Name of Receivership:	**Sawgrass Mutual Insurance Company ("Sawgrass")**
Receivership Number:	**552**
Date of Liquidation:	**October 1, 2018**
Circuit Court Case Number:	**2018-CA-001810**

Scope of Report:

Pursuant to Section 631.398(3), Florida Statutes (2018), the Department of Financial Services ("the Department") is required to prepare a summary report containing such information as is in its possession relating to the history and causes of insolvency, including a statement of the business practices of such insurer which led to such insolvency.

This report will be limited by the following factors: a.) Sawgrass was in runoff when it was referred to the Department for receivership proceedings; b.) there were limited records provided to the Department due to the transfer of claim files and other data to a solvent carrier a year prior to referral; c.) there were no employees of the company at the time of the referral, and the one remaining officer and director of the company contested the delinquency proceedings resulting in limited information being provided to the Department.

Background of the Business:

Sawgrass Mutual Insurance Company ("Sawgrass") was licensed on April 7, 2009 as a Florida domestic property and casualty insurer authorized to write fire, allied lines, homeowner's multi-peril, and other liability lines of insurance. Policies were originally written through Cladium Inc., acting as the Managing General Agent ("MGA"), but at the time of the referral, policies were written through an affiliated MGA, Sawgrass Management Advisors, Inc, ("SMA") who had become licensed by the Department to act as an MGA on August 6, 2015. On March 11, 2016, American Insurance Exchange, Inc. ("AIE") became licensed as an insurance agency by the Department and was a wholly owned subsidiary of the company. On that same date, Insurance Operations Network ("ION") became licensed as a TPA for Sawgrass.

On August 18, 2017, Sawgrass agreed, pursuant to a series of Consent Orders, to be placed into administrative supervision by the Florida Office of Insurance Regulation ("OIR"). The purpose of the supervision was to protect the assets of the company as well as the insureds during an orderly wind down of the company.

On September 1, 2017 after discussions with OIR, Sawgrass entered into an agreement that transferred Sawgrass policyholders to Heritage Property and Casualty Insurance Company ("Heritage"). OIR approved this agreement and Sawgrass and Heritage started implementation of the agreement's terms.

Geographic Areas:

At the time of liquidation, Sawgrass appeared to be licensed solely in Florida.

Ownership and Affiliates:

At the time of referral, Dan O'Neal was the Chief Executive Officer. Paul Simeone was the Chief Financial Officer.

SMA; AIE; ION; Intuitive Software Development, Inc.; and Virtual Video Solutions, Inc. were wholly owned subsidiaries of Sawgrass.

Events of Impact:

On May 15, 2018, Sawgrass filed its first quarter 2018 Financial Statement with OIR showing a surplus of $529,742.00. This surplus did not consider the reinsurance commissions due and owing to JLT Re, its reinsurer, which by contract were due and owing at inception regardless of cancellation of the contract. When those commissions were taken into account, Sawgrass's surplus as to policyholders was reduced by $566,319.00, making their surplus ($36,577.00).

As a condition of its Administrative Supervision, Sawgrass was required to provide OIR with a list of its pending litigation, which it did. On June 28, 2018, OIR determined that there was a case pending in federal court in the US District Court, Southern District of NY that Sawgrass had not listed. Subsequent investigation revealed other litigation involving Sawgrass that had not been reported to OIR as required by the Consent Order.

OIR also determined that Sawgrass had attempted to compromise its debts not only with JLT Re, but also with the Florida Hurricane Catastrophe Fund ("FHCF"), Heritage and Holburn Corporation, the NY litigant. The debt owed to FHCF was $562,378.00. The debt owed to Heritage for the transfer of polices and post September 1, 2017 claims was $2.5 million. The debt owed to the Holburn Corporation was $600,000.00.

As a result, OIR referred Sawgrass for delinquency proceedings on August 3, 2018 on three bases: 1.) Sawgrass was impaired or insolvent, Fla. Stat. 631.051(1) and 631.061(1); 2.) Sawgrass's continual conduct of insurance business was hazardous to its creditors and the public, Fla. Stat. 631.051(3); and Sawgrass had sought to systematically compromise with creditors because it was unable to pay its debts as they became due, Fla. Stat. 631.051(15).

On August 15, 2018, the Department filed its *Application to Show Cause, Injunction, and Notice of Automatic Stay for Purposes of Liquidation* with the circuit court for the Second Judicial District, Leon County, Florida ("the receivership court") because the company's board of directors would not consent to delinquency proceedings. On August 31, 2018, the court entered an *Order to Show Cause, Injunction and Notice of Automatic Stay for Purposes of Liquidation*. An evidentiary hearing was held on October 1, 2018 resulting in an oral order from the bench appointing the Department as the Receiver of Sawgrass for the purposes of liquidation. After post hearing motions, the *Order Appointing the Florida Department of Financial Services as Receiver of Sawgrass Mutual Insurance Company for Purposes of Liquidation, Injunction and Automatic Stay* ("the Liquidation Order") was reduced to writing and signed by the judge on November 28, 2018, *nunc pro tunc* to October 1, 2018.[i]

Sawgrass's former CEO and a former board member, Guy Marvin, filed an appeal to the First District Court of Appeal ("First DCA") of the Liquidation Order and their Motion to Intervene which had been denied by the receivership court on December 28, 2018. No order was entered staying the receivership proceedings pending appeal by either the receivership court or the First DCA. After full briefing of the issues by the parties, the First DCA heard oral argument on February 23, 2021. The Liquidation Order, as well as the order denying the Motion to Intervene, were upheld on March 5, 2021, and the mandate issued on March 26, 2021.

In the meantime, since no stay had been issued, the Florida Insurance Guaranty Association ("FIGA") and Heritage litigated the terms and conditions of the agreement between Sawgrass and Heritage as to the Sawgrass policies and claims in the receivership court. The issue concerned approximately 70 policyholders whose pre-September 1, 2017 claims Heritage argued were not covered by the agreement due to Sawgrass's failure to fully pay them. After discovery and motion practice, the receivership court entered a final judgment on June 30, 2022 which held that FIGA would be responsible for these claims. FIGA did not appeal and the order became final.[ii]

Reinsurance:

Sawgrass had no reinsurance in place when the Department was appointed as Receiver.

Professional Liability and Other Insurance Coverages:

Sawgrass had no directors and officers or other professional liability coverage available when the Department was appointed as Receiver. Since the company had been in a run-off mode for nearly a year at the time of referral, all its other insurance coverages had lapsed as it had no employees or physical operations.

Financial:

The Sawgrass financial statement attached to the referral from OIR showed assets of $320,060.00. Preliminary investigation by OIR indicated probable debts of $3,962,378 on August 3, 2018. Therefore, Sawgrass was insolvent as defined by Fla. Stat. 631.011(14).

Due to the low assets of this estate, the lack of any potential avenues to recover funds on behalf of the estate, the necessity to defend the Liquidation Order on appeal, and the scarcity of any documentary evidence or data, the Department did not hire a forensic accountant to assist during the receivership process. The sole outside expense was for an appellate attorney who successfully defended the Liquidation Order on appeal.

The last unaudited financial statement of Sawgrass dated June 30, 2022 shows a net deficiency of $40,477,682.26. The Department had to access funds from the Insurance Regulatory Trust Fund in order to manage this estate.

Conclusions:

Based on a review of Sawgrass's history and business practices, the causes of Sawgrass's insolvency appear to stem from mismanagement[iii] and lack of funds to sustain the company during the run off period.

[ii] The original receivership court judge retired in December 2019.

[ii] A new receivership court judge heard the preliminary dispositive motions as to the FIGA/Heritage dispute. When that judge retired, his successor receivership court judge heard and entered the final judgement in 2022.

[iiiiii] During the discovery phase of the litigation between FIGA and Heritage, the former CFO testified he did not calculate the actuarial mid-point to determine what funds should be sent to Heritage as required by the September 1, 2017 agreement. He further admitted he was not qualified to make that calculation as he was not an actuary. Evidence was adduced that Sawgrass's former actuary provided calculations showing that the actuarial mid-point differed significantly from the one used by the former CFO thereby proving up Heritage's demand for additional funds.