

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

IN RE: The Receivership of  
GREAT OAKS CASUALTY  
INSURANCE COMPANY,  
a Florida corporation.

CASE NO.: 91-4746

FILED  
CLERK OF CIRCUIT COURT  
LEON COUNTY, FLORIDA

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FILED

**RECEIVER'S MOTION FOR ORDER APPROVING SETTLEMENT  
AGREEMENT AND RELEASE WITH THE UNITED STATES**

THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES, as Receiver of Great Oaks Casualty Insurance Company (the "Receiver"), hereby moves this court for an Order Approving Settlement Agreement and Release with the United States. In support of its Motion, the Receiver says:

1. Great Oaks Casualty Insurance Company ("Great Oaks") was a Florida corporation previously authorized to transact insurance business in the State of Florida pursuant to Florida Statutes. On December 9, 1991, the Second Judicial Circuit Court in and for Leon County, Florida (the "Court") entered its Order Appointing the Florida Department of Insurance as Receiver for Purposes of Liquidation, Injunction and Notice of Automatic Stay. On January 7, 2003, the Florida Department of Insurance became a part of the Florida Department of Financial Services.

2. This Court has jurisdiction over the Great Oaks Receivership and is authorized to enter all necessary and/or proper orders to carry out the purpose of the Florida Insurers Rehabilitation and Liquidation Act (Section 631.021(1), Florida Statutes).

3. In Florida, distributions from insurance company receiverships are paid pursuant to a priority scheme set out in Section 631.271, Florida Statutes. The statute

sets up classes of claimants whereby each class is paid 100% before the next lower class is paid. The expenses of the Receiver and policyholder loss claims are amongst the highest priority and the claims of the shareholders are the lowest. Claims of the Federal government are prioritized after claims for unearned premium. Claims of employees, state and local governments, and general creditors are all in classes below the Federal government. A copy of Section 631.271, Florida Statutes is attached to this motion as "Exhibit A."

4. As a part of the administration of a receivership estate, the Court usually sets a claims filing deadline (in Great Oaks, the claims filing deadline was June 9, 1992). The Federal government has taken the position that they are not subject to any filing deadlines imposed by the state courts, and further that they do not have to file a claim in any format specified by the Receiver. As more fully described below, a series of court decisions have upheld these positions.

5. The current situation is the result of the interaction between two federal laws, the Federal Priority in Claims Act and the McCarren-Ferguson Act. The Federal Priority in Claims Act (31 U.S.C. Section 3713) gives the United States first priority for claims in insolvency cases that are not covered by Title 11 of the Federal Bankruptcy Code. The McCarren-Ferguson Act (15 U.S.C. Section 101 et. Seq.) delegates the principal responsibility for the regulation of the business of insurance to the states.

6. In United States Department of Treasury v. Fabe, 508 U.S. 491 (1993), the Supreme Court examined the interplay between the Federal Priority in Claims Act and the McCarren-Ferguson Act. The Court determined that state laws enacted for the purpose of regulating the business of insurance take precedence over the Federal Priority

in Claims Act. The Court ruled that state statutes giving priority to the claims of policyholders and administrative expenses were enacted for the purpose of regulating the business of insurance, but statutes giving priority to the claims of employees and general creditors were not. Therefore, claims of the United States in an insurance company receivership estate have a priority above all other claims except policyholder level claims and administrative expenses.

7. However, unlike all other claimants in an insurance company receivership, the United States is not subject to any time bar, claims filing deadline or statute of limitations. Ruthardt v. United States, 303 F.3d 375 (1<sup>st</sup> Cir. 2002). In Ruthardt, the First Circuit relied on Fabe and an earlier decision in Garcia v. Island Program Designer, Inc., 4 F.3d 57 (1<sup>st</sup> Cir. 1993), and concluded that statutes creating time bars or claims filing deadlines were not enacted for the purpose of regulating the business of insurance. Therefore, the Federal Priority in Claims Act prevails and the United States is not bound by a claims filing deadline in an insurance company receivership.

8. As an aside, the First Circuit recognized that "... giving the United States an open-ended exemption from deadlines is (in the liquidation context) simply terrible public policy and was almost certainly not the result of any considered judgment by Congress" and pointed out that Congress could easily fix the problem through legislation.

9. The Court decisions discussed above do not limit the Federal government's right to assert a claim to any one agency. A viable claim could come from any branch or agency of the Federal Government. Also, the Federal government has taken the position that a Receiver that makes a distribution of assets to a lower class of claimants is personally liable in the event that the Federal government should later assert

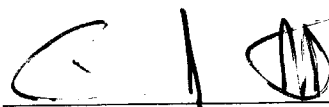
a claim. Predictably, this has had a chilling effect on Receivers. The practical effect of the current situation is to halt payments for an indefinite period of time to any claimant in a class lower than the Federal government which essentially stalls the administration of the receivership estate.

10. In an effort to find a solution to this issue, the Receiver has worked with the Department of Justice to develop a procedure for obtaining a release from the Federal government. By the terms of the Settlement Agreement and Release (attached as "Exhibit B"), the United States releases Great Oaks and the Receiver from any claims arising out of the Great Oaks estate except for claims related to federal tax, fraud or criminal claims.

11. If approved by this Court, the Settlement Agreement and Release will allow the Receiver to make distributions below the priority level of the Federal government, and ultimately discharge the Great Oaks estate.

WHEREFORE, the Receiver respectfully requests this Court grant its Motion and enter an Order Approving the Settlement Agreement and Release with the United States.

DATED this 22<sup>nd</sup> day of November 2010.



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Florida Department of Financial Services  
Division of Rehabilitation and Liquidation  
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## The 2010 Florida Statutes

Title XXXVII  
INSURANCE

Chapter 631

[View Entire Chapter](#)

INSURER INSOLVENCY; GUARANTY OF PAYMENT

**631.271 Priority of claims.—**

(1) The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this subsection. Every claim in each class shall be paid in full or adequate funds shall be retained for such payment before the members of the next class may receive any payment. No subclasses may be established within any class. The order of distribution of claims shall be:

(a) *Class 1.—*

1. All of the receiver's costs and expenses of administration.

2. All of the expenses of a guaranty association or foreign guaranty association in handling claims.

(b) *Class 2.—*All claims under policies for losses incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which claims are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, may not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to her or his employee may be treated as a gratuity.

(c) *Class 3.—*Claims under nonassessable policies for unearned premiums or premium refunds.

(d) *Class 4.—*Claims of the Federal Government.

(e) *Class 5.—*Debts due to employees for services performed, to the extent that the debts do not exceed \$2,000 for each employee and represent payment for services performed within 6 months before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. This priority is in lieu of any other similar priority that is authorized by law as to wages or compensation of employees.

(f) *Class 6.—*Claims of general creditors.

(g) *Class 7.—*Claims of any state or local government. Claims, including those of any state or local government for a penalty or forfeiture, shall be allowed in this class, but only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under paragraph (j).

(h) *Class 8.—*Claims filed after the time specified in s. 631.181(3), except when ordered otherwise by the court to prevent manifest injustice, or any claims other than claims under paragraph (i) or under paragraph (j).

(i) *Class 9.—*Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited

**EXHIBIT "A"**

in accordance with law.

(j) *Class 10.*—The claims of shareholders or other owners.

(2) In a liquidation proceeding involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where such assets are located.

**History.**— s. 743, ch. 59-205; ss. 13, 35, ch. 69-106; s. 13, ch. 70-27; s. 1, ch. 70-439; s. 809(1st), ch. 82-243; s. 21, ch. 83-38; s. 7, ch. 85-63; s. 40, ch. 88-166; ss. 94, 187, 188, ch. 91-108; s. 4, ch. 91-429; s. 1, ch. 95-213; s. 405, ch. 97-102.

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## RELEASE AGREEMENT

In order to permit a distribution of the assets of the estate of Great Oaks Casualty Insurance Company ("Great Oaks"), pursuant to the orders of the Circuit Court of the Second Judicial District, in and for Leon County, Florida ("Court"), this Release Agreement is being executed by the United States and Wayne Johnson, Deputy Receiver of Great Oaks ("Deputy Receiver").

### I. PARTIES

The parties to this Release Agreement are the United States and the Deputy Receiver (collectively, the "Parties").

### II. RECITALS

1. The Parties do not intend this Release Agreement to release any possible claims the United States may have or may acquire against anyone for tax, fraud (including, but not limited to, securities and pension benefit fraud), or criminal liabilities to the United States.
2. Except for the express terms of this Release Agreement, the Parties do not intend to create, enhance, diminish, defeat or otherwise affect such claims, if any, as the United States may have against the Deputy Receiver or the estate of Great Oaks.
3. The Parties understand that this Release Agreement may be subject to the approval of the Court, which is supervising the liquidation of Great Oaks.
4. The United States enters into this Release Agreement in reliance upon the representations of the Deputy Receiver contained in his affidavit dated June 3, 2010, attached as Exhibit A to this Release Agreement ("Affidavit").

### **III. AGREEMENT**

1. Except only for possible federal tax, fraud, or criminal claims, the United States hereby releases and discharges the Deputy Receiver, Wayne Johnson, and the estate of Great Oaks from any and all liability under 31 U.S.C. § 3713(b) in connection with the Great Oaks liquidation.

2. Under the terms of this Release Agreement, the United States or its duly authorized representative shall have the right, prior to the destruction of Great Oaks' records in accordance with the orders of the Court, during normal business hours, on a date and at a location agreed upon by the Parties, to inspect, and if it wishes, to copy at its own expense, such documents, books, and records of the estate, and of the Deputy Receiver, as shall be reasonably necessary to determine the existence and amount of claims the United States may have against the Great Oaks estate, or to determine the Deputy Receiver's compliance with the terms of this Release Agreement. No documents, books, or records of the estate or Deputy Receiver may be destroyed unless notice is given to the United States of any motion filed with the Court requesting approval of the destruction. If the Deputy Receiver does not request approval from the Court, he must obtain prior written authorization from the United States before destruction of any documents, books, or records of the estate or Deputy Receiver.

3. Except for the express undertakings of the Deputy Receiver and the United States in this Release Agreement, nothing in this Release Agreement shall be construed

(a) to establish or perfect any claims, substantive rights, or procedural rights of the United States;



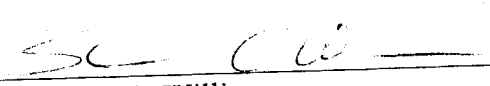
(b) to limit, restrict, diminish, or defeat any claims, substantive rights, or procedural rights of the United States;

(c) to establish or perfect any objections or defenses, substantive rights, or procedural rights of the Deputy Receiver; or

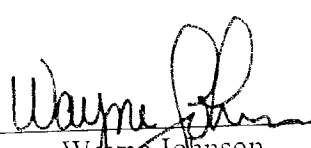
(d) to limit, restrict, diminish, or defeat any defenses, substantive rights, or procedural rights of the Deputy Receiver.

4. The Parties agree that this Release Agreement shall not be effective unless and until it is approved by the Court, if approval is required, and the time for appeals of any such approval has expired. The Parties further agree to cooperate with each other in seeking prompt approval of this Release Agreement from the Court, including but not limited to making the necessary witnesses available for testimony considered necessary or appropriate to provide the Court with an adequate record upon which to approve this Release Agreement.

Dated: 11/9/11

  
By: Sharon C. Williams  
Trial Attorney  
Civil Division  
Department of Justice  
Attorney for the United States

Dated: 11/18/10

  
By: Wayne Johnson  
Deputy Receiver  
Great Oaks Casualty Insurance Company,  
In Liquidation



DEPARTMENT OF FINANCIAL SERVICES

Division of Rehabilitation and Liquidation  
[www.floridainsurancereceiver.org](http://www.floridainsurancereceiver.org)

**AFFIDAVIT OF WAYNE JOHNSON  
DEPUTY RECEIVER**

June 3, 2010

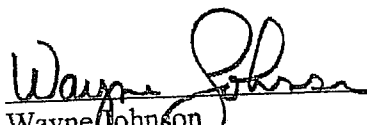
I, Wayne Johnson, Florida Department of Financial Services, Division of Rehabilitation and Liquidation, in my capacity as Deputy Receiver of Great Oaks Casualty Insurance Company (Great Oaks), upon personal knowledge, make the following statement under oath:

1. Great Oaks was a Florida domiciled insurance company that wrote property and casualty coverage. Great Oaks was ordered into liquidation on December 9, 1991. A copy of the Liquidation Order is attached to this affidavit as Exhibit A and incorporated herein.
2. There are no ancillary receiverships for Great Oaks.
3. There were no policies or bonds written or issued by Great Oaks for the benefit of the United States or any of its agencies. The Receiver provided notice to 28 Federal agencies with potential claims in the Great Oaks receivership estate. Copies of the letters the Receiver sent to federal agencies with potential claims are attached to this affidavit as Composite Exhibit B and incorporated herein.
4. A list of claims for Great Oaks is attached to this affidavit as Composite Exhibit C and incorporated herein. The paper copies are summary totals from the final claims report for Great Oaks. The entire final claims report is included in electronic form on the enclosed compact disc.
5. A copy of Section 631.271, Florida Statutes (2009) is attached to this affidavit as Exhibit D and incorporated herein. Section 631.271 governs the priority of claims in insurance company receiverships in Florida. Pursuant to Section 631.271(d), claims of the Federal Government are class 4 claims.
6. As a part of our preparation to apply to the Department of Justice for a Release Agreement, the Receiver researched our files to determine if any Federal Government claims have been filed in the Great Oaks estate. Our search turned up one claim that was filed by an agency of the Federal Government. The Department of the Navy filed a claim seeking repayment of medical expenses (\$977.00) incurred as a result of an August 5, 1991 automobile accident involving a sailor and a Great Oaks' insured. The Department of the Navy's claim was denied based upon their failure to provide the Receiver with information the Receiver requested that was necessary to evaluate the claim. The Department of the Navy did not file an objection to the Receiver's

denial of their claim. Information regarding the Navy's claim is attached to this affidavit as Exhibit E and incorporated herein.

7. A court order addressing Class 2 employee claims in the Great Oaks estate is attached to this affidavit as Exhibit F and incorporated herein.
8. On October 19, 2006, the court issued its Order Approving Receiver's Motion for Approval of the Final Claims Report, Claims Distribution Report and Distribution Accounting and for Order Authorizing Distribution (a copy is attached to this affidavit as Exhibit G and incorporated herein). Pursuant to this Order, the Receiver made a distribution of 100% of the recommended claim amount on allowed claims in class 1-3 in the Great Oaks estate. No further claims distributions have been made in this estate.
9. A copy of the December 31, 1990 annual statement for Great Oaks is attached to this affidavit as Exhibit H and incorporated herein.
10. A copy of the most recent Great Oaks financial statement as of December 31, 2009, a copy of the last Great Oaks tax return filed prior to liquidation (1990), and a copy of the most recent Great Oaks tax return filed by the Receiver (2007) are attached hereto as Exhibits I, J and K and incorporated herein.

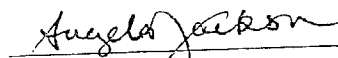
The information contained in this affidavit is accurate and complete to the best of my knowledge.

  
\_\_\_\_\_  
Wayne Johnson  
Deputy Receiver  
Great Oaks Casualty Insurance Company, In Liquidation

State of Florida  
County of Leon

Wayne Johnson, Division Director and Deputy Receiver, personally appeared before me and subscribed the foregoing Affidavit in my presence on this 3<sup>rd</sup> day of June, 2010.



  
\_\_\_\_\_  
Notary Public