

MAR 05 2020 JG

At 10:36 AM.  
Velva L. Price, District Clerk

Cause No. D-1-GN-20-001052

COPY

THE STATE OF TEXAS,  
Plaintiff

v.

WINDHAVEN NATIONAL  
INSURANCE COMPANY  
Defendant

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

419TH JUDICIAL DISTRICT

**ORDER APPOINTING LIQUIDATOR, PERMANENT INJUNCTION  
AND NOTICE OF AUTOMATIC STAY**

On this day, the Court heard the *Plaintiff's Original Petition, Application for Order Appointing Liquidator and Request for Injunctive Relief* ("Application") filed by the State of Texas, at the request of the Commissioner of Insurance for the State of Texas ("Commissioner"). The Application requests an order placing Windhaven National Insurance Company ("Defendant") into liquidation pursuant to Tex. Ins. Code Chapter 443, the Insurer Receivership Act, and appointing the Commissioner as Liquidator of Defendant ("Liquidator"). The Application also requests a Permanent Injunction pursuant to Tex. Ins. Code § 443.008, restraining Defendant and its agents from conducting Defendant's business, and restraining other parties from taking any actions against Defendant or its property in violation of the Insurer Receivership Act.

The State of Texas appeared by and through the Office of the Attorney General. Defendant appeared by and through its counsel of record. Having considered the Plaintiff's verified petition, the evidence presented and the arguments of counsel, the Court finds that the Application should be GRANTED, and enters this Order.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

## I.

### FINDINGS OF FACT

- 1.1 Defendant is a “Covered Person” as defined in Tex. Ins. Code § 443.003.
- 1.2 Defendant does not have admitted assets at least equal to all its liabilities together with the minimum surplus of \$5,000,000 required to be maintained.
- 1.3 Defendant will not have liquid assets to meet its next 90 days’ current obligations.
- 1.4 The continued conduct of the business of Defendant would not be in the best interest of Defendant’s policyholders, creditors or the public.

### II. CONCLUSIONS OF LAW

- 2.1 This Court has jurisdiction over the parties and the subject matter of this action under Tex. Ins. Code § 443.005(c).
- 2.2 Grounds have been established to place Defendant into liquidation under Tex. Ins. Code § 443.057. These grounds include, but are not limited to, the finding that Defendant is insolvent as that term is defined in Tex. Ins. Code § 443.004(a)(13)(B).
- 2.3 In accordance with Tex. Ins. Code § 443.058, Plaintiff is entitled to an order of liquidation, and the Commissioner must be appointed as Liquidator of Defendant pursuant to Tex. Ins. Code § 443.151.
- 2.4 The Liquidator shall be vested by operation of law with title to all of Defendant’s property as defined in Tex. Ins. Code § 443.004(a)(20). Such property shall include property of any

kind or nature, whether real, personal, or mixed, including but not limited to money, funds, cash, stock, bonds, account deposits, statutory deposits, special deposits, contents of safe deposit boxes, funds held in shared, escrow or trust accounts, retainages and retainers, letters of credit, real estate, fixtures, furniture, equipment, books, records, documents and insurance policies, intellectual property, computer software and systems, information technology, internet domain names, patents and intangible assets, whether owned individually, jointly, or severally, wherever located, and all rights, claims or causes of action belonging to Defendant, whether asserted or not, including but not limited to accounts receivable, notes, premiums, subrogation, insurance and reinsurance proceeds, and all licenses held by Defendant (collectively, Defendant's Property). The Liquidator's title shall extend to Defendant's Property regardless of the name in which such items are held, or where such items are located.

- 2.5 Pursuant to Tex. Ins. Code § 443.151(a), the Liquidator shall be directed to take possession and control of Defendant's Property, wherever located.
- 2.6 The Liquidator may act as he deems necessary or appropriate to perform his duties pursuant to Tex. Ins. Code § 443.151. The Liquidator shall have all the powers of Defendant's directors, officers and managers, and the authority of such persons is suspended except as specifically permitted by the Liquidator or his designees.
- 2.7 Defendant and Defendant's agents shall be required to cooperate with the Liquidator and his designees pursuant to Tex. Ins. Code § 443.010.
- 2.8 Pursuant to Tex. Ins. Code § 443.008(c), an automatic stay is in effect with respect to actions against Defendant or its property, effective on the commencement of this

proceeding. Pursuant to Tex. Ins. Code § 443.008(d), an automatic stay is in effect with respect to actions against insureds of Defendant, commencing on the entry of this Order. In addition to the stays under Tex. Ins. Code § 443.008, a stay shall be in effect upon the designation of Defendant as an “impaired insurer” pursuant to Tex. Ins. Code § 462.309.

- 2.9 Pursuant to Tex. Ins. Code § 443.008(a), this Court may issue any stay or injunction as necessary or appropriate to carry out the Insurer Receivership Act. It is necessary for this Court to issue a permanent injunction pursuant to Tex. Ins. Code § 443.008(a) to carry out the provisions of Tex. Ins. Code Chapter 443, and prevent irreparable injury, loss and damage to the general public and Defendant’s creditors. A necessity exists to enjoin Defendant and Defendant’s agents from conducting Defendant’s business, except as specifically permitted by the Liquidator or his designees; to enjoin financial institutions or depositories from taking any actions in connection with Defendant’s property, except as directed by the Liquidator or his designees; and to enjoin all claimants or creditors from asserting claims or causes of action against Defendant, except as permitted by the Insurer Receivership Act.
- 2.10 Pursuant to Tex. Ins. Code § 443.151(a), this proceeding is exempt from any dormancy requirements.
- 2.11 Tex. Ins. Code § 443.001(b) provides that the Insurer Receivership Act may not be interpreted to limit the powers granted to the Commissioner under other provisions of law. Accordingly, this Order shall not be construed as a limitation of the Commissioner’s powers granted under such provisions.

### III. APPOINTMENT OF LIQUIDATOR

The Commissioner is appointed as Liquidator of Defendant, and granted the following powers:

- 3.1 The Liquidator has all powers and authority granted by the Insurer Receivership Act, specifically, without limitation, Tex. Ins. Code § 443.151 *et seq.* and any and all other powers and authority under applicable statutes and the common law of this State.
- 3.2 Pursuant to Tex. Ins. Code § 443.151(a), title to all of Defendant's Property, including but not limited to all the assets and rights described in this Order, is vested in the Liquidator. The Liquidator is authorized to take control and possession of Defendant's Property, wherever located, and remove all such property from Defendant's premises.
- 3.3 Pursuant to Tex. Ins. Code § 443.154(w), the Liquidator is vested with all of Defendant's rights. The Liquidator is authorized to direct, manage, and supervise Defendant's directors, officers, managers, employees or agents, and compensate them as he deems necessary from Defendant's funds, or to suspend or discharge such persons at his discretion.
- 3.4 The Liquidator has all of Defendant's rights as the customer of a financial institution. The Liquidator is authorized to withdraw Defendant's Property from any banks, financial institutions and other depositories, agencies of any state or the federal government, and any other entities, or continue the operation of any accounts of Defendant, at his discretion.
- 3.5 The Liquidator is vested with all legal remedies available to Defendant pursuant to Tex. Ins. Code § 443.154(w). The Liquidator is authorized to file, prosecute, defend, or settle

any action as he deems necessary, including any action to enforce the provisions of this Order.

- 3.6 Pursuant to Tex. Ins. Code § 443.154(k), the Liquidator may enter into contracts as necessary to perform his duties and may assume or reject any executory contract or unexpired lease to which Defendant is a party at his discretion pursuant to Tex. Ins. Code § 443.013.
- 3.7 The Liquidator is authorized to change the locks on any property owned, leased, or occupied by Defendant.
- 3.8 The Liquidator is authorized to exclude any person from any property owned, leased or occupied by Defendant, at his discretion.
- 3.9 The Liquidator is authorized to receive, collect, control, open and review all mail addressed to or intended for Defendant, or arriving at Defendant's address.
- 3.10 Tex. Ins. Code § 443.154(a) authorizes the Liquidator to appoint a Special Deputy and employ or contract with legal counsel and other personnel as he deems necessary. Pursuant to Tex. Ins. Code § 443.015(e), the Liquidator is authorized to set the compensation of any such Special Deputy or other persons as he deems necessary and pay for such services from Defendant's funds. The Liquidator's designees and any Special Deputy appointed under Tex. Ins. Code § 443.154(a) have all the rights and powers of the Liquidator, subject to any limitations imposed by the Liquidator.
- 3.11 Pursuant to Tex. Ins. Code § 443.008(m), the Commissioner is not required to file a bond in connection with this proceeding, in his capacity as Liquidator or otherwise.

- 3.12 In accordance with Tex. Ins. Code § 443.151(a), any successor to the Commissioner shall be appointed as the Liquidator of Defendant. In the event a successor is appointed to be the Commissioner, the successor shall become the Liquidator upon his appointment as Commissioner, and the former Commissioner shall be discharged as Liquidator as a matter of law.
- 3.13 The enumeration of the Liquidator's powers and authority in this Order shall not be construed as a limitation on the Liquidator to take any action authorized by the Insurer Receivership Act or other applicable law that is not specified in this Order.

#### IV. PERMANENT INJUNCTION

The Clerk of this Court shall issue a Permanent Injunction against the persons and entities named below, with the following force and effect:

TO: Defendant and its agents, including but not limited to:

Defendant's current and former officers, directors, underwriters, managers and employees, including but not limited to, Jimmy Eric Whited; Susan Beth Wollenberg; Benjamin Joel Turner; Hugh O'Donnell; John Lie-Nielson; Elliot L. Backerman; Edward Dew; Robert J. Forness; John Rosilier; Stephen Simeonidis; Bryan Deutsch; owners and affiliates, including but not limited to, Whited and Sons, LLC; Whited Family Trust; Windhaven Top Insurance Holdings, LLC; Windhaven Claims Management, LLC; Windhaven National Holding Company; Windhaven Insurance Services, LLC; The Hearth Insurance Group, LLC; Windhaven Underwriters, LLC; Windhaven Select, LLC; Windhaven Insurance Holdings Corporation; Windhaven Insurance Ltd.; Armi Limited Captive Segregated Cell; Artex SAC Limited (Whited Red); R&Q Limited Whited Green; Universal Re-Insurance Company (Dixie Red); Artex SAC Limited (Whited Silver); R&Q Limited (Whited Gold); Universal Reinsurance Company (Whited Grey); Clutch Analytics, LLC; and Clutch Wholesale Insurance Agency, LLC; local recording agents, managing general agents, agents, third party administrators, representatives, associates, servants, adjusters, attorneys and accountants, including but not limited to, Morgan, Lewis & Bockius, LLP; Greenberg Traurig, LLP; Alvarez & Marsal

Holdings, LLC; Atalaya Capital Management, LP; Greenlight Capital, Inc. and those acting in concert with them;

Financial institutions, including but not limited to:

any and all banks, savings and loan associations; trust companies; credit unions; welfare trusts; or any other financial or depository institutions in the possession of any of Defendant's property, including but not limited to, City National Bank of Florida; US Bank; Comerica and UBS Financial Services, Inc ; and

All other parties, including but not limited to:

creditors, claimants, insurers, intermediaries, attorneys and all other persons, associations, corporations, or any other legal entities asserting claims or causes of action of any kind against Defendant, or in possession of any of Defendant's Property, and the United States Postmaster.

Each of you are hereby RESTRAINED and ENJOINED from taking any and all of the following actions:

- 4.1 Doing, operating, or conducting Defendant's business under any charter, certificate of authority, license, permit, power or privilege belonging to or issued to Defendant, or exercising any direction, control, or influence over Defendant's business, except through the authority of the Liquidator or his designees;
- 4.2 Transacting any business of Defendant's in any manner except through the authority of the Liquidator or his designees;
- 4.3 Wasting, disposing of, converting, dissipating, or concealing, in any manner, any of Defendant's Property;
- 4.4 Using, releasing, transferring, selling, assigning, canceling, hypothecating, withdrawing, allowing to be withdrawn, offsetting, asserting ownership of, concealing, in any manner, or removing from this Court's jurisdiction or from Defendant's place of business, any of Defendant's Property, or any other items purchased by Defendant, or any items into which

such property has been transferred, deposited or placed, or any other items owned by Defendant's, wherever located, except through the authority of the Liquidator or his designees;

- 4.5 Releasing, transferring, selling, assigning or asserting ownership of, in any manner, any claims, accounts receivable, or causes of action belonging to Defendant, whether asserted or not, except through the authority of the Liquidator or his designees;
- 4.6 Doing anything, directly or indirectly, to prevent the Liquidator or his designees from gaining access to, acquiring, examining, or investigating any of Defendant's Property or any other property, books, documents, records, or other materials concerning Defendant's business, under whatever name they may be found;
- 4.7 Obstructing or interfering in any way with the conduct of this proceeding or any incidental investigation as prohibited by Tex. Ins. Code § 443.010(b);
- 4.8 Interfering with these proceedings or with the lawful acts of the Liquidator or his designees in any way;
- 4.9 Intervening in this proceeding for the purpose of obtaining a payment from the receivership estate of Defendant as prohibited by Tex. Ins. Code § 443.005(i);
- 4.10 Making any claim, charge or offset, or commencing or prosecuting any action, appeal, or arbitration, including administrative proceedings, or obtaining any preference, judgment, attachment, garnishment, or other lien, or making any levy against Defendant, Defendant's Property or any part thereof, or against the Liquidator, except as permitted by the Insurer Receivership Act.

EACH OF YOU ARE FURTHER SPECIFICALLY ORDERED to make available and disclose to the Liquidator or his designees the nature, amount, and location of Defendant's Property, and immediately surrender all such property to the Liquidator or his designees.

DEFENDANT AND DEFENDANT'S AGENTS ARE FURTHER ORDERED to cooperate with the Liquidator, or his designees as required by Tex. Ins. Code § 443.010(a).

IT IS FURTHER ORDERED that the United States Postmaster and any other delivery services shall deliver to the Liquidator any items addressed to or intended for Defendant.

## **V. STAY OF PROCEEDINGS**

- 5.1 An automatic stay is in effect with respect to actions against Defendant or its property as provided in Tex. Ins. Code § 443.008(c). In accordance with Tex. Ins. Code § 443.008(f), such stay of actions against Defendant is in effect for the duration of this proceeding, and the stay of actions against Defendant's property is in effect for as long as the property belongs to the receivership estate.
- 5.2 An automatic stay is in effect with respect to actions against a party insured by Defendant as provided in Tex. Ins. Code § 443.008(d). Such stay shall continue for 90 days after the date of this Order, or such further time as ordered by this Court.

## **VI. CONTINUATION OF COVERAGE**

- 6.1 All reinsurance contracts by which Defendant has assumed insurance obligations of another insurer are canceled upon entry of this order pursuant to Tex. Ins. Code § 443.152(a).

- 6.2 Unless further extended by the Liquidator with the approval of this Court pursuant to Tex. Ins. Code § 443.152(b), all policies, insurance contracts, surety bonds or surety undertakings issued by Defendant in effect at the time of issuance this order shall continue in force only until the earlier of:
- (a) the 30th day after the date of entry of this order;
  - (b) the date of expiration of the policy coverage;
  - (c) the date the insured has replaced the insurance coverage or otherwise terminated the policy;
  - (d) the date of any transfer of a policy obligation by the Liquidator pursuant to Tex. Ins. Code § 443.154(h); or
  - (e) the date proposed by the Liquidator to cancel coverage.

## **VII. OTHER ORDERS**

- 7.1 This Order shall issue and become effective immediately and shall continue in full force and effect until the entry of an order by this Court terminating liquidation under Tex. Ins. Code § 443.352.
- 7.2 Pursuant to Tex. Ins. Code § 443.055, this Order constitutes a final judgment, provided that this Court shall retain jurisdiction to issue further orders pursuant to the Insurer Receivership Act.
- 7.3 The State of Texas and the Attorney General of Texas shall have a claim for reasonable attorneys' fees and court costs, provided that the amount and payment of such claim are subject to the provisions of Tex. Ins. Code Chapter 443.

- 7.4 In accordance with Tex. Ins. Code § 443.001(b), this Order does not limit the rights of the Commissioner or the Texas Department of Insurance to take any administrative action or issue any administrative order.
- 7.5 Notice of Plaintiff's petition and this Order shall be provided under Tex. Ins. Code § 443.052(b) by first class mail or electronic communication.
- 7.6 Pursuant to Tex. Ins. Code § 443.007(e), the Liquidator may provide notice of any application in the time periods prescribed in Rule 21a of the Texas Rules of Civil Procedure if he determines that an expedited hearing is necessary. In accordance with Tex. Ins. Code § 443.007(d), the Liquidator may provide notice of any application by first class mail, electronic mail, or facsimile transmission, at his discretion.
- 7.7 Anyone over the age of 18 whom is not a party to nor interested in the outcome of this suit may serve all citations, writs and notices in this cause.
- 7.8 All of the foregoing is subject to further orders of this Court.

SIGNED at Austin, Travis County, Texas, on this the 5<sup>th</sup> day of MARCH, 2020, at 10:31 o'clock A.m.

  
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DISTRICT JUDGE PRESIDING