

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

In re the Receivership of
Windhaven Insurance Company

CASE NO.: 2019 CA 002861

**CONSENT ORDER APPOINTING THE FLORIDA DEPARTMENT OF FINANCIAL
SERVICES AS RECEIVER OF WINDHAVEN INSURANCE COMPANY FOR
PURPOSES OF LIQUIDATION, INJUNCTION, AND
NOTICE OF AUTOMATIC STAY, EFFECTIVE JANUARY 6, 2020**

THIS CAUSE was considered on the Florida Department of Financial Services as Receiver of Windhaven Insurance Company's ("Department's"), *Motion for Order to Liquidate Windhaven Insurance Company, effective January 6, 2020*. The Court, having reviewed and considered the Motion, 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. Windhaven Insurance Company ("Respondent" or "Windhaven") 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. On December 9, 2019, the Department filed a *Petition for Consent Order Appointing the Department as Receiver of Windhaven Insurance Company for Purposes of Rehabilitation, Injunction, and Notice of Automatic Stay* ("Petition").

6. On December 12, 2019, this Court entered an *Amended Consent Order Appointing the Florida Department of Financial Services as Receiver of Windhaven for Purposes of Rehabilitation, Injunction, and, Notice of Automatic Stay* ("Rehabilitation Order").

7. In the Rehabilitation Order, this Court directed the Department to apply to the Court to liquidate Windhaven should it be determined that efforts to rehabilitate the company would be useless. § 631.101(2), Fla. Stat.

8. By Motion dated December 23, 2019, the Department informed the Court that further efforts to rehabilitate the Respond would be useless.

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

A. Section 631.061(1), Florida Statutes, authorizes the Department to apply to this Court for an Order directing it to liquidate 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.

B. Sections 631.051(11) and .061, Florida Statutes, authorizes the Department to apply to this Court for an Order directing it to liquidate 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.

10. 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 liquidation.

THEREFORE, IT IS ORDERED AND ADJUDGED as follows:

11. The Department of Financial Services of the State of Florida shall be and is hereby appointed receiver of Respondent for purposes of liquidation, effective January 6, 2020.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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. Marshal and liquidate the assets of Respondent.

C. Publish notice specifying the time and place fixed for the filing of claims with the Department once each week for three consecutive weeks in the Florida Administrative Weekly published by the Secretary of State, at least once in the Florida Bar News, and in all states where Respondents may have issued insurance policies using methods of publication similar to those being used in the State of Florida.

D. Give notice of this proceeding to Respondent's agents pursuant to section 631.341, Florida Statutes.

E. 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.

F. 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.

G. 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.

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

I. Collect all debts that are economically feasible to collect that are due and owing to Respondent.

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

K. 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.

L. Negotiate and settle subrogation claims and final judgments without further order of this Court.

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

N. Coordinate the operation of the receivership with the operation of the Florida Insurance Guaranty Association and any other affected guaranty association in accordance with the provisions of sections 631.395 and 631.397, Florida Statutes. The Department may in its discretion, contract with, provide data processing services for, and release claims files, records, documents pertaining to claims on file with Respondent, or insurance claims filed with the Department to the appropriate guaranty association(s) as necessary to carry out the purposes of chapter 631, Florida Statutes.

O. 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.

P. Transfer unclaimed funds to the unclaimed property unit(s) of the states(s) reflected in the claimants' last address of record in the Department's files.

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

R. Authorize the applicable guaranty association(s) to dispose of and destroy obsolete and unneeded records after they have been scanned, verified, and added to the guaranty association's records management system so long as the guaranty association(s) provide access to these electronic records to the Department as required to handle its duties.

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

IT IS FURTHER ORDERED AND DIRECTED:

18. 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.

19. Pursuant to the provisions of section 631.252, Florida Statutes, all policies of insurance or similar contracts of coverage that have not expired are canceled as of 12:01 a.m. on

February 5, 2020. Policies or contracts of coverage with normal expiration dates prior to the dates otherwise applicable under this paragraph, or which are terminated by insureds, or lawfully cancelled by the Department or insurer before such date, shall stand canceled as of the earlier date.

20. The Department shall continue to coordinate with the applicable Guaranty Associations to provide continued coverage for Respondent's policyholders prior to the cancellation of policies pursuant to section 631.252, Florida Statutes.

21. In the event that Windhaven should not be liquidated and emerge from receivership as a viable insurer, pursuant to section 631.55, the company must reimburse the Florida Insurance Guaranty Association ("FIGA") for any and all claim payments made on its behalf pursuant to this Order.

22. 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.

23. 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.

24. 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.

25. 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 Respondent's reinsurance coverage shall be between the Department and the reinsuring company or intermediary.

26. 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.

27. 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 owned by or held for the benefit of Respondent, 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.

28. 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.

29. 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.

30. 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, including affiliates which are 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 provided, 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.

31. Any information technology service provider or data processing service, including, but not limited to: Ammex iSupport Corporation; Silvervine Software; TimeMatters; Clutch Analytics LLC, 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 the rights to or actual 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 transfer of records or actual use of hardware and software contemplated in this paragraph.

32. 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.

33. 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 33634; 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 sixty-five (65) 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.

34. 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 sixty-five (65) 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.

35. 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.

36. All claims shall be filed with the Department **on or before January 6, 2021**, and all such claims shall be filed on proof of claim forms prepared by the Department.

37. To assure the validity of claim assignments, to assure that the processing of assignments does not create an undue burden on estate resources, and to assure that assignment decisions are made using the best information available, the Department shall not recognize or accept any assignment of claim by the claimant of record unless the following criteria are met:

- A. A distribution petition has not been filed with this Court;
- B. The Department has been provided with a properly executed and notarized assignment of claim agreement entered into between the parties; and
- C. The Department has been provided with a properly executed and notarized Department's Assignment of Claim Change Form and required supporting documentation.
- D. The Department's Assignment of Claim Change Form shall contain an acknowledgement by the claimant, or someone authorized to act on behalf of the claimant, that:
 - i. The claimant is aware that financial information regarding claims distributions and payments published on the Department's website or otherwise available can assist the claimant in making an independent and informed decision regarding the sale of the claim;

ii. The claimant understands that the purchase price being offered in exchange for the assignment may differ from the amount ultimately distributed in the receivership proceeding with respect to the claim;

iii. It is the claimant's intent to sell their claim and have the Department's records be permanently changed to reflect the new owner; and

iv. The claimant understands that that they will no longer have any title, interest, or rights to the claim including future mailings and distributions if they occur.

CONTINUATION OF INVESTIGATION

38. 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.

39. 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.

40. In furtherance of this investigation, Respondent's parent corporations, its subsidiaries, and affiliates are required pursuant to section 631.391, Florida Statutes, 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.

41. 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.

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

INJUNCTION

43. 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.

44. 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

45. 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.

46. 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 30th day of December 2019.



Ronald W. Flury
JUDGE PRESIDING

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