

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

CASE NO: 98-1239

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

Relator,

vs.

ASSOCIATED BUSINESS AND COMMERCE
INSURANCE CORPORATION,
a Florida corporation authorized
to transact an insurance business
in Florida,

Respondent.

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

THIS CAUSE was considered on the Petition of the Florida Department of Insurance (the "Department" herein) for a consent order of rehabilitation of ASSOCIATED BUSINESS AND COMMERCE INSURANCE CORPORATION. The Court having reviewed the pleadings of record, having heard presentation of counsel, and otherwise being fully informed in the premises, finds:

1. ASSOCIATED BUSINESS AND COMMERCE INSURANCE CORPORATION, (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 (1997), provides that a delinquency proceeding pursuant to Chapter 631, Florida Statutes, constitutes the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer.
3. Section 631.061, Florida Statutes (1997), authorizes the Department to

apply to this Court for an order directing it to rehabilitate a domestic insurer upon the existence of any of the grounds specified in therein.

4. Section 631.051(11), Florida Statutes (1997), authorizes the Department to apply to this Court for an order directing it to rehabilitate a domestic insurer upon the ground that the insurer has consented to such an order through a majority of its directors, stockholders, members, or subscribers.

5. Respondent has consented to the appointment of the Department as Receiver for purposes of liquidation and has further admitted that Respondent is insolvent as defined under Chapter 631, Florida Statutes (1997).

6. The Department has informed this Court that it and the Florida Workers' Compensation Insurance Guaranty Association believe a possibility exists to sell the Respondent and/or its assets. Although the Respondent has consented to liquidation, this Court finds that a short period of rehabilitation would be beneficial to the insureds, estate and creditors of Respondent in order to permit one final opportunity to explore the prospect of a sale of Respondent and/or its assets.

7. It is in the best interests of Respondent and its creditors and Insureds that the relief requested in the petition be granted.

IT IS THEREFORE ORDERED and ADJUDGED as follows:

A. The Department of Insurance of the State of Florida is hereby appointed Receiver of Respondent for purposes of rehabilitation.

B. The said Receiver is authorized and directed to:

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

revitalize the Respondent.

2. 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 (1997), 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 Respondent, wherever situate, whether in the possession of Respondent or its officers, directors, employees, consultants, attorneys, agents or affiliates.
3. Appoint one or more special agents and employ and authorize the compensation of legal counsel, actuaries, accountants, clerks, 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, 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.
4. 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.
5. Not defend or accept service of process on 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.

6. Commence and maintain all legal actions necessary, wherever necessary, for the proper administration of this receivership proceeding.
7. Collect all debts which are economically feasible to collect which are due and owing to the Respondent.
8. Deposit funds and maintain bank accounts in accordance with Section 631.221, Florida Statutes (1997).
9. 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 as much as may be necessary, in its judgment, to pay the expenses of administration of this receivership.
10. 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 or reinvest as much as may be necessary, in its judgment, to pay the expenses of administration of this receivership or otherwise best benefit the estate.
11. Apply to this Court for further instructions in the discharge of its duties as may be necessary.

IT IS FURTHER ORDERED and ADJUDGED that:

C. Any officer, director, manager, trustee, administrator, attorney, agent, accountant, actuary, broker, employee, adjuster, independent contractor, such as a third party

administrator or a managed care service provider, 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 be required to fully cooperate with the Receiver, pursuant to Section 631.391, Florida Statutes (1997).

D. Title to all property real or personal, all contracts, rights of action and all books and records of Respondent, wherever located, are vested in the Receiver pursuant to Sections 631.111 and 631.141, Florida Statutes (1997).

E. The Receiver shall have all of the powers of the Respondent's directors, officers, and managers, whose authority is hereby suspended, except as the Receiver redelegates such powers. The Receiver shall have full power to direct and manage the affairs of the Respondent, to hire and discharge employees, and to deal with the property and business of the Respondent.

F. All attorneys employed by Respondent as of the date of this Order, within 10 days notice of this Order, shall 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 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, 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 the delivery of these documents.

G. 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 owed to the Respondent and commissions rendered unearned due to cancellation of policies by this Order, or in the normal course of business, directly to the Receiver within 30 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, premium finance company 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.

H. 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

I. 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.

J. 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.

K. Any bank, savings and loan association, financial institution or other person, including but not limited to the following:

<u>Bank Name and Address</u>	<u>Account Number</u>	<u>Type of Account</u>
Suntrust Bank	0417-006224717	Operating
P.O. Box 405100	0417-066228831	Depository
Ft. Lauderdale, Fl 33340-5100	0417-06224706	Claims
	0494-002021738	SIF

Compass Bank
P.O. Box 10566
Birmingham, Alabama 35296 16049611 Investment

First Union National Bank of Fl.
P.O. Box 2080-FLO35
Jacksonville, Fl. 32231-0010 4056214215 Investment

and any other bank, savings and loan association or other financial institution 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.

L. 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.

M. 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.

N. 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.

O. All insurance policies, bond or similar contracts of coverage issued by the Respondent shall remain in full force and effect until further Order of this Court except where cancelled in the *normal course of business* or upon the *normal expiration date* thereof. Any policy cancellations initiated by insureds shall be prospective only, and all such claims should be filed on proof of claim forms prepared by the Receiver.

P. All affiliated companies including but not limited to, Associated Business & Commerce Holdings, Inc., are hereby directed to make any books and records belonging, pertaining or related to Respondent or Respondent's business available to the Receiver, to include all such records located in any premises occupied by said affiliate, whether corporate records or not, and to provide copies of any such records requested by the Receiver that are related to Respondent. The Receiver has title to all policy files and other records of, and relating to Respondent, whether such documents are kept in offices occupied by an affiliate company or any other person or corporation. The Receiver is authorized to take possession of any such records, files, documents, and to remove them to any location in the Receiver's discretion. Any disputed records shall not be withheld from the Receiver's review, but shall be safeguarded and presented to this Court for review prior to copying by the Receiver.

Q. The Receiver shall have complete access to all computer records belonging, pertaining or related to Respondent or Respondent's business including those computer records in the possession of any affiliate.

R. 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.

S. Pursuant to Sections 631.041(3) and (4), Florida Statutes (1997), all persons, firms, corporations and associations within the jurisdiction of this Court, including but not limited to Respondent and its affiliates including but not limited to, Associated Business & Commerce Holdings, Inc., and the respective officers, directors, stockholders, members, agents, and employees are enjoined and restrained from the further transaction of the insurance business of the Respondent; and are further enjoined and restrained from doing, doing through omission, or permitting to be done any action which might cause waste to the assets of Respondent and/or to dispose, conceal or in any way make or cause to be made unavailable to the Receiver 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, 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. Notwithstanding the provisions of this paragraph, the Receiver 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 shall submit an affidavit to the Receiver 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 Receiver shall be authorized to impose a charge for copies of such claim files pursuant to the provisions of Section 119.07(1)(a), Florida Statutes (1997).

CONTINUATION OF INVESTIGATION

T. The Receiver shall be authorized to conduct an investigation as authorized by Section 631.391, Florida Statutes (1997), of Respondent and its affiliates, as defined above, to uncover and make fully available to the Court the true state of Respondent's financial affairs. In furtherance of this investigation, Respondent and its parent corporations, its subsidiaries, and affiliates shall make all books, documents, accounts, records, and affairs, which either belong to or pertain to the Respondent, available for full, free and unhindered inspection and examination by the Receiver during normal business hours (9:00 a.m. to 5:00 p.m.) Monday through Friday, from the date of the Order. The Respondent and the above specified entities shall cooperate with the Receiver to the fullest extent required by Section 631.391, Florida Statutes (1997). Such cooperation should include, but not be limited to, the taking of oral testimony under oath of Respondent's officers, directors, managers, trustees, agents, adjusters, employees, or independent contractors of Respondent, its affiliates and any other person who possesses any executive authority over, or who exercises any control over, any segment of the affairs of Respondent 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.

U. Any officer, director, manager, trustee, administrator, attorney, agent, accountant, actuary, broker, employee, adjuster, independent contractor, such as a third party administrator or managed care services provider, 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 the affairs of Respondent or its affiliates should be required to fully cooperate with the Receiver as required by Section 631.391, Florida Statutes (1997), and as set out in the preceding paragraph. Upon receipt of a certified copy of the

Order, any bank or financial institution should be required to immediately disclose to the Receiver 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 Receiver's inspection and copying, including but not limited to all records, statements and information regarding the following accounts

<u>Bank Name and Address</u>	<u>Account Number</u>	<u>Type of Account</u>
Suntrust Bank, P.O. Box 405100 Ft. Lauderdale, Fl 33340-5100	0417-006224717	Operating
	0417-066228831	Depository
	0417-06224706	Claims
	0494-002021738	SIF
Compass Bank P.O. Box 10566 Birmingham, Alabama 35296	16049611	Investment
First Union National Bank of Fl. P.O. Box 2080-FLO35 Jacksonville, Fl. 32231-0010	4056214215	Investment

NOTICE OF AUTOMATIC STAY

V. Notice is hereby given that, pursuant to Section 631.041(1), Florida Statutes (1997), 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:

1. The commencement or continuation of judicial, administrative or other action or proceeding against the insurer or against its assets or any part thereof;
2. The enforcement of a judgment against the insurer or an affiliate obtained either before or after the commencement of the delinquency proceeding;

3. Any act to obtain possession of property of the insurer;
4. 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 (1997);
5. Any action to collect, assess or recover a claim against the insurer, except claims as provided for under Chapter 631;
6. The set-off or offset of any debt owing to the insurer except offsets as provided in Section 631.281, Florida Statutes (1997).

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

X. If the Receiver determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the Respondent is appropriate, it shall prepare a plan to effect such changes and shall submit the plan to this Court for consideration.'

Y. Upon petition by the Receiver stating that further efforts to rehabilitate Respondent would be useless, this Court will consider entry of an order of liquidation of Respondent without further notice or hearing.

Z. 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 Tallahassee, Leon County, Florida, this

4th day of March, 1998.

Jerry Dennis

CIRCUIT JUDGE A, COUNTY OF LEON

I HEREBY CERTIFY that the above is a true and correct copy of an order entered in the official records of Leon County. WITNESS my hand and seal this 5th day of March, 1998.

DAVE LANG
Clerk of Circuit Court



by *Danielle S. [Signature]*

Copies to:
Dennis K. Threadgill, Esq.
Sheila L. Erstling, Esq.
Edward L. Kutter, Esq.