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

In re the Receivership of
Windhaven Insurance Company CASE NO.: 2019 CA 002861
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MOTION FOR ORDER GRANTING TEMPORARY STAY PROHIBITING THE COMMENCEMENT OR CONTINUATION OF THIRD-PARTY INSURANCE LITIGATION AGAINST WINDHAVEN'S POLICYHOLDERS

The Florida Department of Financial Services, as Receiver of Windhaven Insurance Company ("Department"), by and through its undersigned counsel, hereby files this *Motion for Order Granting a Temporary Stay Prohibiting the Commencement or Continuation of Third-Party Insurance Litigation Against Windhaven's Policyholders* and as good grounds therefor states as follows:

1. On December 9, 2019, the Department filed a *Petition for Consent Order Appointing the Department as Receiver of Windhaven Insurance Company for Purposes of Rehabilitation, Injunction, and Notice of Automatic Stay* ("Petition")

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

3. Pursuant to section 631.021(1), Florida Statutes, this Court has jurisdiction over the Windhaven Insurance Company ("Windhaven") 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, sections 631.001 *et seq*., Florida Statutes.

4. On December 13, 2019, the Department commenced its on-site receivership activities at Windhaven's offices in both Doral and Tampa, Florida.

5. Since being on-site, the Department has learned that Windhaven has approximately 12,673 active claims related lawsuits pending in Florida courts as well as numerous other claims that are in pre-suit demand status. These lawsuits are both first party claims against Windhaven and third-party claims against Windhaven's policyholders/insureds. Of the 12,673 lawsuits, approximately 351 are against Windhaven's insureds with an additional number of third-party claims in pre-suit demand status.

6. The automatic and permanent stay against the "the commencement or continuation of judicial, administrative, or other action or proceeding against" Windhaven and its assets that went into effect when the Department filed its Petition clearly covers the first-party claims and litigation against Windhaven. § 631.041(1), Fla. Stat.; Rehabilitation Order at 15 para 40.

7. Had Windhaven been ordered immediately into liquidation instead of rehabilitation, the Florida Insurance Guaranty Association ("FIGA") would have been activated and obligated to handle both the first-party and third-party claims and litigation arising from the insurance policies written by Windhaven. Additionally, Florida's Insurance Guaranty Association Act, sections 631.50, *et seq.*, Florida Statutes, grants a six month stay against "all proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court or before any quasi-judicial body or administrative board… to permit proper defense by the association of all pending causes of action as to any covered claims" § 631.67, Fla. Stat.

8. Windhaven is not yet in liquidation so the stay afforded to claims handled by FIGA is not applicable to third-party claims and litigation against Windhaven's policyholders, and section 631.041(1), Florida Statutes, is not clear as to whether third-party claims and litigation against the policyholders are covered by the stay during the rehabilitation period. What is clear,

however, is that the Department is under a duty to defend the policyholders against third-party claims and litigation arising from their Windhaven policies.

9. This Court is empowered without notice at any time during the pendency of the Windhaven receivership to issue orders and injunctions "as may be deemed necessary to prevent interference with the department or the proceeding; waste of the assets of the insurer; the commencement or prosecution of any actions; the obtaining of preferences, judgments, attachments, or other liens; or the making of any levy against the insurer or against its assets or any part thereof." § 631.041(4), Fla. Stat.; Rehabilitation Order at 14 para 38.

10. The Department believes it would be in the best interest of the Windhaven receivership estate for this Court to enter an Order staying the commencement or continuation of third-party litigation in order to permit a proper defense by the Department of all third-party claims and litigation against Windhaven's policyholders. The Department further requests that such a stay be temporary in nature and last for sixty (60) days or until such time that this Court enters an order appointing the Department as Receiver of Windhaven for the purpose of liquidation, whichever comes first. Lastly, the Department requests that with respect to any third-party action against a Windhaven insured, no statute of limitations shall run between the date the Department filed its Petition through and until the date of the expiration of any temporary stay resulting from this Motion.

WHEREFORE, the Florida Department respectfully requests that this honorable Court enter an Order:

A. Granting a temporary stay prohibiting the commencement or continuation of third-party insurance litigation against Windhaven's policyholders for a period of sixty (60) days or until

such time as this court enters an order appointing the Department as Receiver of Windhaven for purpose of liquidation, whichever comes first; and

B. Directing that with respect to any third-party action brought against a Windhaven policyholder, no statute of limitations shall run between the date the Department filed its Petition and the date of the expiration of the temporary stay.

RESPECTFULLY SUBMITTED on this the 18th day of December 2019.

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