

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

**STATE OF FLORIDA, ex. rel., the  
DEPARTMENT OF FINANCIAL  
SERVICES OF THE STATE OF FLORIDA,**

**Relator,**

vs.

**CASE NO.: 2006 CA \_\_\_\_\_**

**FLORIDA PREFERRED PROPERTY  
INSURANCE COMPANY,**

**A Florida Corporation,**

**Respondent.**

**VERIFIED PETITION FOR AN ORDER TO SHOW CAUSE AS TO WHY  
THE DEPARTMENT OF FINANCIAL SERVICES SHOULD NOT BE  
APPOINTED RECEIVER FOR PURPOSES OF LIQUIDATION**

The State of Florida, ex rel., the Florida Department of Financial Services (hereinafter the "Department"), by counsel, applies to this Court for the entry of an Order to Show Cause on the appointment of the Department as the Receiver of Florida Preferred Property Insurance Company (hereinafter "Respondent"), for purposes of liquidation and giving notice of automatic stay. In support of its petition, the Department would show:

1. Respondent is a Florida corporation with its principal place of business at 302 Knights Run Avenue, Suite 700, Tampa, Florida, 33602. Respondent is authorized to conduct business as a property and casualty insurer in this state.
2. Grounds exist for a formal delinquency proceeding against Respondent under Part I, Chapter 631, Florida Statutes, in that Respondent is violating Sections

631.051(1) and (3), and Section 631.061(1), Florida Statutes. Respondent is insolvent within the meaning of Sections 631.061(1), 631.051(1), and 631.011(14), Florida Statutes. Respondent lacks sufficient catastrophic reinsurance coverage to mitigate its exposure to possible hurricane losses rendering its further transaction of insurance presently and prospectively hazardous to its policyholders, creditors, and the public.

3. Section 631.021(3), Florida Statutes, provides that a delinquency proceeding pursuant to Chapter 631, Florida Statutes, constitutes the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer. Further, Section 631.025(2), Florida Statutes authorizes the Department to initiate delinquency proceedings against any “insurer” if the statutory grounds are present as to that insurer.

4. By letter dated, May 9, 2006, to the Honorable Tom Gallagher, Chief Financial Officer of the State of Florida, Kevin McCarty, Commissioner of the Office of Insurance Regulation, recommended that delinquency proceedings, pursuant to Chapter 631, Florida Statutes, be initiated against Florida Preferred Property Insurance Company. This letter is attached as Attachment A.

5. Respondent is insolvent in that it is unable to pay its debts as they become due in the usual course of business and accordingly, Respondent is insolvent within the meaning of Sections 631.011(12), (14), and 631.051(1), Florida Statutes. See the affidavits of Joseph Boor and Claude Mueller, included in this Petition as Attachments B and C, respectively, and incorporated by reference herein.

6. If all of Respondent’s statutorily admitted assets were made immediately available, Respondent’s liabilities exceed its statutorily admitted assets. As reflected in the affidavits of Mr. Mueller and Mr. Boor, the best “point estimate” of the insolvency

based on current data and actuarial analysis is approximately \$10.2 million. However, based on actuarial analyses, the insolvency could range between \$0.8 and \$21.8 million.

7. Respondent sustained significant losses as a result of the eight hurricanes which made landfall in Florida during the 2004 and 2005 hurricane seasons. These losses were, to a large degree, mitigated by Respondent's program of reinsurance, which transferred the exposure to other insurers. Coverage under this program, which expires June 30, 2006, has been virtually exhausted. Thus, if a hurricane makes landfall in Florida before June 30, 2006, Florida Preferred Property Insurance Company will likely sustain losses for which there is no reinsurance. This would further exacerbate respondent's insolvency. Respondent has no reinsurance coverage for the next (July 1, 2006 – June 30, 2007) year.

8. Therefore, Florida Preferred Property Insurance Company is in violation of Section 631.051 (3), Florida Statutes, in that it is in "such condition or is using or has been subject to such methods or practices in the conduct of its business, as to render its further transaction of insurance presently or prospectively hazardous to its policyholders, creditors, stockholders, or the public.

9. Florida Preferred Property Insurance Company has approximately 139,000 policyholders who must be transitioned to a solvent insurer prior to the beginning of hurricane season.

10. Despite the opportunity for the officers, shareholders, and affiliates of Respondent to inject additional capital into Florida Preferred Property Insurance Company, no additional capital has been provided.

11. The Receiver believes that Respondent must be liquidated immediately to protect the remaining assets of Respondent for the benefit of its policyholders, creditors and the public, as well as assuring for the orderly transition of these policyholders to one or more solvent insurers.

12. Sections 631.051 (3), and 631.061, Florida Statutes, authorize the Department to apply to this Court for an Order directing it to liquidate a domestic insurer upon finding “the insurer to be in such condition, or is using or has been subject to such methods or practices in the conduct of its business, as to render its further transaction of insurance presently or prospectively hazardous to its policyholders, creditors, stockholders, or to the public.”

13. By virtue of Respondent’s failure to have adequate catastrophe reinsurance, and its insolvency, pursuant to Section 631.051 (1) and (3), and Section 631.061, Florida Statutes, the Department is authorized to petition this Court for an Order directing it to liquidate a domestic insurer upon the existence of any grounds specified therein.

14. As the risk to its policyholders is substantial, liquidation, not rehabilitation, is the appropriate remedy. *See Sections 631.051 (1), (3), and 631.061 (1), Florida Statutes.* Further, since the onset of hurricane season is less than a month away, a hearing on an Order to Show Cause entered by the Court should be conducted at the earliest available opportunity.

15.. The Department has found that grounds exist pursuant to Sections 631.051 and 631.061, Florida Statutes, for the entry of an Order to Show Cause as to why the Department should not be appointed the Receiver of Respondent for purposes of liquidation. The specific grounds are subsections 631.061(1) and 631.051 (1) and (3), Florida Statutes.

**WHEREFORE**, the Department respectfully requests this Court enter an order:

A. Directing the Respondent to appear before this Court on a short day certain and show good cause, if any, as to why the Department should not be appointed Receiver of Respondent for purposes of liquidation under the provisions of Chapter 631, Florida Statutes.

B. Directing Respondent, its parent corporation, subsidiaries, or affiliated persons controlled by either the Respondent or the parent corporation, to make their books, documents, accounts, records and affairs pertaining to the Respondent available for inspection and examination by the Department during normal business hours.

C. Requiring Respondent to file a written response along with any defenses it may have to the Department's allegations within 10 days of the service of this Order.

D. Giving notice of the automatic stay provisions of Section 631.041(1), Florida Statutes.

1) Notice should be given that, pursuant to Section 631.041(1), Florida Statutes, the filing of the Department's initial petition herein operates as an automatic stay applicable to all persons and entities, other than the Receiver, which shall be permanent and survive the entry of the order, and which prohibits:

a) The commencement or continuation of judicial, administrative or other action or proceeding against the insurer or against its assets or any part thereof;

- b) The enforcement of a judgment against the insurer or an affiliate obtained either before or after the commencement of the delinquency proceeding;
- c) Any act to obtain possession of property of the insurer;
- d) Any act to create, perfect or enforce a lien against property of the insurer, except a secured claim as defined in Section 631.011(21), Florida Statutes;
- e) Any action to collect, assess or recover a claim against the insurer, except claims as provided for under Chapter 631;
- f) The setoff or offset of any debt owing to the insurer except offsets as provided in Section 631.281, Florida Statutes.

E. This Court should retain jurisdiction of this cause for the purpose of granting such other and further relief as from time to time shall be deemed appropriate.

**AND FURTHER**, at hearing or on consent of Respondents, if this Court determines that a receiver should be appointed, that the Court enter an order as follows:

F. The Department of Financial Services of the State of Florida should be appointed Receiver of Respondent for purposes of liquidation.

G. The Receiver should be authorized and directed to:

- a) Take immediate possession of all the property, assets, and estate, and all other property of every kind whatsoever and wherever located belonging to Respondent pursuant to Sections 631.111 and 631.141, Florida Statutes, including but not limited to: offices maintained by the Respondent, rights of action, books, papers, evidences of debt, bank

accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, any and all automobiles, wherever situate and however titled, whether in the possession of Respondent or its officers, directors, trustees, employees, consultants, attorneys, agents or affiliates and all real property of Respondent, wherever situate, whether in the possession of Respondent or its officers, directors, trustees, employees, consultants, attorneys, agents or affiliates.

b) Liquidate the assets of Respondent, including but not limited to, funds held by Respondent's agents, subagents, producing agents, brokers, solicitors, service representatives or others under agency contracts or otherwise which are due and unpaid to Respondent, including premiums, unearned commissions, agents' balances, agents' reserve funds, and subrogation recoveries.

c) Employ and authorize the compensation of legal counsel, actuaries, accountants, clerks, consultants, and such assistants as it deems necessary, purchase or lease personal or real property as it deems necessary, and authorize the payment of the expenses of these proceedings and the necessary incidents thereof, as approved by the Court, to be paid out of the funds or assets of the Respondent in the possession of the Receiver or coming into its possession.

d) Reimburse such employees, from the funds of this receivership, for their actual necessary and reasonable expenses incurred while traveling on the business of this receivership.

e) Not defend or accept service of process on legal actions wherein the Respondent, the Receiver, or the insured is a party defendant, commenced either prior to or subsequent to the order, without authorization of this Court; except, however, in actions where Respondent is a nominal party, as in certain foreclosure actions, and the action does not affect a claim against or adversely affect the assets of Respondent, the Receiver may file appropriate pleadings in its discretion.

f) Commence and maintain all legal actions necessary, wherever necessary, for the proper administration of this receivership proceeding.

g) Collect all debts which are economically feasible to collect which are due and owing to the Respondent.

h) Deposit funds and maintain bank accounts in accordance with Section 631.221, Florida Statutes.

i) Take possession of all Respondent's securities and certificates of deposit on deposit with the Treasurer of Florida or any similar official of any other state, if any, and convert to cash as much as may be necessary, in its judgment, to pay the expenses of administration of this receivership.

j) Publish notice specifying the time and place fixed for the filing of claims with the Receiver once each week for three consecutive weeks in the Florida Administrative Weekly published by the Secretary of State, and at least once in the Florida Bar News and to publish notice by similar methods in all states where Respondents may have issued policies of insurance.

k) Negotiate and settle subrogation claims and Final Judgments up to and including the sum of Twenty Thousand Dollars (\$20,000.00) without further order of this Court.

l) Sell any salvage recovered property having value of not more than Twenty Thousand Dollars (\$20,000.00) without further order of this Court.

m) Give notice of this proceeding to Respondent's agents pursuant to Section 631.341, Florida Statutes, and to its insureds, if any.

n) All officers, directors, trustees, administrators, agents and employees and all other persons representing Respondent or currently employed or utilized by Respondent in connection with the conduct of its business be discharged forthwith.

o) Any officer, director, manager, trustee, administrator, attorney, agent, accountant, actuary, broker, employee, adjuster, independent contractor, or affiliate of Respondent and any other person who possesses or possessed any executive authority over, or who exercises or exercised any control over, any segment of

Respondent's affairs or the affairs of its affiliates be required to fully cooperate with the Receiver, pursuant to Section 631.391, Florida Statutes, notwithstanding the provisions of the above paragraph.

p) Title to all property, real or personal, all contracts, rights of action and all books and records of Respondent, wherever located, be vested in the Receiver pursuant to Sections 631.111 and 631.141, Florida Statutes.

q) All attorneys employed by Respondent as of the date of the Order, within 10 days notice of the Order, be required to report to the Receiver on the name, company claim number and status of each file they are handling on behalf of the Respondent. Said report should also include an accounting of any funds received from or on behalf of the Respondent. All attorneys employed by Respondent should be discharged as of the date of the Order unless their services are retained by the Receiver. All attorneys employed by Respondent should be advised that pursuant to Section 631.011(21), Florida Statutes, a claim based on mere possession does not create a secured claim and all attorneys employed by Respondent, pursuant to In Re the Receivership of Syndicate Two, Inc., 538 So.2d 945 (Fla. 1<sup>st</sup> DCA 1989), who are in possession of litigation files or other material, documents or records belonging to or relating to work performed by the attorney on behalf of Respondent should be required to deliver such litigation files, material, documents or records intact and without purging to the Receiver, on

request, notwithstanding any claim of a retaining lien which, if otherwise valid, should not be extinguished by the delivery of these documents.

r) All agents, brokers or other persons having sold policies of insurance and/or collected premiums on behalf of the Respondent should be required to account for and pay all premiums and commissions unearned due to cancellation of policies by the Order or in the normal course of business owed to the Respondent directly to the Receiver within 30 days of demand by the Receiver or appear before this Court to show cause, if any they may have, as to why they should not be required to account to the Receiver or be held in contempt of Court for violation of the provisions of the Order. No agent, broker, premium finance company or other person should use premium monies owed to the Respondent for refund of unearned premium or for any purpose other than payment to the Receiver.

s) Any premium finance company which has entered into a contract to finance a premium for a policy which has been issued by the Respondent should be required to pay any premium owed to the Respondent directly to the Receiver.

t) Reinsurance premiums due to or payable by the Respondent should be remitted to, or disbursed by, the Receiver. Reinsurance losses recoverable or payable by the Respondent should be handled by the Receiver. All correspondence concerning

reinsurance should be between the Receiver and the reinsuring company or intermediary.

u) Upon request by the Receiver, any company providing telephonic services to the Respondent should be required to provide a reference of calls from the number presently assigned to the Respondent to any such number designated by the Receiver or perform any other services or changes necessary to the conduct of the receivership.

v) Any bank, savings and loan association, or other financial institution which has on deposit, in its possession, custody or control any funds, accounts and any other assets of the Respondent, should be required to immediately transfer title, custody and control of all such funds, accounts and other assets to the Receiver. The Receiver should be authorized to change the name of such accounts and other assets, withdraw them from such bank, savings and loan association or other financial institution, or take any lesser action necessary for the proper conduct of this receivership. No bank, savings and loan association or other financial institution should be permitted to exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court.

w) Any entity furnishing telephone, water, electric, sewage, garbage or trash removal services to the Respondent should be

required to maintain such service and transfer any such accounts to the Receiver as of the date of the Order, unless instructed to the contrary by the Receiver.

x) Any data processing service which has custody or control of any data processing information and records including but not limited to source documents, data processing cards, input tapes, all types of storage information, master tapes or any other recorded information relating to the Respondent should be required to transfer custody and control of such records to the Receiver. The Receiver should be authorized to compensate any such entity for the actual use of hardware and software which the Receiver finds to be necessary to this proceeding. Compensation should be based upon the monthly rate provided for in contracts or leases with Respondent which were in effect when this proceeding was instituted, or based upon such contract as may be negotiated by the Receiver, for the actual time such equipment and software is used by the Receiver.

y) The United States Postal Service should be directed to provide any information requested by the Receiver regarding the Respondent and to handle future deliveries of Respondent's mail as directed by the Receiver.

z) All claims should be filed with the Receiver on or before 11:59 p.m. on the date which is exactly one year from the date

of the liquidation order or be forever barred, and all such claims should be filed on proof of claim forms prepared by the Receiver.

aa) All insurance policies, bonds or similar contracts of coverage of the Respondent issued in Florida are hereby cancelled as of a date to be determined.

bb) Except for contracts of insurance, all executory contracts to which the Respondent was a party shall be cancelled and stand cancelled unless specifically adopted by the Receiver within ninety (90) days of the date of this Order or from the date of the Receiver's actual knowledge of the existence of such contract, whichever is later. "Actual Knowledge" means the Receiver has in its possession the original of a written contract to which the Respondent is a party, and the Receiver has notified the vendor in writing acknowledging the existence of the contract. Any vendor, including but not limited to, any and all employees / contractors of insurer, claiming the existence of a contractual relationship with the insurer shall provide notice to the Receiver of such relationship. This notice shall include any and all documents and information regarding the terms and conditions of the contract, including a copy of the written contract between the vendor and the insurer, if any, what services or goods were provided pursuant to the contract, any current, future and/or past due amounts owing under the contract, and any supporting documentation for third party services or goods provided. Failure to

provide the required information may result in vendors' contractual rights not being recognized by the Receiver. The rights of the parties to any such contracts are fixed as of the date of the Order and any cancellation under this provision shall not be treated as an anticipatory breach of such contracts.

cc) All affiliated companies and associations should be directed to make their books and records available to the Receiver, to include all records located in any premises occupied by said affiliate, whether corporate records or not, and to provide copies of any records requested by the Receiver whether or not such records are related to Respondent. The Receiver would have title to all policy files and other records of, and relating to Respondent, whether such documents are kept in offices occupied by an affiliate company or any other person, corporation, or association. The Receiver should be authorized to take possession of any such records, files, and documents, and to remove them to any location in the Receiver's discretion. Any disputed records should not be withheld from the Receiver's review, but should be safeguarded and presented to this Court for review prior to copying by the Receiver.

dd) The Receiver should have complete access to all computer records of the Respondent and its affiliates.

ee) Any person, firm, corporation or other entity having notice of the Order that fails to abide by its terms should be directed to

appear before this Court to show good cause, if any they may have, as to why they should not be held in contempt of Court for violation of the provisions of this Order.

ff) Pursuant to Sections 631.041(3) and (4), Florida Statutes, all persons, firms, corporations and associations within the jurisdiction of this Court or over whom this Court has jurisdiction, including, but not limited to, Respondent and its officers, directors, stockholders, members, subscribers, agents and employees, should be enjoined and restrained from the further transaction of the business of insurance; from doing, doing through omission, or permitting to be done any action which might waste or dispose of the books, records and assets of the Respondents; from in any means interfering with the Receiver or these proceedings; from the transfer of property and assets of Respondent without the consent of the Receiver; from the removal, concealment, or other disposition of Respondent's property, books, records, and accounts; from the commencement or prosecution of any actions against the Respondent or the Receiver together with its agents or employees, the service of process and subpoenas, or the obtaining of preferences, judgments, writs of attachment or garnishment or other liens; and from the making of any levy or execution against Respondent or any of its property or assets. Notwithstanding the provisions of this paragraph, the Receiver should be permitted to accept and be subpoenaed for non-party production of claims files in

its possession, including medical records which may be contained therein. In such cases, the requesting party must submit an affidavit to the Receiver stating that notice of the non-party production was appropriately issued and provided to the patient and that the patient was given the opportunity to object and either did not object to the non-party production, or objected and the Court overruled the objection, in which case a copy of the Court's ruling must be attached to the affidavit. The Receiver should be authorized to impose a charge for copies of such claim files pursuant to the provisions of Section 119.07(4), Florida Statutes.

#### **CONTINUATION OF INVESTIGATION**

gg) The Receiver should be authorized to conduct an investigation as authorized by Section 631.391, Florida Statutes, of Respondent and its affiliates, as defined above, to uncover and make fully available to the Court the true state of Respondent's financial affairs. In furtherance of this investigation, Respondent and its parent corporations, its subsidiaries, and affiliates should be required to make all books, documents, accounts, records, and affairs, which either belong to or pertain to the Respondent, available for full, free and unhindered inspection and examination by the Receiver during normal business hours (8:00 a.m. to 5:00 p.m.) Monday through Friday, from the date of the Order. The Respondent and the above specified entities should be required to cooperate with the Receiver to the fullest extent

required by Section 631.391, Florida Statutes. Such cooperation should include, but not be limited to, the taking of oral testimony under oath of Respondent's officers, directors, managers, trustees, agents, adjusters, employees, or independent contractors of Respondent, its affiliates and any other person who possesses any executive authority over, or who exercises any control over, any segment of the affairs of Respondent in both their official, representative and individual capacities and the production of all documents that are calculated to disclose the true state of Respondent's affairs.

hh) Any officer, director, manager, trustee, administrator, attorney, agent, accountant, actuary, broker, employee, adjuster, independent contractor, or affiliate of Respondent and any other person who possesses or possessed any executive authority over, or who exercises or exercised any control over, any segment of the affairs of Respondent or its affiliates should be required to fully cooperate with the Receiver as required by Section 631.391, Florida Statutes, and as set out in the preceding paragraph. Upon receipt of a certified copy of the Order, any bank or financial institution should be required to immediately disclose to the Receiver the existence of any accounts of Respondent and any funds contained therein and any and all documents in its possession relating to Respondent for the Receiver's inspection and copying.

Dated this \_\_\_\_\_ day of May, 2006.

Respectfully submitted,

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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 Richard B. Hadlow, Holland and Knight, 100 North Tampa Street, Suite 4100, Tampa, Florida 33602, and to William F. Poe, Sr., Chairman, Poe Insurance Holdings, LLC, 302 Knights Run Avenue , Suite 700, Tampa Florida 33602, this \_\_\_\_\_ day of May, 2006

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