

**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

CASE NO.:

v.

Windhaven Insurance Company  
Respondent.

**PETITION FOR CONSENT ORDER APPOINTING THE FLORIDA DEPARTMENT  
OF FINANCIAL SERVICES AS RECEIVER OF WINDHAVEN INSURANCE  
COMPANY FOR PURPOSES OF REHABILITATION, INJUNCTION, AND NOTICE  
OF AUTOMATIC STAY**

The Florida Department of Financial Services, Division of Rehabilitation and Liquidation (“Department”), hereby petitions this Court pursuant to sections 631.031 and 631.051, Florida Statutes (2019), for the entry of a Consent Order Appointing the Department as Receiver of Windhaven Insurance Company (“Respondent” or “Company”) for purposes of rehabilitation, injunction, and notice of automatic stay. In support of its petition, the Department states:

1. Respondent was licensed by the Office of Insurance Regulation (“OIR”) on March 29, 2006, as a state of Florida domestic property and casualty insurer authorized to write Private Passenger Automobile Liability and Private Passenger Automobile Physical Damage coverage pursuant to Part III of Chapter 624, Florida Statutes. Respondent’s principal place of business is located at: 3155 NW 77 Avenue, Doral FL 33122.

2. Section 631.021, 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 a Florida domiciled insurer.

3. This Court has original jurisdiction over these proceedings and can exercise

jurisdiction over any person required by section 631.391, Florida Statutes, to cooperate with OIR and over all other persons made subject to this Court's jurisdiction by other provisions of law. §§ 631.021(1) and 631.025, Fla. Stat. Additionally, this Court is authorized to enter all necessary or proper orders to carry out the purpose of the Florida Insurers Rehabilitation and Liquidation Act, sections 631.001 *et seq.*, Florida Statutes. § 631.021(1), Fla. Stat.

4. Venue is proper in the Circuit Court of Leon County. § 631.021(2), Fla. Stat.

5. Upon a determination by OIR that one or more grounds exist to initiate a delinquency proceeding against an insurer, and upon OIR's determination that a delinquency proceeding should be initiated, OIR is required to refer the insurer to the Department for the initiation of such delinquency proceeding. § 631.031(1), Fla. Stat.

6. By letter dated December 5, 2019, and pursuant to section 631.031(1), Florida Statutes, David Altmaier, Commissioner of OIR, advised Florida's Chief Financial Officer, Jimmy Patronis, that grounds exist for the initiation of delinquency proceedings against Respondent. A copy of the letter is attached hereto and incorporated herein as **Department Exhibit A**.

7. Section 631.031(2), Florida Statutes, empowers the Department to petition this Court for a consent order directing it to rehabilitate a domestic insurer, and section 631.051, Florida Statutes, provides that the Department may apply for such order upon the existence of any of the grounds specified in that section. Based on the documentation received from OIR, including an affidavit from Robert W. Ridenour, a Financial Administrator within the Property & Casualty Financial Oversight unit, the Department has confirmed that grounds exist that warrant the rehabilitation of Respondent. A copy of the Affidavit of Robert W. Ridenour is attached hereto and incorporated herein as **Department Exhibit B**.

8. **Basis One for Rehabilitation:** Respondent is impaired within the meaning of

section 631.011(13), Florida Statutes. Section 631.051(1), Florida Statutes, authorizes the initiation of delinquency proceedings against an insurer if the insurer is impaired. The basis for the determination of impairment is summarized as follows:

a. An insurer's surplus is considered impaired, as defined by section 631.011(13), Florida Statutes, if the surplus does not meet the requirements of section 624.408, Florida Statutes. Respondent is required by section 624.408(1), Florida Statutes, to maintain a minimum surplus of not less than the greater of \$4 million or 10% of Respondent's total liabilities.

b. On October 21, 2019, Respondent filed its monthly financial statement with OIR for the period ending September 30, 2019 ("September Financial Statement"). A copy of the September 30, 2019, Financial Statement is attached hereto as **Exhibit 2 to Department Exhibit B**.<sup>1</sup>

c. On the September Financial Statement, Respondent reported a \$26,072,438 surplus as regards policyholders. (See page 4, line 39 of Exhibit 2 to Department Exhibit B)

d. On November 13, 2019, Respondent notified OIR that a contingent commission liability of \$19.1 million was being realized, but that the liability had not been reflected on the September Financial Statement. The accrual of the contingent commission liability reduced Respondent's surplus by \$19.1 million.

e. Additionally, Respondent notified OIR that it had a reserve deficiency of \$7 million which reduced Respondent's surplus by an additional \$7 million.

f. OIR determined that Respondent's surplus fell below the minimum required by law and was therefore impaired after Respondent's liabilities were adjusted to take into account the \$19.1 million contingent commission liability and the \$7 million reserve deficiency.

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<sup>1</sup> The Department continued the use of the numbering system used by OIR as to its exhibits. Thus, there is no Exhibit B-3 attached to the Department's Consent Petition.

9. **Basis Two for Rehabilitation:** Respondent is currently insolvent within the meaning of section 631.011(14), Florida Statutes. Sections 631.051(1) and 631.061(1), Florida Statutes, authorize the initiation of delinquency proceedings against an insurer if the insurer is insolvent. The basis for the determination of insolvency is summarized as follows:

a. An insurer is insolvent when all of the assets of the insurer, if made immediately available, would not be sufficient to discharge all its liabilities or that the insurer is unable to pay its debts as they become due in the usual course of business. § 631.011(14), Fla. Stat.

b. Respondent's total liabilities as reported on the September Financial Statement were \$131,448,583 and its total assets were \$157,537,420. OIR has determined that after adjusting Respondent's liabilities to account for the \$19.1 million contingent commission liability and the \$7 million reserve deficiency, Respondent's assets are not sufficient to discharge all its liabilities and Respondent is therefore insolvent.

10. **Basis Three for Rehabilitation:** OIR has determined that Respondent's further transaction of insurance is hazardous to policyholders, creditors, stockholders, or the public. Section 631.051(3), Florida Statutes, authorizes the initiation of delinquency proceedings if a domestic insurer is found by OIR "to be in such condition or is using ... such methods or practices in the conduct of its business...to render its further transaction of insurance presently or prospectively hazardous to its policyholders, creditors, stockholders, or the public." The basis for the determination that Respondent's continued transaction of insurance is hazardous is as follows:

a. As outlined above in paragraphs 8 and 9, Respondent is insolvent and in an unsound financial condition.

b. As reported in Respondent's annual statement for the year ending December

31, 2018 (“2018 Annual Statement”), Respondent’s policyholder surplus declined by \$10,833,349 or 22.28%, between 2017 to 2018. A copy of Respondent’s 2018 Annual Statement is attached hereto as **Exhibit 4 to Department Exhibit B.**

c. The 2018 Annual Statement also reflects that Respondent suffered a \$9,712,162 net loss for 2018 which represents 19.97% of Respondent’s 2017 year-end surplus as regards policyholders.

d. Respondent’s 2018 Annual Statement also shows a pattern of adverse loss reserve development which reflects that Respondent has been “consistently under-estimating its actual losses and failing to establish adequate reserves for such losses.”

e. Lastly, Respondent’s cash and invested assets declined from \$74,215,327 (Exhibit 4, page 2, line 17) in the first nine months of 2019 to \$41,086,714 (see Exhibit 2, page 2, line 17) which represents a 44.64% decrease.

11. **Basis Four for Rehabilitation:** Respondent, through a majority of its directors, consented to the entry of an order placing Respondent into receivership. Section 631.051(11), Florida Statutes, authorizes the initiation of delinquency proceedings against an insurer if the insurer has consented through a majority of its directors, stockholders, members or subscribers to the entry of an order placing Respondent into receivership. On November 18, 2019, Respondent and OIR executed a Consent Order for Administrative Supervision (“Supervision Consent Order”), in which Respondent agreed that should it fail to comply with any provision of the Supervision Consent Order, such failure would constitute a consent to the entry of an Order appointing the Department as Receiver. Respondent failed to comply with provisions of the Supervision Consent Order. A copy of the Supervision Order is attached hereto and incorporated herein as **Exhibit 1 to Department Exhibit B.**

a. The Supervision Consent Order required Respondent to provide OIR with a bank statement, reflecting a capital contribution of at least \$30 million in cash or cash equivalents by November 29, 2019. (See Exhibit 1, page 3, paragraph 6.b. to Department Exhibit B.) Respondent failed to provide the required bank statement by the due date and to date has not contributed any of the required cash or cash equivalents.

b. On November 15, 2019, attendant to Respondent's execution of the Supervision Consent Order, Respondent, through a resolution of its board of directors, executed a Consent to Order of Receivership consenting to the appointment of the Department as Receiver of Respondent. A copy of the Consent to Order of Receivership is attached hereto and incorporated herein as **Exhibit 5 to Department Exhibit B**.

c. The Consent to Order of Receivership admits that "grounds exist for the appointment of a Receiver for Rehabilitation or Liquidation" pursuant to section 631.051 and 631.061, Florida Statutes; that Respondent consents, through a majority of its directors, to the entry of an Order of Rehabilitation or Liquidation, at the sole discretion of the Department; and waives any right to contest the initiation of delinquency proceedings by the Department or to a hearing on the Department's petition.

12. Accordingly, the Department requests, pursuant to sections 631.031 and 631.061, Florida Statutes, the entry of a Consent Order Appointing the Department as Receiver of Respondent for purposes of rehabilitation, injunction, and notice of automatic stay to allow the Department the ability to marshal Respondent's assets in the best interest of Respondent's policyholders, creditors, other claimants, and the public.

**WHEREFORE**, the Florida Department of Financial Services, Division of Rehabilitation and Liquidation, respectfully requests that this Court enter a Consent Order appointing the

Department of Financial Services as receiver of Windhaven Insurance Company for the purposes of rehabilitation, injunction, and notice of automatic stay.

**RESPECTFULLY SUBMITTED** this the 9th day of December, 2019.

*/signed//*

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OFFICE OF INSURANCE REGULATION

DAVID ALTMAIER  
COMMISSIONER

FINANCIAL SERVICES  
COMMISSION

RON DESANTIS  
GOVERNOR

JIMMY PATRONIS  
CHIEF FINANCIAL OFFICER

ASHLEY MOODY  
ATTORNEY GENERAL

NICOLE "NIKKI" FRIED  
COMMISSIONER OF  
AGRICULTURE

December 5, 2019

SENT VIA FACSIMILE  
(850) 413-2950

The Honorable Jimmy Patronis  
The Chief Financial Officer  
Department of Financial Services  
The Capitol, PL-11  
Tallahassee, FL 32399

Re: Windhaven Insurance Company

Dear Chief Financial Officer Patronis:

Pursuant to Chapter 631, Florida Statutes, the Office of Insurance Regulation has determined that one or more grounds exist for the Department of Financial Services, Division of Rehabilitation and Liquidation, to initiate delinquency proceedings against Windhaven Insurance Company. Included with this letter please find an affidavit setting forth those grounds along with a consent to order of receivership signed by the company so that the Division can promptly initiate those proceedings.

Please be aware that an attachment to the affidavit contains financial information that was submitted to the Office by Windhaven as trade secret pursuant to Section 624.4213, Florida Statutes. Accordingly, please ensure the affidavit is afforded appropriate protection from public disclosure when filed with the Circuit Court.

As always, the Office stands ready to provide any additional information or assistance the Department needs in order for this matter to proceed as expeditiously as possible. Thank you for your attention to this matter.

Sincerely,

  
David Altmaier

cc: Peter Penrod, Chief of Staff  
Department of Financial Services

Enclosures

DFS Exhibit A

• • •  
DAVID ALTMAIER • COMMISSIONER  
200 EAST GAINES STREET • TALLAHASSEE, FLORIDA 32399-0305 • (850) 413-5914 • FAX (850) 488-3334  
WEBSITE: WWW.FLOIR.COM • EMAIL: DAVID.ALTMAIER@FLOIR.COM



**AFFIDAVIT OF ROBERT W. RIDENOUR**

STATE OF FLORIDA

COUNTY OF Leon

**BEFORE ME**, the undersigned authority, personally appeared Robert W. Ridenour, who after being duly sworn, deposes and says:

1. I, Robert W. Ridenour, am over the age of eighteen (18), sui juris, and I am competent to testify to and have personal knowledge of the facts contained herein.

2. I have been employed by the Florida Office of Insurance Regulation (hereinafter referred to as "OFFICE") since May 2000.

3. Since October 2017, I have held the position of Financial Administrator within the Property & Casualty Financial Oversight business unit. In this position, I supervise a team of twenty persons specifically assigned to the financial analysis of insurance companies licensed to do business in Florida.

4. I have a Bachelor of Science degree in Business Administration with a major in Finance from the University of Florida.

5. Windhaven Insurance Company (hereinafter referred to as "WINDHAVEN") holds a license as a state of Florida domestic Property and Casualty insurer and is authorized to write in the lines of (192) Private Passenger Auto Liability and (211) Private Passenger Auto Physical Damage, pursuant to Part III of Chapter 624, Florida Statutes.

6. As a licensed insurer, WINDHAVEN is subject to the regulation of the OFFICE pursuant to the Florida Insurance Code.

DFS Exhibit B

7. On November 18, 2019, WINDHAVEN and the OFFICE executed Consent Order 255482-19-CO (hereinafter referred to as “Supervision Consent Order”). Pursuant to the Supervision Consent Order, WINDHAVEN was placed in Administrative Supervision for the purposes of protecting its assets and the interests of its insureds. A true and correct copy of the Supervision Consent Order is attached hereto as Exhibit 1.

8. The OFFICE has worked with WINDHAVEN during the period of Administrative Supervision to review and evaluate the true financial position of WINDHAVEN.

9. The OFFICE has now determined that grounds exist for the Department of Financial Services (hereinafter referred to as “DEPARTMENT”) to petition for an order, under Section 631.051 or 631.061, Florida Statutes, directing the DEPARTMENT to rehabilitate WINDHAVEN or appointing the DEPARTMENT as receiver for purposes of liquidating the business of WINDHAVEN. The four bases for this determination are summarized as follows:

#### **BASIS ONE: WINDHAVEN IS IMPAIRED**

##### **Authority: § 631.051(1) Fla. Stat.**

10. On October 21, 2019, the OFFICE received WINDHAVEN’s monthly financial statement (“Statement”) for the period ending September 30, 2019. A true and correct copy of the Statement is attached as Exhibit 2.

11. In the Statement, WINDHAVEN reported surplus as regards policyholders totaling \$26,072,438 United States Dollars (“USD”). See Exhibit 2, page 4, line 37.

12. On or about November 13, 2019, the OFFICE was notified by WINDHAVEN that a contingent commission liability triggered by thresholds of profitability and offset by receivables, previously deferred, was suddenly being realized.

13. On November 14, 2019, WINDHAVEN estimated the contingent liability at about \$19.1 million and indicated that it had not yet accrued this liability in its financial statement.

14. In addition to the above contingent commission liability, WINDHAVEN represented that it had a reserve deficiency of \$7 million dollars that would also negatively impact its surplus position and the financial representations made in its Statement.

15. On November 22, 2019, WINDHAVEN submitted as Trade Secret, pursuant to Section 624.4213, Florida Statutes, pro forma statements to the OFFICE in accordance with the terms of Supervision Consent Order. A true and correct copy of the pro formas is attached hereto in a sealed envelope as Exhibit 3.

16. The pro forma statements indicate a different contingent commission liability than that indicated in paragraph 13 (see Exhibit 3, UCCA Proforma Financial Statements Assumptions page).

17. Section 631.011(13), Florida Statutes, defines “impairment of surplus” as a surplus in an amount that “does not meet the requirements of section 624.408.” Pursuant to Section 624.408, Florida Statutes, WINDHAVEN is required to “at all times” maintain surplus as to policyholders of at least the greater of \$4 million or 10% of its total liabilities.

18. Based on WINDHAVEN’s Statement and pursuant to Section 624.408, Florida Statutes, WINDHAVEN was required to maintain surplus as to policyholders in the amount of \$4,095,398. For the purposes of calculating minimum surplus and pursuant to Section 625.041(5), Florida Statutes, liabilities do not include taxes, expenses, and other obligations due or accrued at

the date of the statement. Liabilities do include items enumerated in Section 625.041 (1) – (4), Florida Statutes, which are reserve and unearned premium related items.

19. Adjusting the liabilities owed by WINDHAVEN to take into account the contingent commission liability and the reserve deficiency, surplus as to policyholders is reduced by the same amounts leaving surplus as to policyholders at September 30, 2019, at a negative amount.

20. The OFFICE has determined that WINDHAVEN is impaired.

## **BASIS TWO: WINDHAVEN IS INSOLVENT OR ABOUT TO BECOME INSOLVENT**

### **Authority: §§ 631.051(1) and 631.061(2) Fla. Stat.**

21. Section 631.011(14), Florida Statutes, defines “insolvency” as a condition in which all of the assets of the insurer, if made immediately available, would be insufficient to discharge all of the liabilities of the insurer.

22. WINDHAVEN’s total liabilities reported on its Statement were \$131,448,583 (see Exhibit 2, page 3, line 28) and its total assets were \$157,537,420, (see Exhibit 2, page 2, line 8).

23. Adjusting the liabilities owed by WINDHAVEN to take into account the contingent commission liability and the reserve deficiency, WINDHAVEN’s assets are insufficient to discharge all its liabilities thereby rendering WINDHAVEN insolvent as of September 30, 2019.

24. The OFFICE has determined that WINDHAVEN is insolvent.

**BASIS THREE: FURTHER TRANSACTION OF INSURANCE IS HAZARDOUS TO POLICYHOLDERS, CREDITORS, STOCKHOLDERS, OR THE PUBLIC**

**Authority: §631.051(3), Fla. Stat.**

25. As reported in its December 31, 2018 Annual Statement, WINDHAVEN's policyholder surplus declined by \$10,833,349, or 22.28%, from 2017 to 2018. Additionally, WINDHAVEN's net loss for the period ending December 31, 2018, was \$9,712,162 which loss represents 19.97% of WINDHAVEN's prior year-end surplus as regards policyholders. A true and correct copy WINDHAVEN's December 31, 2018 Annual Statement is attached hereto as Exhibit 4.

26. WINDHAVEN also reported in its December 31, 2018 Annual Statement loss reserve development for the past two (2) years as follows:

One-Year Loss Reserve Development:	2017 - \$8,963,000 2018 - \$33,106,000 (Exhibit 4, page 18, line 74).
Two-Year Loss Reserve Development:	2017 - \$5,394,000 2018 - \$38,732,000 (Exhibit 4, page 18, line 76).

27. This adverse loss reserve development pattern reflects that WINDHAVEN has been consistently under-estimating its actual losses and failing to establish adequate reserves for such losses.

28. WINDHAVEN's cash and invested assets declined 44.64% in the first nine (9) months of 2019 from \$74,215,327 (Exhibit 4, page 2, line 17) to \$41,086,714 (see Exhibit 2, page 2, line 17). WINDHAVEN's cash and invested assets have continued to decline during the period of Supervision.

29. Based on the above, the OFFICE has determined that WINDHAVEN is operating in an unsound condition that is hazardous to policyholders, creditors, stockholders, and the public.

## **BASIS FOUR: CONSENT TO REHABILITATION OR LIQUIDATION**

### **Authority: §631.051(11), Fla. Stat.**

30. The Supervision Consent Order required WINDHAVEN to provide a bank statement to the OFFICE reflecting a capital contribution of at least \$30 million in cash or cash equivalents into WINDHAVEN by November 29, 2019. See Exhibit 1, page 3, paragraph 6.b.

31. WINDHAVEN failed to provide the required bank statement by the due date above and to date has not contributed any required cash or cash equivalents.

32. The Supervision Consent Order states “[s]hould WINDHAVEN fail to comply with any provision of this consent order, WINDHAVEN consents to the entry of an Order appointing the Department as Receiver and acknowledges that the Department may apply to the Court for an Order of Rehabilitation or Liquidation, at the sole discretion of the Department, on the basis that WINDHAVEN has consented to the entry of such Order.” See Exhibit 1, page 5, paragraph 16.

33. On November 15, 2019, WINDHAVEN, through a majority of its directors, executed a Consent to Order of Receivership (hereinafter referred to as “the Consent”) for the appointment of the Department of Financial Services, Division of Rehabilitation and Liquidation as Receiver. A true and correct copy of the Consent is attached hereto as Exhibit 5.

34. The Consent admits “that grounds exist for the appointment of a Receiver for Rehabilitation or Liquidation pursuant to Sections 631.051 and 631.061, Florida Statutes.” See Exhibit 5, paragraph 2.

35. The Consent states as follows:

Pursuant to Sections 631.051(11) and 631.061 (on grounds of consent), Florida Statutes, Respondent consents, through a majority of its directors, stockholders, members, or subscribers, to the entry of an Order of Rehabilitation or Liquidation, at the sole discretion of the Department of Financial Services (herein, the “DFS”) as Receiver for the purposes of Rehabilitation or Liquidation, and

consents to any injunctions this Court deems necessary and appropriate.

Exhibit 5, paragraph 3.

36. Further, the consent states:

Respondent agrees not to contest the initiation of delinquency proceedings by the DFS in the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida. Respondent agrees further that no hearing need be held on the DFS' petition for an order appointing the DFS as Receiver.

Id.

### CONCLUSION

As set forth above, WINDHAVEN is impaired and insolvent or about to become insolvent; 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; has willfully violated Florida law; and has consented to rehabilitation or liquidation. Thus, grounds for issuing an Order for entry into receivership exist under Sections 631.051(1), 631.051(3), 631.051(8), 631.051(11), and 631.061(1), Florida Statutes.

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**FURTHER AFFIANT SAYETH NOT.**

*Robert W. Ridenour*

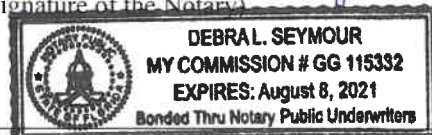
Robert W. Ridenour, Financial Administrator  
Property & Casualty Financial Oversight  
Office of Insurance Regulation

STATE OF Florida

COUNTY OF Leon

The foregoing affidavit was sworn to and subscribed before me this 5<sup>th</sup> day of December  
2019, by Robert W. Ridenour

*Debra L. Seymour*  
(Signature of the Notary)



(Print, Type or Stamp Commissioned Name of Notary)

Personally Known X OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

My Commission Expires August 8, 2021