

COPY

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

In Re: The Receivership of SOUTHERN
FAMILY INSURANCE COMPANY, a Florida
corporation.

CASE NO.: 06-CA-1060

In Re: The Receivership of ATLANTIC
PREFERRED INSURANCE COMPANY,
a Florida corporation.

CASE NO.: 06-CA-1083

In Re: The Receivership of FLORIDA
PREFERRED PROPERTY INSURANCE
COMPANY, a Florida corporation.

CASE NO.: 06-CA-1198

BOB INZER
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

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FILED
CIRCUIT CIVIL DIV.

**RECEIVER'S RESPONSE TO RESPONDENTS' AFFILIATES' EMERGENCY
MOTION TO VACATE ORDER APPROVING RECEIVER'S PLAN OF
LIQUIDATION AND TRANSITION**

The Department of Financial Services of the State of Florida, in its capacity as Receiver for Southern Family Insurance Company, Atlantic Preferred Insurance Company and Florida Preferred Property Insurance Company (hereinafter the "Receiver") hereby files this response in opposition to the Respondent's affiliates (hereinafter the "Poe affiliates") Emergency Motion to Vacate Order Approving Receiver's Plan of Liquidation and Transition, and in support thereof states as follows:

I. Introduction and Background.

1. These Receiverships came about because of the recent insolvencies of the above-named insurance companies. The companies primarily wrote homeowners insurance. As stated by the Poe affiliates, the Court's Liquidation Orders were effective on June 1, 2006, the first day of the 2006 hurricane season. Because of these insolvencies and liquidations, 330,000 policyholders suddenly faced the difficult challenge of finding replacement coverage in the admitted market, at the time of year when Floridians are

most-exposed to natural disasters. Strangely, but not surprisingly, the Poe affiliates, in their Emergency Motion, make no mention of the plight of, or difficulties facing, the former customers of all three insurance companies. Any consideration for the 330,000 policyholders is completely absent in the pleading.

2. The Poe affiliates bear much of the responsibility for the situation they now complain about. According to representatives of the Office of Insurance Regulation (hereinafter the "OIR"), the OIR first became concerned about the Respondent's financial condition shortly after Hurricane Wilma made landfall in October of 2005. While OIR had no definitive data to analyze (typically, there is a several month lag in developing accurate loss information), the insurance companies' management (also the management of the Poe affiliates) knew the situation was dire and chose not to disclose the true state of affairs for several months. When the Office approached the insurance companies' management about regulatory intervention, the insurance companies' management insisted additional capital would be forthcoming. It wasn't until they were facing irrefutable evidence of deep insolvency, and the certainty of Court-ordered liquidation, that the Poe companies acted in the best interests of their policyholders and consented to Liquidation in May 2006. The consent for Florida Preferred Property Insurance Company occurred barely more than one business day before the scheduled hearing. The Receiver expended much effort to prepare for contested proceedings. But for Poe's intransigence, this time could have been better spent facilitating the transition, including the Receiver's Plan of Liquidation and Transition approved by the court on June 2, 2006.

3. More importantly, these same Poe affiliates made the business decision to conduct all the business of the insurance companies through these affiliates. Had the

insurers been self-sufficient with their own employees, facilities and equipment, there would be no need to utilize the affiliates' resources. Also omitted in the Poe affiliates' Emergency Motion is that the insurance companies in receivership have already paid Poe Insurance Managers 26.5% of their premiums for servicing the policies. These fees include the management fee and the agents' commissions. The Poe affiliates have previously stated that this management fee was "fully earned" at the policy inception date. The Receiver strongly disagrees. The standard practice in the industry is that such fees are earned pro rata, over the term of the policy. In the Receiver's opinion, the Poe affiliates' are seeking additional compensation for the use of facilities it has already agreed to, and been paid to provide. Simply stated, this position is disingenuous, illogical, and should be summarily dismissed by the Court.

4. The Receiver's over-arching concern and first priority is the protection of 330,000 policyholders. This concern has been the sole focus of the efforts of the Receiver, the Florida Insurance Guaranty Association (hereinafter "FIGA"), the Florida Office of Insurance Regulation (hereinafter "OIR"), and Citizens Property Insurance Company (hereinafter "Citizens"). To that end, the following actions have already taken place and/or are underway:

a. FIGA is paying loss claims, attending previously scheduled mediations, and, on June 2, 2006, mailed information to the nearly 22,000 pending loss claimants providing contact information. FIGA has established a call center just for the Poe claims. The transition to FIGA has been seamless.

b. To the greatest extent feasible, the Receiver and Citizens are assisting policyholders in finding alternative coverage. Innumerable conference

calls, meetings and e-mails to work out the logistics of this massive undertaking have been taking place for more than two plus months. The Receiver, FIGA, OIR and Citizens have expedited processes, sought solutions “outside the box,” and agreed to take steps that are unprecedented. Some of these unprecedented steps are reflected in the Receiver’s Plan of Liquidation and Transition. Much effort has been expended developing FAQs for websites, telephone inquiries and use in mailing. The Receiver, with the assistance of Citizens, has worked with agents’ associations to enable the agents to fulfill their statutory duties and help their customers.

5. The scope of this challenge is a massive undertaking. For example, the time necessary to process and mail a single communication to approximately 330,000 policyholders is five to ten business days and costs approximately a quarter of a million dollars.

II. Response to specific allegations in Emergency Motion.

6. First, the Receiver vigorously disputes the assertion in Paragraph 1 that its conduct is or has been in any way, shape, or form, “inappropriate.” Every action taken by the Receiver has been to protect the interests of the policyholders for these three insolvent insurance companies. As required by Chapter 631, Florida Statutes, the Receiver presented its Plan of Liquidation and Transition to the Court for approval and finds no provision within the chapter that requires that the Receiver provide for the participation of the companies, affiliates or other party in the drafting and submission of that Plan. The Receiver regrets that due to a miscommunication, counsel for the Poe affiliates was not provided a copy of the Plan when filed late Thursday afternoon on June 1, 2006. When

this oversight was brought to the Receiver's attention, it was promptly provided. However, the Receiver does not believe that the Poe affiliates had any right to participate in the formulation of the plan, have any right to review or approve the plan, have standing to challenge any aspect of the plan, and concomitantly, have any right to seek to have the order approving the plan vacated.

7. Paragraphs 2 through 10 of the Emergency Motion present a chronology, which, while not entirely accurate, is irrelevant to the issue before the Court.

8. Paragraph 11 states that by filing a Plan of Liquidation and Transition after the Liquidation Orders, the Receiver was "essentially deferring some of the issues which would have otherwise been addressed in the liquidation orders." The implication is that the Receiver conspiratorially deprived the Poe affiliates of the right to participate in the drafting and/or approval of the Plan of Liquidation. This inference is simply without merit. Typically, a Plan of Liquidation is not prepared and submitted for approval until several months after the entry of an Order of Liquidation. Owing to the pre-liquidation and post-liquidation actions of the Poe affiliates, the luxury of several months to prepare a Plan of Liquidation is something the Receiver just does not have. The timing of the Poe insurance companies' consents to Liquidation (one occurring less than two business days before the scheduled hearing), the unprecedented size of the insolvencies, the fast approaching hurricane season, and the public interest mandated that the Receiver take immediate action.

9. In Paragraph 15, the Poe affiliates state that the Receiver presented the Plan of Liquidation to the Court "and represented that there was no objection to the plan." The statement is in part true. The Receiver made no representation concerning the

affiliates' position on the Plan; however, simply stated, the affiliates lack standing to object to a Plan that contemplates the use of facilities that have already been paid for by the insurance companies. No predicate right to object on the part of the affiliates exists, anymore than any other contracting entity could object to providing what it previously agreed to provide, and been paid for.

10. The "dramatic impact" on the business of the affiliates referred to in Paragraph 16 of the Emergency Motion was proximately caused by the insolvencies of Southern Family Insurance Company (hereinafter the "SFIC"), Atlantic Preferred Insurance Company (hereinafter the "APIC"), and Florida Preferred Property Insurance Company (hereinafter the "FPPIC"), and not any action taken or contemplated by, or decision made by the Receiver, FIGA, Citizens, or OIR. The Plan of Liquidation and Transition seeks to mute and lessen the "dramatic impact" that is already being felt by policyholders because of these insolvencies.

11. In Paragraph 17 of the Emergency Motion, the Poe affiliates state: "The Receiver has not demonstrated any justification or legal basis for Citizens to use the Affiliates' computer systems for a year or more when the Receiver will no longer be in need of policy administration or claims functions." This statement is myopic. It is the policyholders who will need policy administration and claims functions for the remainder of the policy terms. These are the same policyholders who have already paid the Poe affiliates for that service. The Poe affiliates have made the business decisions that now prevent the insurance companies from winding up their business affairs independently. The management of these affiliates is the same management of the insurance companies who waited until the absolute last minute to consent to Liquidation and at this time

continue to attempt to delay the best possible transition for the policyholders of the three insolvent insurance companies.

12. Receivership proceedings under Chapter 631, Florida Statutes, sound in equity. As provided in Section 631.001(3)(a), Florida Statutes, Receiverships are to be administered to “Protect the interests of policyholders, creditors, and other claimants and the public.” The approved Plan of Liquidation and Transition clearly fulfills this purpose.

13. Paragraphs 15AA of the SFIC and APIC and 14AA of the FPPIC Liquidation Orders afford the Receiver 90 days to accept or reject any existing contract. The MGA agreement with Poe Insurance Managers, LLC, is within the ambit of this provision. Moreover, the ability of the Poe affiliates to perform is very much in doubt. The Receiver has been advised on past occasions that the manager would not be able to meet its payroll unless the Receiver advanced funds to the manager. The affiliates have also suggested they might file bankruptcy.

14. The exact amounts due the estates from Poe Insurance Managers, LLC, and Poe and Associates, LLC, for unearned premium, management fees, agent commissions, etc., will not be known for some time. It is certain to be many tens of millions of dollars more than the value of facilities provided by the Poe affiliates pursuant to the Receiver’s Plan of Liquidation and Transition.

15. Unless directed by the Court, the Receiver will not compromise any cause of action the estates might have against the Poe affiliates, officers and/or directors, whether those causes of action sound in tort, contract, or quasi-contract, or as restitution in a criminal proceeding. One of the central mandates of the Receiver’s duties is to

maximize recovery of assets for the benefit of the insurer's estate. *Section 631.001(3)(h), Florida Statutes.*

16. In Paragraph 18 of the Emergency Motion, the Poe affiliates take exception to the business decision of Citizens to write insurance directly with the policyholders previously serviced by Poe and Associates, LLC. The concern is without merit, and, once again, places the Poe affiliates' interest, by benefiting from this insolvency, ahead of the public interest. First, the treatment afforded Poe and Associates is no different than what occurs in the typical insolvency. As in the typical insolvency, Poe and Associates' relationship with the policyholders terminates on the date the policies are cancelled (in this case, at 12:01 a.m. on July 01, 2006). Any commission for the balance of the policy term is unearned, and must be returned to the estate. This unearned commission is returned to the policyholder, as part of the unearned premium. Recognizing the grave potential consequences to the former insureds of SFIC, APIC, and FPPIC, Citizens has agreed to provide coverage for the policyholders for the balance of the prior policy term, at rates which are significantly lower than those otherwise applicable. Citizens made a business decision to take the policyholders formerly serviced by Poe and Associates, LLC, and service them directly. *Section 627.351(6)(v)(6), Florida Statutes (2006).* It is hardly surprising that Citizens does not want to extend a benefit, at a cost of millions of dollars, to an affiliate of the companies which precipitated this crisis. Indeed, any shortfall suffered by Citizens is ultimately born by all the policyholders of this state. To suggest that this publicly borne potential shortfall should be exacerbated to advance the private interests of Poe and Associates, LLC, is patently absurd.

17. The Poe affiliates have failed to demonstrate that this Court's order approving the Receiver's Plan of Liquidation and Transition is in any way, shape or form "legally unsound."

18. Moreover, Poe and Associates, LLC, could protect its future commissions by finding coverage for these policyholders with a carrier other than the state-mandated carrier of last resort. The Receiver recognizes that in this market, such coverage is extremely difficult to find.

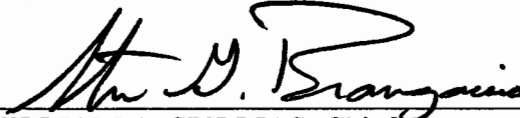
19. Finally, while the pleading is styled as an Emergency Motion, the movants have failed to identify, let alone demonstrate, any aspect of the Order which creates an "emergency." The characterization in Paragraph 20 of the Emergency Motion of the Receiver's actions as "underhanded," is insulting, without merit, and avoids the fact that the Poe affiliates have been fully compensated in advance for services it will likely never provide. The assertion that the Poe affiliates should have notice of or standing to challenge the orderly administration of these receiverships is devoid of legal, factual, or equitable merit. The crisis situation that the Receiver, Citizens and FIGA face in protecting the policyholders is in part because of the Poe affiliates.

III. CONCLUSION.

20. For the reasons cited in this Response, the Poe Affiliates Emergency Motion to Vacate Order Approving Receiver's Plan of Liquidation and Transition should be denied in every respect.

Dated this 13th day of June, 2006.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W. A. Spillias", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished via facsimile and overnight mail to Michael L. Chapman, Richard B. Hadlow and Robert J. Grammig, Holland and Knight, 100 North Tampa Street, Suite 4100, Tampa, Florida 33602; Miriam O. Victorian and Timothy J. Meenan, Blank, Meenan & Dunphy, 204 South Monroe Street, Tallahassee, Florida 32301; Steve Parton and Belinda Miller, OIR, 200 East Gaines Street, Tallahassee, Florida 32399; Karen Asher-Cohen, Radey Thomas Yon & Clark, Suite 200, 301 S. Bronough Street, Tallahassee, Florida 32301; Perry Cone, Citizens, 101 North Monroe Street, 10th Floor, Tallahassee, Florida 32301 and to William F. Poe, Sr., Chairman, Poe Insurance Holdings, LLC, 302 Knights Run Avenue, Suite 700, Tampa, Florida 33602, this 13th day of June, 2006.



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