travis County District Clerk  
P. O. Box 679003  
Austin, Texas 78767-9003

Re: The State of Texas v. Gramercy Insurance Company, Cause No. D-1-GV-12-001713; In the 53<sup>rd</sup> Judicial District Court of Travis County, Texas

Dear Ms. Rodriguez:

Enclosed please find for filing the original and a copy of Defendants' Motion to Lift or Modify Stay in the above-referenced matter. Please file in your usual manner and return the file-stamped copies in the enclosed, self-addressed stamped envelope.

Please contact me if you have questions. By copy of this letter, we are notifying all Counsel of record of this filing.

Very truly yours,

FENLEY & BATE, L.L.P.

Original Signed by

CURTIS (CURT) W. FENLEY, III  
Email – [cfenley@fenley-bate.com](mailto:cfenley@fenley-bate.com)  
CWFIII/tjm

Encls:

cc: Ms. Melissa Mather  
Assistant Attorney General

VIA FACSIMILE: (512) 477-2348

Mr. Alexander J. Gonzales  
Winstead, P.C.

VIA FACSIMILE: (512) 370-2850

Lufkin Office  
224 E. Lufkin Avenue  
Lufkin, Texas 75902-0450  
TPN: (936) 634-3346  
FAX: (936) 639-5874

ATTORNEYS AT LAW  
office @fenley-bate.com  
www.fenley-bate.net

Livingston Office  
415 N. Washington, Suite B  
Livingston, Texas 77351  
TPN: (936) 327-1100  
FAX: (936) 327-1107

•Fellow of the American  
College of Trust and  
Estate Counsel

•Board Certified Civil  
Trial Law Texas Board of  
Legal Specialization

+Board Certified Personal  
Injury, Trial Law, Texas  
Board of Legal  
Specialization

•Certified Public  
Accountant

Curtis W. Fenley, Sr.  
(1900-1980)

**IN THE 53<sup>rd</sup> JUDICIAL DISTRICT COURT OF TRAVIS COUNTY**

**STATE OF TEXAS**

**THE STATE OF TEXAS**

**v.**

**GRAMERCY INSURANCE COMPANY**

§  
§  
§  
§  
§

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

**MOTION TO LIFT OR MODIFY STAY**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **E.T.C., INC D/B/A ELAM TRUCKING COMPANY, PATRICK A. THOMPSON AND NATIONAL TRANSPORTATION ADJUSTERS, INC. ("Movants")**, parties in interest and pursuant to Section 443.008 (h) of the Insurer Receivership Act, move this Court for an Order to lift or modify the stay imposed by the December 4, 2012 Agreed Order Appointing Rehabilitator and Permanent Injunction and in support thereof would respectfully show the court as follows:

1. Movant, **E.T.C., INC D/B/A ELAM TRUCKING COMPANY**, entered into a policy of insurance coverage under Policy/Surety Number GIC 41-1900-00241 providing coverage from May 1, 2011 through May 1, 2012 (Exhibit 1).
2. Movant, **PATRICK A. THOMPSON**, was a driver for **E.T.C. INC., D/B/A ELAM TRUCKING COMPANY**, and was involved in an accident on or about December 2, 2011.
3. Movant, **NATIONAL TRANSPORTATION ADJUSTERS, INC.**, is a third party administrator of claims for and on behalf of Movant, **E.T.C., INC. D/B/A ELAM TRUCKING COMPANY**, and negotiated and set reserves for settlement of claims.
4. The Order provides, inter alia, for an injunction of Defendant, Gramercy Insurance Company and its agents from conducting Defendant's business and appoints the Commissioner as

Rehabilitator of Defendant, vesting all assets and control of assets with the Rehabilitator, including the suspension of payments of claims and obligations under the policies of insurance of Defendant.

5. The Order further permanently enjoins Movants from acting on behalf of Movants to resolve outstanding disputes.
6. Movants would respectfully request that the Stay and Injunction be lifted or modified to permit negotiations and resolution with the claimants in the accident of December 2, 2011. Movants would show that reasonable reserves have been established to effectuate a resolution and that ongoing settlement negotiations would be impeded by the delay of the Rehabilitation. The net policy reserves established for the claim are not necessary to a rehabilitation of Defendant because the amounts were established prior to the Order specifically for the purpose of the claim and based on the empirical review of claim. Movants will not be able to obtain replacement coverage or surety to address the claims already existing from the December 2, 2011 incident.
7. Movants request the Stay to be lifted or modified to permit Movants to proceed with the defense of the claims in CV-01772-12-09, William E. Allen and Ronda S. Allen v. E.T.C., Inc. d/b/a Elam Trucking Company and Patrick A. Thompson; in the District Court of Angelina County, Texas and to proceed with appropriate negotiations within the established reserves to resolve the above matter. Movants would show that delay of the negotiation would hinder the resolution of the action.

WHEREFORE, PREMISES CONSIDERED, Movants, **E.T.C., INC. D/B/A ELAM TRUCKING COMPANY, PATRICK A. THOMPSON AND NATIONAL TRANSPORTATION ADJUSTERS, INC.**, parties in interest, respectfully pray that it be granted

the relief sought as set forth herein, and for such other and further relief, at law or in equity, to which Movants may show themselves to be justly entitled.

Respectfully submitted,

Original Signed by

CURTIS (CURT) W. FENLEY, III  
**FENLEY & BATE, L.L.P.**  
P.O. Box 450  
Lufkin, Texas 75902-0450  
TPN: (936) 634-3346  
FXN: (936) 639-5874  
SBN: 06902010  
*Email: [cfenley@fenley-bate.com](mailto:cfenley@fenley-bate.com)*  
**ATTORNEY FOR THE MOVANTS**

**CERTIFICATE OF SERVICE**

I, the undersigned attorney of record in the above-numbered and styled cause, do hereby certify that on December 17, 2012, I served a true and correct copy of the foregoing Motion to Lift or Modify Stay to:

Ms. Melissa Mather  
Assistant attorney General  
Financial Litigation Division  
P.O. Box 12548  
Austin, Tx 78711-2548  
VIA FAX: 512-477-2348

- By certified mail
- By regular mail
- By overnight mail
- By hand delivery
- By Facsimile

Mr. Alexander J. Gonzales  
Winstead, P.C.  
401 Congress Avenue  
Suite 2100  
Austin, Tx 78701  
VIA FAX: 512-370-2850

- By certified mail
- By regular mail
- By overnight mail
- By hand delivery
- By Facsimile

Original Signed by

CURTIS (CURT) W. FENLEY, III

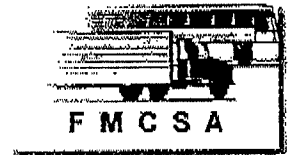
**FMCSA Motor Carrier**

USDOT Number: 448301

Docket Number: MC322695

Legal Name: E T C, INC.

DBA (Doing-Business-As) Name ELAM TRUCKING COMPANY

**Insurance History:**

|   |                    |                        |                 |
|---|--------------------|------------------------|-----------------|
| Form: 91X                               | Type: BIPD/Primary |                        |                 |
| Policy/Surety Number: GIC 41-1900-00241 | Coverage From      | \$0                    | To: \$1,000,000 |
| Effective Date From: 05/01/2011         | To: 05/01/2012     | Disposition: Cancelled |                 |

Insurance Carrier GRAMERCY INSURANCE COMPANY  
 Attn: LINDA BRANDON  
 Address: 5000 QUOROM DR., STE. 111  
 DALLAS, TX 75254-7583 US  
 Telephone: (888) 202 - 0422 Fax: (972) 233 - 6252

|   |                    |                        |                 |
|---|--------------------|------------------------|-----------------|
| Form: 91X                               | Type: BIPD/Primary |                        |                 |
| Policy/Surety Number: GIC 41-1900-00159 | Coverage From      | \$0                    | To: \$1,000,000 |
| Effective Date From: 05/01/2010         | To: 05/01/2011     | Disposition: Cancelled |                 |

Insurance Carrier GRAMERCY INSURANCE COMPANY  
 Attn: LINDA BRANDON  
 Address: 5000 QUOROM DR., STE. 111  
 DALLAS, TX 75254-7583 US  
 Telephone: (888) 202 - 0422 Fax: (972) 233 - 6252

|                                 |                    |                        |                 |
|---------------------------------|--------------------|------------------------|-----------------|
| Form: 91X                       | Type: BIPD/Primary |                        |                 |
| Policy/Surety Number: SAP000320 | Coverage From      | \$0                    | To: \$1,000,000 |
| Effective Date From: 05/01/2009 | To: 05/10/2010     | Disposition: Cancelled |                 |

Insurance Carrier STATE NATIONAL INSURANCE CO., INC.  
 Attn: ANNALaura MILLER  
 Address: 1900 L. DON DODSON BLVD.  
 BEDFORD, TX 76021 US  
 Telephone: (800) 877 - 4567 Fax: (877) 894 - 6930

|                                 |                    |                       |                 |
|---------------------------------|--------------------|-----------------------|-----------------|
| Form: 91X                       | Type: BIPD/Primary |                       |                 |
| Policy/Surety Number: SAP000320 | Coverage From      | \$0                   | To: \$1,000,000 |
| Effective Date From: 05/01/2009 | To: 05/01/2010     | Disposition: Replaced |                 |

Insurance Carrier STATE NATIONAL INSURANCE CO., INC.  
 Attn: ANNALaura MILLER  
 Address: 1900 L. DON DODSON BLVD.  
 BEDFORD, TX 76021 US  
 Telephone: (800) 877 - 4567 Fax: (877) 894 - 6930

