

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

In Re: The Receivership of  
THE EXOTIC WARRANTY COMPANY,  
a Florida corporation.

Case No. 2006-CA-0422

Civil Division – Judge Bateman

FILED  
CLERK OF CIRCUIT COURT  
LEON COUNTY, FLORIDA

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CIRCUIT CIVIL DIV.

**ORDER APPOINTING THE FLORIDA DEPARTMENT  
OF FINANCIAL SERVICES RECEIVER OF THE  
EXOTIC WARRANTY COMPANY FOR PURPOSES OF  
LIQUIDATION, INJUNCTION AND NOTICE OF AUTOMATIC STAY**

**THIS CAUSE** was considered on the Receiver’s Order to Show Cause as to why the Department of Financial Services (hereinafter “department”) should not be appointed as receiver for purposes of liquidation and having reviewed the pleadings of record, heard the presentation and argument of counsel, and otherwise being fully informed in the circumstances, I find as follows:

1. The Exotic Warranty Company (“Exotic”) is a Florida corporation with its principal place of business in Bradenton, Florida and is conducting business as a Motor Vehicle Service Agreement (“MVSA”) Company. Benjamin Evans is the President and sole shareholder of Exotic and its affiliates.
2. Because Exotic is located within Florida, it is required to be licensed as an MVSA Company by the State of Florida in order to solicit applications or otherwise transact service agreement sales in and from this state.
3. Pursuant to section 634.031 (1), F.S., a person may not transact, administer, or market, attempt to transact, administer, or market, or in any manner hold itself out as transacting, administering, or marketing the service agreement business, on behalf of

herself or himself or itself, in this state or from this state unless it is authorized to do so under a subsisting license issued to it by the department.

4. Section 634.031(2), F.S., provides that no person shall, from offices or by personnel or facilities in this state, solicit applications or otherwise transact service agreement sales in another state or country unless it holds a subsisting license issued to it by the department office authorizing it to transact the same kind or kinds of service agreement business in this state. Further, under Section 634.031 (3), F.S., no person shall transact, administer, or market service agreements unless it holds a subsisting license issued by the department authorizing it to transact the same kind or kinds of service agreement business in this state.

5. While Exotic has a Florida Department of Financial Services “253-type” automobile warranty license, issued on January 22, 2003, the evidence presented demonstrates that this license only permits a dealership, corporation, partnership, or sole proprietorship to be appointed as a salesperson by a licensed MVSA company. It does not allow Exotic to issue warranties in its own name. Indeed, section 634.011 (13), F.S. defines a “salesperson” as any dealership, corporation, partnership, or sole proprietorship employed or otherwise retained by an insurer or MVSA company for the purpose of selling or issuing MVSA or for the purpose of soliciting or retaining other salespersons.

6. On July 20, 2004, Exotic entered into an agency agreement (“agreement”) with ACSC of Florida, Inc. (“ACSC”), a licensed MVSA Company. Pursuant to the agreement, ACSC appointed Exotic as a salesperson. Under the agreement, Exotic was authorized to market contracts on behalf of ACSC, a licensed Florida underwriter.

However, the evidence demonstrated that between July 20, 2004, and July 10, 2005,

Exotic sold at least seventy (70) contracts in Florida on behalf of its Alabama affiliate, Fidelity Worldwide Corporation (“Fidelity”), which the testimony showed, is not a licensed in Florida as a MVSA Company.

7. Even prior to its appointment by ACSC, Exotic sold and serviced at least sixty-two (62) MVSA contracts in Florida without the requisite licensing. And, during its appointment with ACSC, Exotic sold and serviced contracts that were not sold on behalf of ACSC, but rather on behalf of Fidelity, in apparent direct contravention of the Florida Insurance Code. Moreover, even after its appointment was terminated by ACSC on July 10, 2005, Exotic continued to market MVSA on behalf of Fidelity in violation of F.S.

8. Exotic is not and has never been an authorized MVSA Company in the State of Florida. Because Exotic’s authority to market MVSA contracts on behalf of a licensed entity was terminated, it violated Chapter 634 of the Florida Insurance Code by issuing MVSA contracts without the required licensure or otherwise being exempt from the provisions of the Florida Insurance Code.

9. Exotic did file an application for a license as a MVSA Company with the Florida Office of Insurance Regulation (“OIR”) in November 2005. However, on January 25, 2006, OIR returned Exotic’s application for a number of deficiencies including failure to meet the capital and surplus requirements of the Florida Insurance Code. Despite not having the required license, Exotic continued to transact business without a license or authority.

10. On February 15, 2006, the department filed its ex parte motion for an order to seize property and temporary injunction against Exotic and its affiliates. This court granted the motion and set the matter for an evidentiary hearing.

11. Section 631.061, F.S., authorizes the department to apply to this court for an order directing it to liquidate a domestic insurer upon the existence of any grounds specified in section 631.051, including, but not limited to, a finding that the insurer 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.” The statute also authorizes the department to petition this circuit court for an order directing it to liquidate a domestic insurer if such insurer is insolvent or has failed to obtain the requisite certificates of authority.

12. By marketing MVSA contracts without benefit of a license and acting as an unauthorized salesperson, Exotic has unlawfully transacted insurance and in doing so, in effect, has rendered the comprehensive statutory scheme for regulating such meaningless as to it. However, requirement to have a license to transact such business was intended by the Legislature to protect the public health, safety and welfare. A violation is considered an imminent and immediate threat to the residents of this state. As Exotic continuously marketed MVSA contracts without a license or authority between 2003 and 2005, continued to market such in 2006, and failed to meet the solvency requirements within the meaning of the statute, liquidation is the appropriate remedy.

13. I find that Exotic’s failure to be licensed as a MVSA company as required by Section 634.031 (1) & (2), F.S., constitutes hazardous practice within the meaning of Sections 631.051 (3) and 631.061, F.S., and because it lacks the required license as a Motor Vehicle Service Agreement Company, it cannot be rehabilitated.

Therefore, it is **ORDERED AND ADJUDGED** that:

- A. The Florida Department of Financial Services is appointed receiver of respondent for purposes of liquidation.
- B. The receiver is authorized to:
  - 1) 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, F.S., 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, 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.
  - 2) 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.
  - 3) 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.

4) 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.

5) 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.

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

7) Collect all debts which are economically feasible to collect which are due and owing to the respondent.

8) Deposit funds and maintain bank accounts in accordance with Section 631.221, F.S.

9) 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.

- 10) 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 purported Motor Vehicle Service Agreements.
- 11) 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.
- 12) Sell any salvage recovered property having value of not more than Twenty Thousand Dollars (\$20,000.00) without further order of this court.
- 13) Give notice of this proceeding to respondent's agents pursuant to Section 631.341, F.S., and to its insureds, if any.
- 14) Discharge forthwith, 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.
- 15) Ensure that 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, F.S., notwithstanding the provisions of the preceding paragraph. All persons to whom this paragraph applies shall be informed that the failure to fully cooperate may result in the

imposition of contempt proceedings upon motion, notice and an opportunity to be heard.

16) Ensure 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, F.S.

17) Ensure that all attorneys employed by respondent as of the date of the Order, within 10 days notice of the existence of this order, be required to report to the receiver the name, company claim number and status of each file they are handling on behalf of the respondent. Such report shall include an accounting of any funds received from or on behalf of the respondent. All attorneys employed by respondent shall be discharged as of the date of the order unless their services are retained by the receiver. All attorneys employed by respondent shall be advised that pursuant to Section 631.011(17), F.S., 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 shall 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, shall not be extinguished by the delivery of these documents.

18) Ensure that all agents, brokers or other persons having sold policies of insurance or collected premiums on behalf of the respondent 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 shall not be required to account to the receiver or be held in contempt of court for violation of the provisions of the order. Also, ensure that 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.

19) Ensure that any premium finance company which has entered into a contract to finance a premium for a policy which has been issued by the respondent be required to pay any premium owed to the respondent directly to the receiver.

20) Ensure that reinsurance premiums due to or payable by the respondent be remitted to, or disbursed by, the receiver; reinsurance losses recoverable or payable by the respondent be handled by the receiver; and, that all correspondence concerning reinsurance be between the receiver and the reinsuring company or intermediary.

21) Ensure that upon request by the receiver, any company providing telephonic services to the respondent 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.

22) Ensure that 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, be required to immediately transfer title, custody and control of all such funds, accounts and other assets to the receiver. The receiver shall 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 shall 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.

23) Ensure that any entity furnishing telephone, water, electric, sewage, garbage or trash removal services to the respondent 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.

24) Ensure that any data processing service, including but not limited to salesforce.com, 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 be required to transfer custody and control of such records to the receiver. The receiver shall 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 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.

25) Ensure that the United States Postal Service 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.

26) Ensure that all claims be filed with the receiver on or before 11:59 p.m. on the date which is exactly one year from the date of this liquidation order or be forever barred. All such claims shall be filed on proof of claim forms prepared by the receiver.

27) Ensure that all motor vehicle service agreements, bonds or similar contracts of coverage of the respondent issued in Florida or from Florida to other states or countries by The Exotic Warranty Company and all affiliates are cancelled pursuant to order of this court.

28) It is ordered and the department shall ensure that, except for contracts of insurance, all executory contracts to which the respondent was a party are 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.

29) Ensure that all affiliated companies and associations 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 shall 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 shall 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 shall not be withheld from the receiver's review, but shall be safeguarded and presented to this court for review

prior to copying by the receiver if they remain in dispute.

30) Have complete access to all computer records of the respondent and its affiliates or to seek assistance from the court to order access if it is withheld.

31) Notify the court if any person, firm, corporation or other entity having notice of the order that fails to abide by its terms. Such persons who violate this order shall be directed to appear before this court upon motion, notice and opportunity to be heard, 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.

It is further **ORDERED AND ADJUDGED** that

C. Pursuant to Sections 631.041(3) and (4), F.S., 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, shall be enjoined and restrained from the further transaction of the business of issuing Motor Vehicle Service Agreements; 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 shall 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 shall be authorized to impose a charge for copies of such claim files pursuant to the provisions of Section 119.07(1)(a), F.S.

D. The department shall give notice to Benjamin Evans, as the owner of 3DHosting.com, to disable all websites associated with the following domains: ExoticWarranty.com, FidelityWorldwide.com, and AnnapurnaHolding.com as well as to redirect all associated Universal Resource Locators (URLs), hostnames, or aliases to <http://www.floridainsurancereceiver.org>.

E. The receiver shall be authorized to continue to conduct its investigation as authorized by Section 631.391, F.S., 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 shall 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 (9:00 a.m. to 5:00 p.m.) Monday through Friday, from the date of the Order. The

respondent and the above specified entities shall be required to cooperate with the receiver to the fullest extent required by Section 631.391, F.S. Such cooperation shall 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.

F. 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 are required to fully cooperate with the receiver as required by Section 631.391, F.S., and as set out in the preceding paragraph. Upon receipt of a certified copy of this order, any bank or financial institution shall 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.

**NOTICE OF AUTOMATIC STAY**

G. Notice is hereby given that, pursuant to Section 631.041(1), F.S., 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:

- 1) The commencement or continuation of judicial, administrative or other action or proceeding against the insurer or against its assets or any part thereof;
- 2) The enforcement of judgment against the insurer or an affiliate obtained either before or after the commencement of the delinquency proceeding;
  - a) Any act to obtain possession of property of the insurer;
  - b) 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), F.S.;
  - c) Any action to collect, assess or recover a claim against the insurer, except claims as provided for under Chapter 631;
  - d) The determination of set-off or offset of any debt owing to the insurer except offsets as provided in Section 631.281, F.S.

H. All Sheriffs and all law enforcement officials of the state shall cooperate with and assist the receiver in the implementation of this order.

I. The court retains jurisdiction for the purpose of granting such other relief as from time to time shall be deemed appropriate.

**DONE and ORDERED** in Chambers at the Leon County courthouse in Tallahassee,  
Leon County, Florida on April 12, 2006.



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THOMAS H. BATEMAN III  
CIRCUIT JUDGE

**COPIES FURNISHED TO:**

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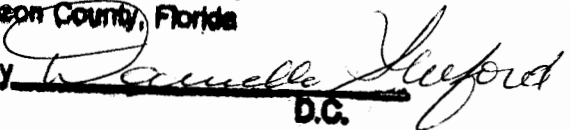
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**A Certified Copy  
Attest:**

**Bob Inzer**

Clerk of Circuit Court  
Leon County, Florida

By

  
D.C.