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**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF UTAH**

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<p><b>COMPLAINANT:</b></p> <p>UTAH INSURANCE DEPARTMENT</p> <p><b>RESPONDENT:</b></p> <p>BERKSHIRE CREEK INSURANCE COMPANY, INC. 16485 Laguna Canyon Road, Suite 250 Irvine, CA 92618-3849 Utah Co. Id. No. 168009</p>	<p><b>STIPULATION AND ORDER</b></p> <p>Docket No. 2013-108 CA</p> <p>Enf. Case No. 3350</p>
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**STIPULATION**

1. Respondent, Berkshire Insurance Company, Inc. is a licensed Captive Insurer domiciled in the State of Utah. Utah Company Identification No. 168009.
2. Respondent stipulates with the Complainant, Utah Insurance Department, as follows:
  - a. If a hearing were held, witnesses called by the Complainant could offer and introduce evidence that would support the Findings of Fact herein;
  - b. Respondent admits the Findings of Fact and Conclusions made therefrom;

c. Respondent stipulates to the summary entry of the Order herein which shall be in lieu of other administrative proceedings by Complainant in this matter; and

d. Respondent and Complainant have negotiated the terms of the Order entered herein and Respondent agrees to its entry and further agrees to be bound by all its terms.

3. Respondent is aware of its right to a hearing at which it may be represented by counsel, present evidence, and cross-examine witnesses. Respondent has irrevocably waived its right to such hearing and to any appeal related thereto.


4. Respondent admits the jurisdiction of the State of Utah Insurance Commissioner as to all matters herein.

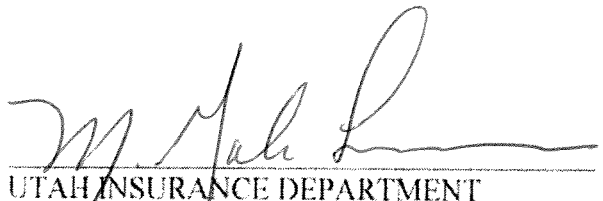
5. Respondent is acting herein free from any duress or coercion of any kind or nature, having been advised fully as to its rights set forth herein.

6. Respondent acknowledges that the issuance of this Order by the Commissioner is solely for purpose of disposition of the matter entitled herein.

7. If this agreement is not accepted or the penalty is not imposed as agreed upon by the parties, then this Stipulation will be void or of no effect.

DATED this 13<sup>th</sup> day of August, 2013.

  
BERKSHIRE CREEK INSURANCE COMPANY,  
INC.  
David M. Decker, President

  
UTAH INSURANCE DEPARTMENT  
M. Gale Lemmon, Assistant Attorney General

Based upon the foregoing Stipulation and information in the file, the Presiding Officer makes the following Findings of Fact:

**FINDINGS OF FACT**

1. In March, 2012, Active Captive Management, on behalf of Respondent, requested approval of a loan to a related party in the amount of \$400,000.
2. On March 26, 2012, the Department gave approval for a loan in the amount of \$340,000. Subsequently, revised documents including a copy of a promissory note in the amount of \$340,000 was submitted to the Department.
3. On October 16, 2012, Respondent's balance sheet reflected the loan in the amount of \$400,000. Department records show that no further request for approval of the additional \$60,000 had been made, nor had approval been granted.
4. On October 29, 2012, Respondent made a request for approval to make another loan in the amount of \$600,000. The Department requested copies of the proposed promissory note and guaranty for the loan.
5. On November 1, 2012, Active Captive Management sent an email to the Department stating that after discussions with Respondent, they decided to put the loan on hold, and that the Department would be notified should they pursue the loan further.
6. In November 2012, Active Captive Management submitted another approval request to the Department to make a loan in the amount of \$600,000. After review, the Department determined that a loan in that amount would compromise Respondent's financial position and denied the application.
7. Following the November denial by the Department, Active Captive Management indicated they would communicate the Department's concerns to Respondent and resubmit for

approval.

8. On February 11, 2013, the Department received a request for "retroactive approval" of the \$600,000 loan denied in November 2012. On December 31, 2012, the balance sheet indicated Active Captive Management had booked the \$600,000 loan despite the Department's previous denial.

9. Respondent has agreed to an administrative forfeiture in the amount of \$2,000 for the first loan and \$4,000 for the second loan for a total forfeiture in the amount of \$6,000.00.

Based upon the foregoing Stipulation and Findings of Fact, the Presiding Officer enters the following Conclusions of Law:

#### **CONCLUSIONS OF LAW**

1. Utah Code Annotated Section 31A-37-302 sets out the applicable allowances and restrictions on investments of captive insurance companies. The statute requires prior written approval of the Commissioner for the two loans at issue.

2. Respondent violated the above provisions by failing to receive prior written approval for the amount of the first loan and by seeking retroactive approval for the second loan.

4. The agreement between the Department and Respondent for an administrative forfeiture in the amount of \$6,000.00 is appropriate in this matter.

Based upon the foregoing Stipulation, Findings of Fact and Conclusions of Law, the

Presiding Officer herewith enters the following Order:

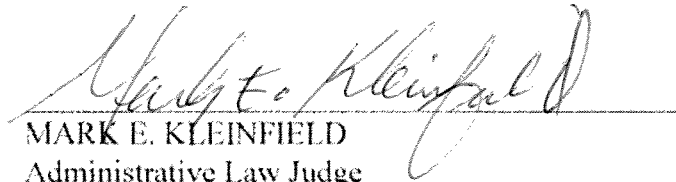
**ORDER**

**IT IS HEREBY ORDERED:**

1. Respondent, Berkshire Creek Insurance Company, Inc. is assessed an administrative forfeiture in the amount of \$6,000.00.
2. The forfeiture shall be paid to the Department within 30 days of the date of this Order.

DATED this 13<sup>th</sup> day of August, 2013.

TODD E KISER  
Insurance Commissioner



MARK E. KLEINFELD  
Administrative Law Judge  
Utah Insurance Department  
State Office Building, Room 3110  
Salt Lake City, Utah 84114  
Telephone: (801) 538-3800

**NOTIFICATION**

You are hereby notified that a failure to obey an Order of the Commissioner may subject you to further penalties, including forfeiture of up to \$5,000 per violation and the suspension or revocation of your license and the filing of an action in district court, which may impose

forfeitures of up to \$10,000 per day for continued violation.

You are further notified that other jurisdictions in which you may be licensed may require that you report this action to them.

CERTIFICATE OF MAILING

I do hereby certify that on this date I mailed, by regular mail postage prepaid, a true and correct copy of the attached:

STIPULATION  
&  
ORDER

To the following:

Berkshire Creek Insurance Company, Inc.  
Attn: Deanna S. Gilpin  
16485 Laguna Canyon Road, Suite 250  
Irvine, CA 92618-3849

DATED this 13<sup>th</sup> day August, 2013



Linda Hardy  
Market Conduct  
801-538-3860  
[lhardy@utah.gov](mailto:lhardy@utah.gov)

**UTAH**  
**Invoice - Original**

Printed Date: August 13, 2013  
 Invoice Date: August 13, 2013  
 Balance Due: \$6,000.00  
 Due Date: September 12, 2013  
 Invoice ID: 648154  
 Payor ID: 168009

DEANNA GILPIN  
 BERKSHIRE CREEK INSURANCE COMPANY INC  
 C/O DEANNA S GILPIN  
 16485 LAGUNA CANYON RD STE 250  
 IRVINE CA 92618-3849

Item Description	Amount
8/13/2013 Monetary Penalty Company E-Case 3350 Docket # 2013-108 CA	\$6,000.00
<b>Original Amount Due</b>	<u>\$6,000.00</u>
<b>Payments Received</b>	
	<u><b>Balance Due</b></u>

**UTAH**  
**Invoice - Original**

Invoice Date: August 13, 2013  
 Balance Due: \$6,000.00  
 Due Date: September 12, 2013  
 Invoice ID: 648154  
 Payor ID: 168009  
 Payor Name: BERKSHIRE CREEK  
 INSURANCE  
 COMPANY, INC.

Make checks payable to: Utah Insurance Department

Send payment to:

Utah Insurance Department  
 3110 State Office Building  
 Salt Lake City, UT 84114-6901