

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

State of Florida, ex rel., The  
Department of Financial Services of  
The State of Florida,

Relator,

v.

CASE NO.: 2004-CA-2353

American Superior Insurance Company,  
a Florida Corporation authorized to  
transact an insurance business in Florida

Respondent.

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**ORDER APPOINTING THE FLORIDA DEPARTMENT OF  
FINANCIAL SERVICES AS RECEIVER FOR PURPOSES OF LIQUIDATION,  
INJUNCTION AND NOTICE OF AUTOMATIC STAY**

THIS CAUSE was considered on the Receiver's Petition for Consent Order of Liquidation, Injunction and Notice of Automatic Stay appointing the Florida Department of Financial Services (hereafter "Department") as Receiver for Purposes of Liquidation, Injunction and Notice of Automatic Stay. The Court having reviewed the pleadings of record, having heard presentation of counsel, and otherwise being fully informed in the premises, finds that:

1. American Superior Insurance Company (hereafter "Respondent") and its Affiliates (American Superior Holding Company, American Superior Management Company, L.C.; Employers Risk Services of Florida, Inc.; ERS L.C.; Solience Systems, L.C.) are Florida corporations with their principal place of business at 600 N. Pine Island Road, Suite 400, Plantation, FL 33324. Respondent is a domestic insurer authorized to transact an insurance business in this state.

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

3. On September 29, 2004, Circuit Court Judge Jonathan Sjostrom entered a Consent Order Appointing the Florida Department of Financial Services as Receiver for Purposes of Rehabilitation, Injunction and Notice of Automatic Stay appointing the Department Receiver of Respondent for purposes of rehabilitation. Section 631.061, Florida Statutes, authorizes the Department to apply to this Court for an order directing the Department to liquidate a domestic insurer upon the existence of any of the grounds specified in Section 631.051, Florida Statutes.

4. Respondent is insolvent as that term is defined in Section 631.011(14), Florida Statutes within the meaning of Section 631.051(1), Florida Statutes.

5. Based on the insolvency, Respondent is in such condition as to render its further transaction of insurance hazardous to its policyholders, creditors, or the public, within the meaning of Section 631.051(3), Florida Statutes.

6. Pursuant to Section 631.051(11), Florida Statutes, Respondent has consented to the entry of an Order of Liquidation through a majority of its directors, stockholders, members, or subscribers.

7. Based on the foregoing, it is in the best interests of Respondent, its policyholders, its claimants, and its other creditors that the relief requested in the motion be granted and that the Department be appointed as receiver for purposes of liquidation.

**THEREFORE, it is ORDERED AND ADJUDGED** as follows:

8. The Florida Department of Financial Services is hereby appointed Receiver of Respondent for purposes of liquidation. The Receiver is authorized and directed to:

9. 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, 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, investments, software, electronic data, e-mail, websites, and all real property of said Respondent, whether in the possession of Respondent or its officers, directors, employees, consultants, attorneys, or agents.

10. 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.

11. 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.

12. 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.

13. Not defend or accept service of process on legal actions wherein the Respondent, the Receiver or the insured 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 affect a claim against or adversely effect the assets of Respondent, the Receiver may file appropriate pleadings in its discretion. Absent permission of this court, process servers shall not serve any papers on Respondent or the Receiver except as set out in this paragraph.

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

15. Collect all debts, which are economically feasible to collect, and which are due and owing to the Respondent.

16. Deposit funds and maintain bank accounts in accordance with Section 631.221, Florida Statutes.

17. 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.

18. 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.

19. Negotiate and settle subrogation claims and Final Judgments up to and including the sum of \$20,000.00 without further Order of this Court.

20. Sell any salvage recovered having value of not more than \$20,000.00 without further Order of this Court.

21. Coordinate the operation of the receivership with the Florida Insurance Guaranty Association ("FIGA") pursuant to Part II, Chapter 631, Florida Statutes. The Receiver may, in

its discretion, contract with the appropriate guaranty association to provide services as are necessary to carry out the purposes of Chapter 631.

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

23. The Receiver is authorized to disburse assets to the Florida Insurance Guaranty Association in accordance with the provisions of Section 631.397, Florida Statutes, at such time as the Receiver determines that the financial circumstances of the insolvent estate indicate the feasibility of such an advance distribution. The Receiver has determined that there are currently no assets available for distribution to the Florida Insurance Guaranty Association.

24. 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; provided, however, the Receiver may retain such persons in the Receiver's discretion.

25. 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, notwithstanding their dismissal pursuant to this Order.

26. 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.

27. 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 the Receiver retains their services in writing. 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, electronic data or records belonging to or relating to work performed by the attorney on behalf of Respondent shall deliver such litigation files, material, documents, electronic data 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.

28. All Managing Agents, 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 Managing Agent, 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.

29. 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.

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

31. 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.

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

33. 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.

34. Any data processing service, including but not limited to Business Risk Technology, Inc., 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.

35. The United States Postal Service is directed to provide any information requested by the Receiver regarding the Respondent or its Affiliates and to handle future deliveries of Respondent's mail as directed by the Receiver.

36. All claims shall be filed with the Receiver on or before 11:59 p.m. December 1, 2005, or be forever barred, and all such claims should be filed on proof of claim forms provided by the Receiver. The Receiver is authorized to collect the information filed on a proof of claim form electronically.

37. The Receiver's report and recommendation on claims as specified in Section 631.182, Florida Statutes, shall contain the payee(s) or claimant(s) for each claim as it has been filed with the Receiver by submission of a properly executed Proof of Claim form. The Receiver



shall make payment to the payee(s) or claimant(s) named on the report. Any and all assignments of claims are a private contract between the payee(s) or claimant(s) and a third party and the Receiver has no administrative responsibility to recognize or reflect the assignment on the report and recommendation. The Receiver shall not be responsible for and shall not recognize or accept any assignment of a claim by the payee(s) or claimant(s) of record to any third party.

38. 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 effective at 11:59 p.m. as of January 14, 2005. 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.

39. 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 in writing 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.

40. The United States Postal Service is directed to provide any information requested by the Receiver regarding Respondent and to handle future deliveries of Respondent's mail as directed by the Receiver.

41. 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.

42. The Department is hereby authorized to cancel and render null and void any certificate of authority issued by the Department and required by the Florida Insurance Code in order for Respondent to do business in the State of Florida.

43. All affiliated companies, as that term is defined in Section 631.011 (1), Florida Statutes, 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 shall not be withheld from the Receiver's view, but shall be safeguarded by the Receiver and presented to this Court for a determination of the Receiver's entitlement to access to such records.

44. The Receiver shall have complete access to all computer records of the Respondent and its affiliates, including those in the possession of Business Risk Technologies, Inc., at all times.

45. Any person, firm, corporation or other entity having notice of the Order that fails to abide by its terms should 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.

46. 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, members, subscribers, agents, Affiliates 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, electronic data, e-mail, and assets of the Respondent or pertaining to 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, electronic data, e-mail 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. Notwithstanding the provisions of this paragraph, the Receiver may 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 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 is authorized to impose a charge for copies of such claim files pursuant to the provisions of Section 119.07(1)(a), Florida Statutes.

#### **CONTINUATION OF INVESTIGATION**

47. The Receiver may conduct an investigation as authorized by Section 631.391, Florida Statutes, of Respondent and its affiliates, as defined above and by Section 631.011(1), Florida Statutes, 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, its affiliates, any officer, director, manager, trustee, agent, adjuster, employee or independent contractor, 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 and copying (at cost to the Receiver) by the Receiver during normal business

hours (8:00 a.m. to 5:00 p.m.) Monday through Friday, from the date of the Order. The Respondent and the above-specified entities shall fully cooperate with the Department in accordance with Section 631.391, Florida Statutes. Such cooperation shall 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.

48. Any 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 the affairs of Respondent or its affiliates should be required to fully cooperate with the Receiver as required by Section 631.391, Florida Statutes, 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.

#### **NOTICE OF AUTOMATIC STAY**

49. Notice is hereby given that, pursuant to Section 631.041(1), Florida Statutes, 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;
- 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.

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

51. 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 this 15th day of December, 2004.

A Certified Copy  
Attest:



Clerk of Court  
Leon County

By Andre Moore  
D.C.

JONATHAN STOSTROM  
CIRCUIT JUDGE