

**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.: 2019 CA 002861

vs.

Windhaven Insurance Company
Respondent

**AMENDED 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**

THIS CAUSE was considered on the Petition of the Florida Department of Financial Services ("Department"), for a Consent Order appointing the Department of Financial Services as receiver of Windhaven Insurance Company ("Respondent" or "Company"), for purposes of rehabilitation, injunction, and notice of automatic stay, which was filed on December 9, 2019, (hereinafter, "Petition"). The Court, having reviewed and considered the pleadings of record, and otherwise being fully informed in the premises, finds as follows:

1. Section 631.021, Florida Statutes (2019), 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.

2. 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 the Department and the Office of Insurance Regulation ("OIR") and over all persons made subject to this Court's jurisdiction by other provisions of law. 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), .025, Fla. Stat.

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

4. Respondent was authorized as a Florida domiciled insurance company on March 29, 2006, by OIR and was authorized to transact Private Passenger Automobile Liability and Private Passenger Automobile Physical Damage coverage insurance business. Respondent's principal place of business is located at 3155 NW 77 Avenue, Doral, FL 33122.

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, 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.

7. The Court has determined that sufficient grounds exist for the rehabilitation of Respondent based on the evidence presented in the Department's Petition as follows:

A. Section 631.051(1), Florida Statutes, authorizes the Department to apply to this Court for an Order directing it to rehabilitate a domestic insurer if the insurer is impaired. The Court finds that Respondent is impaired within the meaning of section 631.011(13), Florida Statutes.

B. Section 631.051(1), Florida Statutes, authorizes the Department to apply to this Court for an Order directing it to rehabilitate a domestic insurer if the insurer is insolvent. The

Court finds that Respondent is currently insolvent within the meaning of section 631.011(14), Florida Statutes.

C. Section 631.051(3), Florida Statutes, authorizes the Department to apply to this Court for an Order directing it to rehabilitate a domestic insurer 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.” OIR has found that Respondent’s further transaction of insurance is hazardous to policyholders, creditors, stockholders, or the public.

D. Section 631.051(11), Florida Statutes, authorizes the Department to apply to this Court for an Order directing it to rehabilitate a domestic 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. The Court finds that Respondent, through a majority of its directors, consented to the entry of an order placing Respondent into receivership.

8. The Court therefore finds that it is in the best interests of Respondent, its policyholders, creditors, stockholders, and the public that the Department be appointed receiver of Respondent for purposes of rehabilitation.

THEREFORE, IT IS ORDERED AND ADJUDGED as follows:

9. The Department of Financial Services of the State of Florida shall be and is hereby appointed receiver of Respondent for purposes of rehabilitation, effective immediately upon the entry of this Order.

10. The Department is vested with the title to all property, real or personal; contracts; rights of action; and all books and records of Respondent, wherever located. § 631.141(2), Fla. Stat.

11. The Department is granted all the powers of Respondent's directors, officers, and managers, whose authority is hereby suspended, except as such powers are re-delegated by the Department. The Department has full power to direct and manage the affairs of Respondent, to hire and discharge employees, and to deal with the property and business of the Respondent. § 631.141(10), Fla. Stat.

12. For purposes of this Order, the term "affiliate" shall be defined in accordance with section 631.011(1), Florida Statutes, and shall include, but not be limited to, the following affiliates: Windhaven Insurance Holdings Corporation; Windhaven Underwriters, LLC.; Windhaven Select, LLC.; Windhaven Claims Management, LLC; Windhaven National Insurance Company; and Windhaven Insurance Services.

13. Any present or former 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 ("Controlling Persons") shall be required to fully cooperate with the Department, pursuant to section 631.391, Florida Statutes. Any person who fails to cooperate with the Department, interferes with the Department, or fails to follow the instructions of the Department, may, at the Department's discretion, be excluded from the Respondent's business premises.

14. Any person, firm, corporation, or other entity having notice of the Order that fails to abide by its terms may be subject to further sanction of this Court. §§ 631.041(3), (4), .156, .391, Fla. Stat.

15. **THE DEPARTMENT IS AUTHORIZED AND DIRECTED TO:**

A. Take possession of all the assets, estate, and property of every kind whatsoever and wherever located belonging to Respondent pursuant to sections 631.101 and 631.141, Florida Statutes, whether in the possession of Respondent or its officers, directors, shareholders, trustees, employees, consultants, attorneys, agents, affiliates, or other persons, including but not limited to: offices maintained by Respondent; furniture; fixtures; equipment; office supplies; choses in action; rights of action; contract rights; books, papers, claims and claim files, policy files, application files, premium records, rate books, underwriting manuals, personnel records, and all other records and data that are otherwise the property of the Respondent, in whatever form maintained; evidences of debt; bank accounts; savings accounts; certificates of deposit, stocks, bonds, debentures, and other securities; mortgages; real property; and all funds held by Respondent's agents, subagents, producing agents, brokers, solicitors, service representatives, premium finance companies, 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.

B. Conduct the business of Respondent and take all steps, as the Court may direct, toward the removal of the causes and conditions which have made this Order of Rehabilitation necessary and to take such further action, as the Department deems necessary or appropriate, to reform and revitalize the Respondent.

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; subject to approval by the Court, to be paid out

of the funds or assets of the Respondent in the possession of the Department 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 Respondent, the Department, 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 Department 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 that are economically feasible to collect that are due and owing to Respondent.

H. Deposit funds and maintain bank accounts in accordance with section 631.221, Florida Statutes.

I. Take possession of all of Respondent's securities and certificates of deposit on deposit with the Chief Financial Officer 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. Negotiate and settle subrogation claims and final judgments without further order of this Court.

K. Sell any salvage recovered property without further order of this Court.

L. Update its records to incorporate change of address information for interested individuals/entities (e.g. agent, claimant, creditor, policyholder, subscriber) if the Department determines that there has been a change of address for any interested individuals/entities. The Department is authorized to use change of address information for future mailings.

M. Dispose of and destroy obsolete and unneeded records pursuant to section 631.141(12), Florida Statutes.

N. Apply to this Court for further instructions as the Department deems necessary.

IT IS FURTHER ORDERED AND DIRECTED:

16. Any "Covered Entity" or "Business Associate" in possession of "Protected Health Information" ("PHI") as defined in and governed by the federal Health Insurance Portability and Accountability of 1996, is authorized and directed to disclose such PHI to the Department as receiver of Respondent to the same extent that such disclosure would have been permissible if made directly to Respondent prior to the entry of this Order.

17. Any "financial institution" in possession of "nonpublic personal information" ("NPI") as defined in and governed by the Gramm-Leach-Bliley Financial Modernization Act of 1999, is authorized and directed to disclose such NPI to the Department as receiver of Respondent, to the same extent that such disclosure would have been permissible if made directly to Respondent prior to the entry of this Order.

18. All agents, brokers, or other persons having sold policies of insurance and/or collected premiums on behalf of Respondent are required to account for and pay all premiums and

unearned commissions due to cancellation of policies in the normal course of business owed to the Respondent directly to the Department within 20 days of demand by the Department. 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 Department. § 631.155, Fla. Stat.

19. Any premium finance company that has entered into a contract to finance a premium for a policy issued by the Respondent is required to pay any premium owed to the Respondent directly to the Department.

20. Reinsurance premiums due to or payable by the Respondent shall be remitted to, or disbursed by, the Department. The Department shall handle reinsurance losses recoverable or payable by the Respondent. All correspondence concerning reinsurance shall be between the Department and the reinsuring company or intermediary.

21. The United States Postal Service shall be directed to provide any information requested by the Department regarding the Respondent and to handle future deliveries of Respondent's mail as directed by the Department.

22. Any bank, savings and loan association, financial institution or other person which has on deposit, in its possession, custody or control any funds, accounts and any other assets of the Respondent is directed to immediately transfer title, custody, and control of all such funds, accounts, and other assets to the Department. The Department 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 Department's control without permission of this Court.

23. Any entity furnishing telephone, water, electric, sewage, garbage, or trash removal services to the Respondent is required to maintain such service and transfer any such accounts to the Department as of the date of the Order, unless instructed to the contrary by the Department.

24. Upon request by the Department, any company providing telephonic services to the Respondent is directed to provide a reference of calls from the number presently assigned to the Respondent to any such number designated by the Department or perform any other services or changes necessary to the conduct of the receivership.

25. All executory contracts to which the Respondent was a party shall be cancelled and stand cancelled unless specifically adopted by the Department within ninety (90) days of the date of this Order or from the date of the Department's actual knowledge of the existence of such contract, whichever is later. "Actual Knowledge" means the Department has in its possession a written contract to which the Respondent is a party, and the Department has notified the vendor in writing acknowledging the existence of the contract.

A. Further, the Department shall have the authority to do the following:

i. Pay for services provided by any of Respondent's vendors, in the ninety (90) day period prior to assuming or rejecting the contract, which are necessary to administer the receivership estate; and

ii. Once the Department determines Respondent's vendor is necessary in the continued administration of the receivership estate for a period to exceed the ninety (90) days from the date of this order, or from the date of Department's actual knowledge of such contract, whichever is later, the Department may make minimal

modifications to the terms of the contract, including, but not limited to, the expiration date of the agreement, the scope of the services to be provide, and/or the compensation to be paid to Respondent's vendor pursuant to the contract. "Minimal Modifications" shall mean any minimum alteration made to the contract in order to adapt to the new circumstances of the receivership estate. In no event will any minimal modification be construed as the Department entering into a new contract with Respondent's vendor.

B. 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 Department 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 Department. 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.

C. Notwithstanding the foregoing, the Department shall negotiate in good faith with Respondent's affiliates the terms and conditions under which the affiliates will make their employees available to render services to the Department for the operation of the business and affairs of the Respondent during the course of the receivership. The terms and conditions of the

requested services and the reimbursement thereof shall be set forth in a separate Memorandum of Understanding between the Department and the affiliates.

26. Any information technology service provider or data processing service, including, but not limited to: Ammex iSupport Corporation; Silvervine Software; Clutch Insurance, which has custody or control of any data processing information and records including but not limited to electronic message communications, source documents, claims data, policy administration data, data processing cards, input tapes, all types of storage information, master tapes or any other recorded information relating to the Respondent is directed to transfer custody and control of such records to the Department. The Department shall be authorized to compensate any such entity for the actual use of hardware and software, which the Department 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 Department, for the actual time such equipment and software is used by the Department. Any past due or pending balances due from Respondent shall not be a basis for withholding the services contemplated in this Paragraph.

27. All attorneys employed by Respondent as of the date of the Order, are required **within ten (10) days of receiving notice of this Order**, to report to the Department 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 are advised that pursuant to sections 631.011(17) and 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 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 are required to deliver such litigation files, material, documents or records intact and without purging to the Department, on request, notwithstanding any claim of a retaining lien which, if otherwise valid, should not be extinguished by the delivery of these documents.

28. All subsidiaries, affiliates, parent corporations, ultimate parent corporations, and any other business entity affiliated with Respondent having any interest in the buildings located at 3155 NW 77 Avenue, Doral, FL 33122; 4343 Anchor Plaza Parkway, Tampa, FL; 9050 Capital of TX Hwy North, Suite 260, Austin, TX; 5400 Lyndon B. Johnson Freeway, Suite 200, Dallas, TX; or any other facility in which Respondent may operate, shall make available, at that location and at no charge to the Department or to Respondent for ninety (90) days, office space, and related facilities (telephone service, copiers, computer equipment and software, office supplies, parking, etc.) to the extent deemed necessary by the Department in its sole discretion. After such ninety-day period, the Department shall pay for the use and occupancy of such office space and related facilities on a basis to be agreed by the parties, or as determined by the Receivership Court at the conclusion of such occupancy.

29. All subsidiaries, affiliates, parent corporations, ultimate parent corporations, and any other business entity affiliated with Respondent having any interest in the computer equipment, software, and peripherals currently used by or for Respondent shall provide complete access to and administrative control of all such computer equipment, software, and peripherals to the Department at no charge to the Department for ninety (90) days to the extent deemed necessary by the Department in its sole discretion, provided that such access and control shall not interfere with the access of the Respondent's affiliates to such computer equipment, software, and peripherals and information needed by them to operate their business. After such ninety-day

period, the Department shall pay for the use of such computer equipment, software, and peripherals and information on a basis to be agreed by the parties, or as determined by the Receivership Court at the conclusion of such use.

30. Respondent, its affiliates, and parent corporations shall secure all employee electronic mailboxes for employees who provided services to Respondent and provide the Department with a full export of those employee electronic mailboxes for the past twelve months or longer to the extent that data older than twelve months is available in a format that maintains all header and custodian metadata.

CONTINUATION OF INVESTIGATION

31. The Department shall be authorized to conduct an investigation as authorized by section 631.156, Florida Statutes, to discover assets for recovery; to determine the location of assets and their manner of recovery; and to make fully available to the Court the true state of Respondent's financial affairs.

32. Section 631.391, Florida Statutes, imposes on Controlling Persons a duty to cooperate with the Department during its investigation. Such cooperation shall include, but not be limited to, providing oral testimony under oath, 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.

33. In furtherance of this investigation, Respondent's parent corporations, its subsidiaries, and affiliates are required to make all books, documents, accounts, records, including all records located in any premises occupied by such parent corporations, subsidiaries or affiliates available for full, free and unhindered inspection and examination by the Department during normal business hours (8:00 a.m. to 5:00 p.m.) Monday through Friday, from the date of the Order

and to provide copies of any records requested by the Department whether or not such records are related to Respondent. .

34. Upon receipt of a certified copy of this order, any bank or financial institution is directed to immediately disclose to the Department 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 Department's inspection and copying.

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

36. In the event the Department determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the Respondent is appropriate, the Department shall prepare a plan to effect such changes and submit the plan to this Court for consideration.

37. If at any time the Department determines further efforts to rehabilitate Respondent would be useless, it may apply to the court for an order of liquidation. § 631.101, Fla. Stat.

INJUNCTION

38. 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 and its officers, directors, stockholders, affiliates, members, subscribers, agents, and all other persons 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 Department or these proceedings; from the transfer of property and assets of Respondent without the consent of the Department; 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 Department 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.

39. Notwithstanding the provisions of this paragraph, the Department 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 Department 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 Department shall be authorized to impose a charge for copies of such claim files pursuant to the provisions of sections 119.07(1)(a), and 624.501, Florida Statutes.

NOTICE OF AUTOMATIC STAY

40. Notice is hereby given that, pursuant to section 631.041(1), Florida Statutes, the filing of the Department's Petition herein operates as an automatic stay applicable to all persons and entities, other than the Department and OIR, which shall be permanent and survive the entry of the order, and which prohibits:

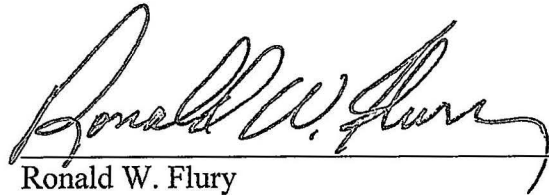
A. The commencement or continuation of judicial, administrative, or other action or proceeding against the insurer or against its assets or any part thereof;

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, Florida Statutes; and
- F. The set-off or offset of any debt owing to the insurer except offsets as provided in section 631.281, Florida Statutes.

41. 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.

DONE and ORDERED in Chambers at the Leon County Courthouse in Tallahassee, Leon County, Florida on this 12th day of December 2019.



Ronald W. Flury
JUDGE PRESIDING

cc: Jamila G. Gooden
Yamile Benitez-Torviso
Miriam Victorian
Harold S. Horwich