

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

CASE NO.: 94-2188

STATE OF FLORIDA, ex. rel., the
DEPARTMENT OF INSURANCE OF
THE STATE OF FLORIDA,

Relator,

vs.

WESTERN STAR INSURANCE COMPANY,
an Antigua corporation.

Respondent.

**CONSENT ORDER APPOINTING THE FLORIDA DEPARTMENT OF
INSURANCE AS RECEIVER FOR PURPOSES OF LIQUIDATION,
INJUNCTION. AND NOTICE OF AUTOMATIC STAY**

THIS CAUSE was considered on the Petition of the Florida Department of Insurance for a consent order of liquidation of WESTERN STAR INSURANCE COMPANY, WESTERN STAR MANAGEMENT COMPANY, LIMITED, BROADVIEW SERVICES, INC., RIDING SERVICES, BARVAS INSURANCE COMPANY, and TOBER SERVICES. The Court having reviewed the pleadings of record, having heard presentation of counsel, and otherwise being fully informed in the premises, finds:

A. WESTERN STAR INSURANCE COMPANY, LIMITED (herein "Respondent")
is an unauthorized insurer transacting an insurance business in and from the State of

Florida, without proper authorization or certificate of authority, in violation of Chapter 631, Florida Statutes, and as such is de facto commercially domiciled in Florida and is de facto domiciled in Florida.

B. This court has jurisdiction over Respondent, its alter egos, and affiliates. 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.

C. Section 631.081, Florida Statutes, authorizes the Department to apply to this Court for an order directing it to liquidate an insurer upon the existence of any of the grounds specified in Section 631.061 or 631.051, Florida Statutes, or if such insurer is or is about to become insolvent.

D. Sections 631.061 and 631.051(11), Florida Statutes, authorize the Department to apply to this Court for an order directing it to liquidate a domestic insurer upon the ground that the insurer has consented to such an order through a majority of its directors, stockholders, members, or subscribers.

E. Respondent has consented to the appointment of the Department as Domiciliary Receiver for purposes of liquidation of Western Star Insurance Company, and its alter egos and affiliates: Western Star Management Company, Limited, Broadview Services, Inc., Riding Services, Barvas Insurance Company, and Tober Services.

F. Respondent has been found by the Department to be in such condition or using such methods or practices in the conduct of its business as to render the further transaction of insurance presently or prospectively hazardous to its subscribers, policyholders, creditors and the public.

G. It is in the best interests of Respondent and its creditors and insureds that the relief requested in the petition be granted.

H. Broadview Services, Inc.; Western Star Management Company, Limited; Riding Services; Barvas Insurance Company; and Tober Services are alter egos and affiliates of Western Star Insurance Company and their assets and liabilities should be merged into the receivership of Western Star Insurance Company.

IT IS THEREFORE ORDERED and ADJUDGED as follows:

1. Department of Insurance of the State of Florida is hereby appointed Domiciliary Receiver of Respondent, its alter egos, and affiliates for purposes of liquidation and the said Receiver is 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, its alter egos, and affiliates, pursuant to Sections 631.111 and 631.141, Florida Statutes, including but not limited to, offices maintained by the Respondent, its alter egos, and affiliates, rights of action, books, papers, evidences of debt, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, bank accounts, stocks, bonds, debentures, mortgages, furniture, fixtures, and office equipment, and all real property of Respondent, its alter egos, and affiliates, whether in the possession of Respondent, its alter egos, and its affiliates, or its officers, directors, employees, consultants, attorneys, or agents, or its alter egos, or affiliates.

- b. Liquidate the assets of Respondent, its alter egos, and affiliates, 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, accountants, clerks, and such assistants 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, its alter egos, and affiliates, in the possession of the Receiver, its alter egos, and affiliates, or coming into their 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 legal actions wherein the Respondent or the Receiver is a party defendant, commenced either prior to or subsequent to this 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 effect a claim against or adversely affect the assets of Respondent, the Receiver may file appropriate

pleading 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, its alter egos, and affiliates.
- h. Take possession of all of Respondent's securities and certificates of deposit on deposit with the Treasurer of Florida, if any, and convert to cash as much as may be necessary, in its judgment, to pay the expenses of administration of this receivership.
- i. 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.
- j. 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.
- k. Sell any salvage recovered having value of not more than Twenty Thousand Dollars (\$20,000.00) without further order of this Court.
- l. Give notice of this proceeding to Respondent's agents pursuant to Section 631.341, Florida Statutes, and to its insureds.

IT IS FURTHER ORDERED and ADJUDGED that:

- 2. All officers, directors, agents and employees and all other persons

representing Respondent, its alter egos, and affiliates, or currently employed by Respondent, its alter egos, and affiliates, in connection with the conduct of its business are discharged forthwith.

3. Title to all property real or personal, all contracts, rights of action and all books and records of Respondent, its alter egos, and affiliates, wherever located, are vested in the Receiver pursuant to Sections 631.111 and 631.141, Florida Statutes, including title to all property of subsidiary corporations whose stock is owned 100% by Respondent, its alter egos, and affiliates.

4. Any officer, director, manager, trustee, attorney, agent, accountant, actuary, broker, employee or adjuster of Respondent, its alter egos, and affiliates, 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 Respondent's affiliates, alter egos, or subsidiaries, shall fully cooperate with the Receiver, pursuant to Section 631.391, Florida Statutes.

A. All attorneys employed by Respondent as of this date shall, within 10 days notice of this Order, 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 shall also include an accounting of any funds received from or on behalf of the Respondent. All attorneys employed by Respondent are hereby discharged as of the date of this Order unless their services are retained by the Receiver. All attorneys employed by Respondent are hereby advised that pursuant to Section 631.011 (17), 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. 1st 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 shall 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, shall not be extinguished by the delivery of these documents.

5. All agents, brokers or other persons having sold policies of insurance and/or collected premiums on behalf of the Respondent shall account for and pay all premiums and commissions unearned due to cancellation of policies by this 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 this Order. No agent, broker, premium finance company or other person shall use premium monies owed to the Respondent for refund of unearned premium or for any purpose other than payment to the Receiver. All agents, brokers or other persons having sold policies of insurance and/or collected premiums on behalf of the Respondent shall provide access to any files or records in their possession which belong to, or pertain to Respondent. The Receiver may copy any files or data processing records which pertain to the Respondent.

6. Any premium finance company which has entered into a contract to finance a premium for a policy which has been issued by the Respondent shall pay any premium owed to the Respondent directly to the Receiver.

7. Reinsurance premiums due to or payable by the Respondent shall be

remitted to, or disbursed by, the Receiver. Reinsurance losses recoverable or payable by the Respondent shall be handled by the Receiver. All correspondence concerning reinsurance shall be between the Receiver and the reinsuring company or intermediary.

8. Upon request by the Receiver, any company providing telephonic services to the Respondent, its alter egos, and affiliates, shall provide a reference of calls from the number presently assigned to them to any such number designated by the Receiver or perform any other services or changes necessary to the conduct of the receivership.

9. 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, its alter egos, or affiliates, shall immediately transfer title, custody and control of all such funds, accounts, or assets to the Receiver, and are hereby instructed that the Receiver has absolute control over such funds, accounts and other assets. The Receiver may 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 shall 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.

10. Any entity furnishing telephone, water, electric, sewage, garbage or trash removal services to the Respondent shall discontinue such service.

11. 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 shall transfer custody and control of such records to the Receiver. The Receiver shall compensate any such entity for the actual use of hardware and software which the Receiver finds to be necessary to this proceeding. Compensation shall 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.

12. The United States Postal Service is directed to provide any information requested by the Receiver regarding the Respondent, its alter egos, and affiliates, and to handle future deliveries of their mail as directed by the Receiver.

13. All claims shall be filed with the Receiver on or before December 14, 1994, or be forever barred, and all such claims should be filed on proof of claim forms prepared by the Receiver.

14. Pursuant to the provisions of Section 631.252, Florida Statutes, all insurance policies, bonds or similar contracts of coverage of the Respondent issued in Florida and now in force shall be determined canceled as of 12:01 a.m. June 15, 1994, except that those policies or contracts of coverage with normal expiration dates prior thereto and policies terminated by insureds or lawfully canceled by the insurer before such date, shall stand canceled as of such earlier date.

15. Except for contracts of insurance, all executory contracts to which the Respondent was a party are hereby canceled and will stand canceled unless specifically adopted by the Receiver within 30 days of the date of this Order. The rights of the parties to any such contracts are fixed as of the date of this Order and any cancellation

under this provision shall not be treated as an anticipatory breach of such contracts.

16. All affiliated companies are hereby 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 has 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 or corporation. The Receiver is authorized to take possession of any such records, files, documents, and to remove them to any location in the Receiver's discretion. Any disputed records shall not be withheld from the Receiver's review, but shall be safeguarded by the Receiver until the dispute may be settled by this Court.

17. The Receiver shall have complete access to all computer records of the Respondent, its alter egos, and affiliates at all times.

18. Any person, firm, corporation or other entity having notice of this order that fails to abide by its terms shall 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.

19. Pursuant to Sections 631.041(3) and (4), Florida Statutes, all persons, firms, corporations and associations within the jurisdiction of this Court, including, but not limited to, Respondent, its alter egos, and affiliates, and their officers, directors, stockholders, members, subscribers, agents, and employees, are enjoined and restrained from the further transaction of the insurance business of the Respondent; 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 Respondent; 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, 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.

NOTICE OF AUTOMATIC STAY

19. Notice is hereby given that, pursuant to Section 631.041(1), Florida Statutes (1991), 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 this 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(17), Florida Statutes (1991);
- e. Any action to collect, assess or recover a claim against the insurer,

except claims as provided for under Chapter 631;

- f. The set-off or offset of any debt owing to the insurer except offsets as provided in Section 631.281, Florida Statutes (1991).

20. All Sheriffs and all law enforcement officials of this state shall cooperate with and assist the Receiver in the implementation of this Order.

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

ORDERED in Chambers at Tallahassee, Leon County, Florida, this 14 day of June, 1994.



CIRCUIT JUDGE

STATE OF FLORIDA, COUNTY OF LEON

I HEREBY CERTIFY that the above and foregoing is a true and correct copy of an instrument recorded in the official records of Leon County, Florida.

WITNESS my hand and seal of office this 14 day of June, 1994

DAVE LANG
Clerk of Circuit Court

by Deborah Adelson D.C.

STATE OF FLORIDA, COUNTY OF LEON

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DAVE LANG
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