

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

CASE NO.: 92-4127

STATE OF FLORIDA, ex. rel., the  
DEPARTMENT OF INSURANCE OF  
THE STATE OF FLORIDA,

Relator,

vs.

FIRST SOUTHERN INSURANCE COMPANY,  
a Florida corporation authorized  
to transact an insurance business  
in Florida,

Respondent.

RECORDED IN THE PUBLIC  
RECORDS OF LEON COUNTY  
IN THE COURT OF SECOND JUDICIAL  
CIRCUIT  
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AT THE TIME A STATE NOTED  
GAIL E. HARTSFIELD  
CLERK OF CIRCUIT COURT

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**CONSENT ORDER APPOINTING THE  
DEPARTMENT OF INSURANCE AS RECEIVER  
FOR PURPOSES OF REHABILITATION,  
INJUNCTION, AND NOTICE OF AUTOMATIC STAY; CONSENT ORDER OF  
LIQUIDATION; INJUNCTION; AND NOTICE OF AUTOMATIC STAY**

THIS CAUSE was considered on the Petition of the Florida Department of Insurance for a consent order of rehabilitation, injunction, and notice of automatic stay, and for a consent order of liquidation, injunction, and notice of automatic stay, of FIRST SOUTHERN INSURANCE COMPANY, and was further considered on the stipulation and consent to appointment of Receiver attached to the Petition as Exhibit A. The Court, having reviewed the pleadings of record and being fully advised in the premises, finds:

1. FIRST SOUTHERN INSURANCE COMPANY (herein "Respondent") is a Florida corporation and is a domestic insurer authorized to



transact an insurance business in the State of Florida.

2. Section 631.021(3), Florida Statutes (1991), provides that a delinquency proceeding pursuant to Chapter 631 constitutes the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer.

3. Sections 631.051(1) and (11), Florida Statutes (1991), authorize the Department to apply to this Court for an Order directing it to rehabilitate a domestic insurer upon the grounds that the insurer is impaired or insolvent, and that the insurer has consented to such an order through a majority of its directors, stockholders, members, or subscribers.

4. Respondent is insolvent within the meaning of Section 631.011(11), Florida Statutes (1991), and admits that it is insolvent.

5. Respondent has consented to the appointment of the Department as Receiver for purposes of rehabilitation or liquidation.

6. Respondent has been found by the Department to be in such condition, due in part to losses sustained as a result of Hurricane Andrew, so as to render the further transaction of insurance presently and prospectively hazardous to its subscribers, policyholders, creditors and the public.

7. It is in the best interests of Respondent and its creditors and insureds that the relief requested in the petition be granted and that the Department be appointed as receiver for

purposes of rehabilitation for not longer than thirty days, after which the Department should automatically be appointed as receiver for purposes of liquidation without further notice to Respondent and without further hearing.

8. It is in the best interests of Respondent's policyholders, creditors, and the public that the Respondent's policies be canceled as soon as possible, before the cancellation of reinsurance becomes effective, and that agents of Respondent make their best efforts to obtain immediate replacement coverage for insureds.

IT IS THEREFORE ADJUDGED and ORDERED as follows:

I. CONSENT ORDER OF REHABILITATION:

1. The Department of Insurance of the State of Florida is hereby appointed Receiver of Respondent for purposes of rehabilitation and as Receiver, is authorized and directed to:
  - A. 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 the order of rehabilitation necessary, or which protect the interests of Respondent's policyholders, creditors, or the public.
  - B. Take immediate possession of all Respondent's property, assets and estate, and all other property of Respondent of every kind whatsoever and

wheresoever located belonging to or in the possession of Respondent or its officers, directors, employees or agents, including but not limited to all offices maintained by Respondent, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, officesupplies and equipment, and all real property of the Respondent wherever situate, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court.

- C. Proceed to collect any and all debts economically feasible to collect which are due and owing to Respondent, including, but not limited to, funds or premiums held by agents of Respondent under agency contracts or otherwise.
- D. Appoint one or more special agents and employ legal counsel, actuaries, accountants, clerks, consultants and assistants as it deems necessary and to fix and to pay the reasonable compensation and reasonable expenses thereof and all reasonable expenses of taking possession of the insurer,

subject to approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation.

- E. Reimburse employees, from the funds of this receivership, for their actual necessary and reasonable expenses incurred while traveling on the business of this receivership.
- F. Commence and maintain all legal actions necessary for the conduct of the rehabilitation proceeding.
- G. Not defend legal actions wherein Respondent or the Receiver is a party defendant, commenced either prior to or subsequent to this 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 effect a claim against or adversely affect the assets of Respondent, the Receiver may file appropriate pleadings in its discretion.
- H. Deposit funds and maintain bank accounts in accordance with Section 631.221, Florida Statutes.
- I. Take possession of all Respondent's securities on deposit with the Treasurer of Florida and liquidate or reinvest as much of the same as may be necessary, in its judgment, to best benefit the estate or to pay expenses as set forth above.

IT IS FURTHER ORDERED and ADJUDGED that:

2. The Receiver is authorized to request the assistance of the Florida Insurance Guaranty Association (FIGA) with the evaluation of claims and funding for the payment of claims. If FIGA elects to assist, FIGA shall be the assignee of policyholder's or claimant's rights against the Respondent for any claims payments funded by FIGA, and further, if Respondent is rehabilitated, Respondent will not be released from rehabilitation until FIGA is repaid in full any funds advanced on Respondent's behalf.
3. The Receiver is authorized to contract with the Florida Insurance Guaranty Association as necessary to provide a facility for the evaluation and/or funding of claims payments on behalf of Respondent.
4. Any officer, director, manager, trustee, attorney, agent, actuary, broker, employee or adjuster 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 shall fully cooperate with the Receiver pursuant to Section 631.391, Florida Statutes. All attorneys employed by Respondent as of this date shall, within 10 days notice of this Order, report to the Receiver on the name, company claim number and status of each file they are handling on behalf of the Respondent. Said report shall

also include an accounting of any funds received from or on behalf of the Respondent. All attorneys employed by Respondent are hereby advised that pursuant to Section 631.011 (17), Florida Statutes (1991), 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. 1st 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 shall deliver such litigation files, material, documents or records intact and without purging to the Receiver, on request, notwithstanding any claim of a retaining lien which, if otherwise valid, shall not be extinguished by such turn over of documents.

5. All persons who have in their possession, custody or control, assets of the Respondent of any kind whatsoever and wherever situate, including but not limited to, monies, books or records, personal or real property, are directed forthwith to deliver upon demand such assets or books and records to the Receiver.
6. Title to all property, real or personal, all contracts, rights of action and all books and records of Respondent, wherever located within or without this state, is vested by operation of law in the Receiver, pursuant to Section

631.141(2), Florida Statutes (1991).

7. Upon request by the Receiver, any company providing telephonic services to the Respondent shall provide a reference of calls from the number presently assigned to the Respondent to any such number designated by the Receiver or perform any other changes necessary to the conduct of the receivership.
8. Any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to Respondent shall maintain such service and transfer any such accounts to the Receiver as of the date of the order of rehabilitation unless instructed to the contrary by the Receiver.
9. The United States Postal Service is directed to provide any information requested by the Receiver regarding the Respondent and to handle future deliveries of Respondent's mail as directed by the Receiver.
10. All affiliated companies shall make their books and records available for inspection and copying by the Receiver, and shall relinquish possession of the originals of any of Respondent's records that may be in their possession to the Receiver. Any disputed records should not be withheld from the Receiver's view, but should be safeguarded by the Receiver and presented to this Court for a determination of the Receiver's



entitlement to access to such records.

11. All policies of insurance or similar contracts of coverage issued by the Respondent and now in force shall continue in force until 30 days from the date of the entry of this Order. The Receiver is authorized to give notice of cancellation as soon as possible, to be effective at 11:59 p.m., October 31, 1992; except that those policies which insure property or risks for businesses or individuals located within the boundaries of Dade County, Florida may continue in force until November 30, 1992, and may be canceled by the Receiver on or before 11:59 p.m. November 30, 1992. 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 canceled by the insurer before such date, shall stand canceled as of the earlier date.
12. Any bank, savings and loan association, or other financial institution, including, but not limited to Chase Manhattan Bank of Florida, First Florida Bank, First Atlanta Bank, Sunwest Bank, or any other entity or person, which has on deposit or in its possession, custody or control any funds, accounts and any other assets of the Respondent shall immediately transfer title, custody and control of all such funds, accounts or

assets to the Receiver and is instructed that the Receiver has absolute control over such funds, accounts and other assets. The Receiver may 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 the receivership.

13. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court.
14. Pursuant to Sections 631.041(3) and (4), Florida Statutes (1991), all persons, firms, corporations and associations within the jurisdiction of this Court, including, but not limited to Respondent, its officers, directors, trustees, stockholders, members, agents and employees are hereby enjoined and restrained from the further transaction of the insurance business of Respondent without written permission of the Receiver; from doing, doing through omission, or permitting to be done any action which might waste or otherwise dispose of the books, records and assets of the Respondent and from interfering with the Receiver or the conduct of these proceedings; from the

removal, concealment or other disposition of its property, books, records, and accounts; from the commencement or prosecution of any actions against the Respondent, the Receiver, or the agents or employees of the receiver in their representative capacities, 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 its property or assets.

15. All Sheriffs and all law enforcement officials of the state shall cooperate with and assist the Receiver in the implementation of this Order.
16. The Receiver may apply to this Court for further instructions in the discharge of its duties at any time during the conduct of the receivership.

NOTICE OF AUTOMATIC STAY

17. Notice is hereby given that, pursuant to Section 631.041(1), Florida Statutes, the filing of the Department's petition for consent order herein operates as an automatic stay applicable to all persons and entities, other than the Receiver, which shall be permanent and survive the entry of this 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 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(17), Florida Statutes (1991);
  - E. Any action to collect, assess or recover a claim against the insurer, except claims as provided for under Chapter 631;
  - F. The set-off or offset of any debt owing to the insurer except offsets as provided in Section 631.281, Florida Statutes (1991).

II. ORDER OF LIQUIDATION:

IT IS FURTHER ORDERED and ADJUDGED as follows:

1. Effective October 31, 1992, at 12:01 a.m., unless the Receiver petitions for an extension or shortening of the rehabilitation period prior to that date, the Florida Department of Insurance is hereby appointed Receiver of Respondent for purposes of liquidation. The said

Receiver is authorized and directed to:

- A. Take immediate possession of all the property, assets, and estate, and all other property of every kind whatsoever and wherever located belonging to Respondent pursuant to Sections 631.111 and 631.141, Florida Statutes (1991), including but not limited to, offices maintained by the Respondent, rights of action, books, papers, evidences of debt, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, bank accounts, stocks, bonds, debentures, mortgages, furniture, fixtures, and office equipment, and all real property of said Respondent, whether in the possession of said Respondent or its officers, directors, employees, consultants, attorneys, or agents.
- B. Liquidate the assets of Respondent including but not limited to funds held by Respondent's agents, subagents, producing agents, brokers, solicitors, service representatives 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.
- C. Employ and authorize the compensation of legal

counsel, accountants, clerks, and such assistants as it deems necessary, and authorize the payment of the expenses of these proceedings and the necessary incidents thereof, as approved by the Court, to be paid out of the funds or assets of the Respondent in the possession of the Receiver 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 legal actions wherein the Respondent or the Receiver is a party defendant, commenced either prior to or subsequent to this 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 effect a claim against or adversely affect the assets of Respondent, the Receiver 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 which are economically feasible to collect and which are due and owing to the

Respondent.

- H. Take possession of all of Respondent's securities and certificates of deposit on deposit with the Treasurer of Florida, if any, and convert to cash so much of the same as may be necessary, in its judgment, to pay the expenses of administration of this receivership.
- I. Publish notice specifying the time and place fixed for the filing of claims with the Receiver once each week for three consecutive weeks in the Florida Administrative Weekly published by the Secretary of State, and at least once in the Florida Bar News.
- J. Negotiate and settle subrogation claims and Final Judgments up to and including the sum of \$15,000.00 without further Order of this Court.
- K. Sell any salvage recovered having value of not more than \$15,000.00 without further Order of this Court.
- L. Coordinate the operation of the receivership with the Florida Insurance Guaranty Association pursuant to Part II of Chapter 631, Florida Statutes (1991). The Receiver may, in its discretion, contract with the guaranty association to provide services as are necessary to carry out the purposes of Chapter 631.

M. Give notice of this proceeding to Respondent's agents pursuant to Section 631.341, Florida Statutes (1991), and to its insureds.

IT IS FURTHER ADJUDGED and ORDERED that:

2. All officers, directors, agents and employees and all other persons representing Respondent or currently employed by Respondent in connection with the conduct of its business are discharged forthwith.
3. Any officer, director, manager, trustee, agent or adjuster 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 is required to fully cooperate with the Receiver, pursuant to Section 631.391, Florida Statutes (1991), notwithstanding their dismissal pursuant to this Order.
4. Title to all property real or personal, all contracts, rights of action and all books and records of Respondent, wheresoever located, are vested in the Receiver pursuant to Sections 631.111 and 631.141, Florida Statutes (1991).
5. All attorneys employed by Respondent as of this date shall, within 10 days notice of this Order, report to the Receiver on the name, company claim number and status of each file they are handling on behalf of the Respondent. Said report shall also include an accounting of any funds



received from or on behalf of the Respondent. All attorneys described herein are hereby discharged as of the date of this Order unless their services are retained by the Receiver. All attorneys employed by Respondent are hereby advised that pursuant to Section 631.011(17), Florida Statutes (1991), 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. 1st 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 shall deliver such litigation files, material, documents or records intact and without purging to the Receiver notwithstanding any claim of a retaining lien which, if otherwise valid, shall not be extinguished by such turn over of documents.

6. All agents, brokers or other persons having sold policies of insurance and/or collected premiums on behalf of the Respondent shall account for and pay all premiums and commissions unearned due to cancellation of policies by this Order or in the normal course of business owed to the Respondent directly to the Receiver within 20 days of demand by the Receiver or appear before this Court to show cause, if any they may have, as to why they should

not be required to account to the Receiver or be held in contempt of Court for violation of the provisions of this Order. No agent, broker or other person shall use premium monies owed to the Respondent for refund of unearned premium or for any purpose other than payment to the Receiver.

7. Any premium finance company which has entered into a contract to finance a premium for a policy which has been issued by the Respondent shall pay any premium owed to the Respondent directly to the Receiver.
8. Reinsurance premiums due to or payable by the Respondent shall be remitted to, or disbursed by, the Receiver. Reinsurance losses recoverable or payable by the Respondent shall be handled by the Receiver. All correspondence concerning reinsurance shall be between the Receiver and the reinsuring company or intermediary.
9. Upon request by the Receiver, any company providing telephonic services to the Respondent shall provide a reference of calls from the number presently assigned to the Respondent to any such number designated by the Receiver or perform any other services or changes necessary to the conduct of the receivership.
10. 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, shall immediately transfer title, custody and control of all such funds, accounts, or assets to the Receiver, and are hereby instructed that the Receiver has absolute control over such funds, accounts and other assets. The Receiver may 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 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 Receiver's control without the permission of this Court.

11. Any entity furnishing telephone, water, electric, sewage, garbage or trash removal services to the Respondent shall maintain such service and transfer any such accounts to the Receiver as of the date of this order, unless instructed to the contrary by the Receiver.
12. Any data processing service which has custody or control of any data processing information and records including but not limited to source documents, data processing cards, input tapes, all types of storage information, master tapes or any other recorded information relating

to the Respondent shall transfer custody and control of such records to the Receiver. The Receiver shall compensate any such entity for the actual use of hardware and software which the Receiver finds to be necessary to this proceeding. Compensation shall 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 Receiver, for the actual time such equipment and software is used by the Receiver.

13. The United States Postal Service is directed to provide any information requested by the Receiver regarding the Respondent and to handle future deliveries of Respondent's mail as directed by the Receiver.
14. All claims shall be filed with the Receiver on or before May 3, 1993, or be forever barred, and all such claims should be filed on proof of claim forms prepared by the Receiver.
15. Pursuant to the provisions of Section 631.252, Florida Statutes (1991), all policies of insurance or similar contracts of coverage are canceled effective at 11:59 p.m. on October 31, 1992, except that policies which insure property or risks for businesses or individuals located within the boundaries of Dade County, Florida may continue in force, but shall be determined canceled as of

11:59 p.m., on November 30, 1992. 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 canceled by the Receiver or insurer before such date, shall stand canceled as of the earlier date.

16. Except for contracts of insurance, all executory contracts to which the Respondent was a party are hereby canceled and will stand canceled unless specifically adopted by the Receiver within 30 days of the effective date of this Order. The rights of the parties to any such contracts are fixed as of the date of this Order and any cancellation under this provision shall not be treated as an anticipatory breach of such contracts.
17. Any person, firm, corporation or other entity having notice of this order that fails to abide by its terms shall be directed to appear before this Court to show good cause, if any they may have, as to why they should not be held in contempt of Court for violation of the provisions of this Order.
18. The Florida Department of Insurance is hereby authorized to cancel and render null and void any certificate of authority issued by the Department of Insurance and required by the Florida Insurance Code in order for Respondent to do business in the State of Florida.

19. All affiliated companies shall make their books and records available for inspection and copying by the Receiver, and shall relinquish possession of the originals of any of Respondent's records that may be in their possession to the Receiver. Any disputed records should not be withheld from the Receiver's view, but should be safeguarded by the Receiver and presented to this Court for a determination of the Receiver's entitlement to access to such records.
20. Pursuant to Sections 631.041(3) and (4), Florida Statutes (1991), all persons, firms, corporations and associations within the jurisdiction of this Court, including, but not limited to, Respondent and its officers, directors, stockholders, members, subscribers, agents, and employees, 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 Receiver or these proceedings; from the transfer of property and assets of Respondent without the consent of the Receiver; 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

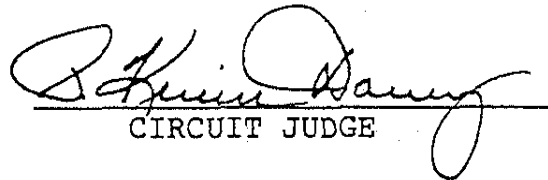
Respondent or the Receiver, or the obtaining of preferences, judgments, writs of attachment or garnishment or other liens; and from the making of any levy or execution against Respondent or any of its property or assets.

NOTICE OF AUTOMATIC STAY

21. Notice is hereby given that, pursuant to Section 631.041(1), Florida Statutes (1991), the filing of the Department's initial petition herein operates as an automatic stay applicable to all persons and entities, other than the Receiver, which shall be permanent and survive the entry of this 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 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(17), Florida Statutes (1991);

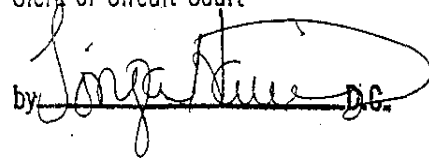
- E. Any action to collect, assess or recover a claim against the insurer, except claims as provided for under Chapter 631;
  - F. The set-off or offset of any debt owing to the insurer except offsets as provided in Section 631.281, Florida Statutes (1991).
22. All Sheriffs and all law enforcement officials of the state shall cooperate with and assist the Receiver in the implementation of this Order.
23. 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.

ORDERED in Chambers at Leon County Courthouse, Tallahassee, Leon County, Florida, this Second Day of October, 1992.

  
CIRCUIT JUDGE

STATE OF FLORIDA, COUNTY OF LEON  
I HEREBY CERTIFY that the above and foregoing is a true and correct copy of an instrument recorded in the official records of Leon County, Florida.  
WITNESS my hand and seal of office this 29<sup>th</sup> day of January, 1998.



DAVE LANG  
Clerk of Circuit Court  
by  D.C.