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

In Re: Receivership of

Florida Workers' Compensation Fund Case No.: 1998-CA-3962

/

# DEPARTMENT'S MOTION FOR ORDER APPROVING DISCHARGE ACCOUNTING STATEMENT, DIRECTING FINAL DISCHARGE, AND AUTHORIZING DESTRUCTION OF OBSOLETE RECORDS

COMES NOW, The Florida Department of Financial Services, Division of Rehabilitation and Liquidation, as Receiver of Florida Workers' Compensation Fund, (hereinafter "Department"), by and through the undersigned counsel, and hereby moves this Court for entry of an Order Approving the Discharge Accounting Statement, Directing Final Discharge of the Department as Receiver, and Authorizing the Destruction of Obsolete Records and as good grounds therefor states:

- 1. Florida Workers Compensation Fund ("FWCF") was a domestic self-insurance fund authorized to transact business as a group workers' compensation self-insurance fund in the state of Florida pursuant to the Florida Insurance Code.
- 2. On July 17, 1998, this Court entered an *Order Appointing the Florida Department of Financial Services, as the Receiver of FWCF for purposes of Rehabilitation, Injunction, and Notice of Automatic Stay* ("Rehabilitation Order"). By order of this Court, FWCF was subsequently placed in receivership for purposes of liquidation on May 13, 1999 ("Liquidation Order").
- 3. Pursuant to section 631.021, Florida Statutes, this Court has original jurisdiction over the receivership and has exclusive jurisdiction with respect to the assets and property of FWCF 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. Upon entry of the Liquidation Order, title to all property, real or personal, all contracts, rights of action, and all books and records of FWCF became vested with the Department as Receiver of FWCF. §§ 631.111, .141, Fla. Stat. In the Liquidation Order the Court directed the Department to take possession of all the property and assets of FWCF, liquidate the assets, collect all debts owed to FWCF if economically feasible to do so, and evaluate and make recommendations to the Court on claims filed in the estate.
- 5. On May 11, 2017, the Department filed its Final Claims Report with the Court, and on May 12, 2017, this Court entered an *Order Approving the Final Claims Report, Claims Distribution Report, Distribution Accounting, and Authorizing Distribution* ("Distribution Order"). The Order authorized a distribution of estate assets in the amount of \$38,407,617.70 to all claimants in Classes 1 and 2, which constitutes 100% of the amount recommended in Class 1 and 54.26% of the amount recommended in Class 2. The calculated distribution percentage takes into account the funds previously disbursed as early access funds.
- 6. The only substantive task remaining in this receivership is the ongoing recovery of excess insurance for workers' compensation claims made during the FWCF receivership. Workers' compensation claims, such as the ones covered by FWCF, tend to stay open for a long period. These claims have what is known in the industry as a "long tail." Pursuant to section 631.913, Florida Statutes, the Florida Workers' Compensation Insurance Guaranty Association ("FWCIGA") pays the workers compensation claims filed in the FWCF receivership, and the Department bills excess workers' compensation insurers with whom FWCF entered into agreements once the claims filed by FWCIGA have exceeded an agreed upon retention.
- 7. All excess insurance proceeds collected by the Department become an asset of the FWCF estate and are used to pay claims pursuant to the claims priority scheme set out in section

631.271, Florida Statutes. Pursuant to that section, the administrative expenses of the estate are a Class 1 priority and are paid first. Administrative expenses include the expenses directly related to the Department's management of the FWCF estate, FWCIGA's claims handling expenses, as well as the estate's share of the Department's indirect expenses which are spread across all estates. Due to the size of FWCIGA's claim in the FWCF estate, all funds remaining after Class 1 expenses are paid will be used to pay FWCIGA's Class 2 claim.

- 8. To avoid the FWCF estate incurring additional expenses while these collection activities continue, the Department and FWCIGA have developed a plan to decrease expenses and maximize the recovery to FWCIGA. First, the plan calls for the assignment to FWCIGA of all rights and interests under all excess workers' compensation insurance policies currently held by the Department as Receiver of FWCF. The assignment would grant FWCIGA the right to recover proceeds from the excess workers' compensation insurance policies.
- 9. Secondly, the plan calls for the Department to be discharged as Receiver of FWCF. The Department's Discharge Accounting Statement—*Projected as of June 30, 2017*, (the "Discharge Accounting") is attached hereto and incorporated herein by reference as **Exhibit A**. As shown in the *Discharge Accounting*, the estimated value of all assets remaining in the FWCF receivership estate is projected to be \$570,625.45. The Department requests authority to retain these funds as a reserve for "wind up" expenses of the receivership and requests authority to remit to FWCIGA any surplus expense funds remaining after the Department's wind up activities are completed.
- 10. Lastly, the plan calls for the Department and FWCIGA to enter into an agreement whereby FWCIGA agrees to compensate the Department on a contingency basis to continue to collect excess workers' compensation insurance proceeds for the benefit of FWCIGA. The

Department and FWCIGA have already entered into such an agreement, the Enterprise Agreement, and the parties' obligations thereunder will commence upon the discharge of the Department as Receiver of FWCF. The Enterprise Agreement is attached hereto as **Exhibit B**.

- 11. The Department requests that the plan as described above and memorialized in the Enterprise Agreement be approved by the Court.
- 12. The Department requests authority to remit to FWCIGA any other assets which may be recovered following the discharge of the Department as Receiver if, in the Department's sole discretion, the value of the recovered assets does not justify the re-opening of this receivership estate.
- 13. The Department requests that the following be assigned to FWCIGA: all mortgages, notes, judgments, or other liens in favor of FWCF recorded with any Clerk of Circuit Court in the State of Florida, upon property located in the State of Florida, that have not been previously assigned, sold, or transferred by the Department.
- 14. Upon approval of the Department's request for final discharge, the records of the FWCF receivership estate will no longer be needed, and it will be necessary to dispose of the obsolete company records. Prior to the actual destruction of these records, the Department will seek approval to destroy the records by submitting an *In-House Records Disposition Document* to the Department's Records Management Liaison Officer ("RMLO") for review and approval.
- 15. The Department requests that it shall be fully and finally discharged of its responsibilities in this receivership as of 11:59 P.M. on June 30, 2017.

**WHEREFORE**, the Department respectfully requests this Court enter an Order:

- A. Granting the Department's Motion;
- B. Approving and adopting the Department's Discharge Accounting Statement;
- C. Authorizing and directing the Department to retain \$570,625.45 as a reserve for "wind up" expenses of the Department and to remit to the FWCIGA any surplus expense funds remaining after the Department's wind up activities are completed;
- D. Assigning to FWCIGA all the rights and interests under all excess workers' compensation insurance policies currently held by the Department as Receiver of FWCF;
  - E. Approving the Enterprise Agreement between the Department and FWCIGA;
- F. Authorizing the Department to remit to FWCIGA any other assets which may be recovered following the discharge of the Department as Receiver if, in the Department's sole discretion, the value of the recovered assets does not justify the re-opening of this receivership estate; and
- G. Assigning to FWCIGA all mortgages, notes, judgments, or other liens in favor of FWCF recorded with any Clerk of Circuit Court in the State of Florida, upon property located in the State of Florida, that have not been previously assigned, sold, or transferred by the Department;
- H. Authorizing the Department, after final discharge, to destroy any obsolete records in the Department's possession; and
- I. Directing, without further order of this Court, the final discharge of the Department of its responsibilities in this receivership estate as of 11:59 p.m. on June 30, 2017.

### **Respectfully Submitted** on this the 22nd day of June, 2017.

### /s/ Jamila G. Gooden \_\_

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Rev. 6/17

### Florida Workers' Compensation Fund

Discharge Accounting Statement Projected for June 2017

### **ASSETS**

		Amount	
Cash		\$ 570,625.45	Schedule A
Total Assets		\$ 570,625.45	
	LIABILITIES		
		Recommended	
		Disbursement	
		=	
Taral Link William			
Total Liabilities		<u> </u>	
ı	WINDUP SUMMARY		
Funds Available for Windup Expenses		570,625.45	

(201,600.00)

369,025.45

Schedule D

### **Index to Attached Schedules:**

**Projected Windup Expenses** 

Schedule A - Available Cash Projection

Schedule B - Allocated State Funds Expensed

Balance (Any Remaining Funds to FWCIGA)

Schedule C - Interest Earnings Projection

Schedule D - Receiver Windup Expenses

Schedule E - Contributed Equity and Advances from the Regulatory Trust Fund

570,625.45

### Florida Workers' Compensation Fund Available Cash Projection Projected for June 2017

	Cash Bal. as of April 30, 2017	May-17	Jun-17	
Beginning Pooled Cash Balance	\	2,727,898.27	\$ 2,692,788.08	
Distribution to FIGA			\$ 2,107,612.63	
Direct Receiver Expenses (Actual or Estimated)				
Rent-Storage, Postage	\ /	100.00	100.00	
Sub-total		100.00	100.00	
Allocated Receiver Expenses (Estimated)				
Labor & Benefits	\ /	33,260.00	16,630.00	1
Indirect Expenses	\ /	4,800.00	120.00	2
Sub-total	X	38,060.00	16,750.00	
Cash Balance Before Interest Earnings	/\	2,689,738.27	568,325.45	
Interest Earnings				
Pooled Cash:				
Actual SPIA Earnings for April to be credited on	/			
5/1/2017.	/	3,049.81		
Estimate based on assume SPIA APR on the previous	/			
month's average Pooled Cash balance (Sch. D)			2,300.00	

2,727,898.27

2,692,788.08 \$

### **Assumptions for Allocated Receiver Expenses:**

**Ending Pooled Cash Balance** 

<sup>1</sup> Labor & Benefits: This estimate is based on a four months actual average doubled for increased labor activity during May with the average used for June.

January Actual	13,855.90
February Actual	15,474.32
March Actual	11,373.06
April Actual	 25,832.74
Sub-total Sub-total	 66,536.02
Monthly average (rounded)	\$ 16,630.00
Monthly average Doubled for increased activity (rounded)	\$ 33,260.00

<sup>2</sup> The pro rata share calculation is based on FWCF's estimated total assets divided by the Receiver's estimated total assets for all receiverships.

 Estimated Total Asset %
 4.00%
 After Distribution

 Estimated Total for the Receiver
 \$ 120,000.00
 \$ 120,000.00

 Estimated Expense
 \$ 4,800.00
 \$ 120.00

### Florida Workers' Compensation Fund

Allocated State Funds Expensed

Estimated from May 2017 through the Projected Discharge Date of June 2017
THIS STATEMENT INCLUDED FOR INFORMATION PURPOSES ONLY - AMOUNTS NOT PART OF DISTRIBUTION CALCULATION

	 Мау	June	Totals
Accrued Allocated State of Florida Expenses (Estimated)			
Labor & Benefits	\$ 360.00	\$ 180.00	\$ 540.00 <sup>1</sup>
Indirect Expenses	400.00	100.00	\$ 500.00 <sup>2</sup>
Total	\$ 760.00	\$ 280.00	\$ 1,040.00 <sup>3</sup>

### Assumptions for Allocated State of Florida Expenses:

Labor & Benefits: This estimate is based on a four month actual average doubled for increased labor activity during May with the average used for June.

January Actual	-
February Actual	-
March Actual	217.00
April Actual	510.00
Sub-total	727.00
Monthly average (rounded)	\$ 180.00
Monthly average Doubled for increased activity (rounded)	\$ 360.00

Indirect Expenses: This estimate is FWCF's estimated pro rata share of the Receiver's estimated total indirect expenses. The pro rata share calculation is based on FWCF's estimated total assets divided by the Receiver's estimated total assets for all receiverships.

	Before Distribution			After Distribution		
Estimated Total Asset %		4.00%		0.10%		
Estimated Total for the State	\$	10,000.00	\$	10,000.00		
Estimated Expense	\$	400.00	\$	10.00		

<sup>&</sup>lt;sup>3</sup> Per current Receiver policies and procedures, these accumulated amounts are recorded contributed equity to the estate.

### Florida Workers' Compensation Fund Interest Earnings Projection - Pooled Cash Projected for June 2017

Interest accrued for May 2017	
Beginning cash balance	2,727,898.27
Ending cash balance	2,692,788.08
Average cash balance	2,710,343.18
Assumed SPIA interest rate (Annualized)	1.00%
Subtotal (Annualized)	27,103.43
Accrual for May 2017	\$ 2,300.00
Interest accrued for June 2017	
Beginning cash balance	2,692,788.08
Ending cash balance	570,625.45
Average cash balance	1,631,706.77
Assumed SPIA interest rate (Annualized)	1.00%
Subtotal (Annualized)	16,317.07
Accrual for June 2017	\$ 1,400.00

## Florida Workers' Compensation Fund Receiver Windup Expenses Projected for June 2017

### Discharge Expenses (Projected for Post 6/30/2017)

Reserve for Final Reimbursements to Safety National on Closed Claims Records Storage, Labor 2016 & 2017 Final Tax Return Preparation 200,000.00 1,600.00

Total \$ 201,600.00

# Florida Workers' Compensation Fund Statement of Contributed Equity from Regulatory Trust Fund Estimated Balances Projected for Discharge by 6/30/2017

	Projected Contributed Equity Balance as of 6/30/2017		\$ 343,596.32
	Total		\$ 1,040.00
	Accrual for May - June (Estimate from Schedule B)	\$ 1,040.00	
I.	Contributed Equity Balance as of 4/30/2017		\$ 342,556.32

### ENTERPRISE AGREEMENT

### between

### THE DEPARTMENT OF FINANCIAL SERVICES

### and

### THE FLORIDA WORKERS' COMPENSATION INSURANCE GUARANTY ASSOCIATION

THIS AGREEMENT is entered into by and between the Florida Department of Financial Services, Division of Rehabilitation and Liquidation, 2020 Capital Circle SE, Suite 310, Tallahassee, Florida, 32301, hereinafter referred to as "DEPARTMENT", and the Florida Workers' Compensation Insurance Guaranty Association, whose address is P.O. Box 15159, Tallahassee, Florida 32317, hereinafter referred to as "FWCIGA".

### RECITALS

WHEREAS, Florida Workers Compensation Fund ("FWCF") was a domestic self-insurance fund authorized to transact business as a group self-insurance fund in the state of Florida pursuant to section 440.57, Florida Statutes; and

WHEREAS, on July 17, 1998, the Court entered a Consent Order appointing the Department as Receiver of Florida Workers Compensation Fund ("FWCF") for purposes of rehabilitation and subsequently entered a Consent Order on May 13, 1999, appointing the Department as Receiver of FWCF for the purposes of liquidation; and

WHEREAS, FWCIGA's responsibilities under chapter 631, Part V, Florida Statutes, were triggered by the liquidation proceeding; and

WHEREAS, FWCIGA is currently administering the remaining claims in the FWCF estate and the only remaining task in the administration of the FWCF estate is the DEPARTMENT's collection of excess insurance receivables; and

WHEREAS, the DEPARTMENT and FWCIGA agree that it is in the best interests of the FWCF receivership estate for the DEPARTMENT to be discharged as Receiver of the FWCF estate, assign its rights and obligations under certain excess insurance policies to FWCIGA, and enter into an Agreement with FWCIGA whereby the DEPARTMENT will work to collect all remaining excess insurance receivables on behalf of FWCIGA;

**NOW THEREFORE**, in consideration of the services to be performed and payments to be made, together with the mutual covenants and conditions hereinafter set forth, the parties agree as follows:

- 1. **TERM.** The obligations of the parties under this Agreement will commence on the date and at the time the DEPARTMENT is discharged from its responsibilities as Receiver of FWCF ("commencement date") and will end upon completion of the services described herein, unless terminated earlier in accordance with paragraph 9 of this Agreement.
- 2. **SCOPE OF WORK.** The work contemplated hereunder is as follows:
  - 2.1. The DEPARTMENT will provide excess insurance collection services related to FWCF

### Exhibit B

claims. Such services will include, but will not be limited to the following:

- 2.1.1. Bill no less than twice yearly, each excess insurer in accordance with provisions of appropriate excess insurance contract;
- 2.1.2. Initiate the negotiation of commutation agreements with excess insurers at such time as ultimate excess insurance receivables have been identified; and
- 2.1.3. Provide expert testimony in the event legal proceedings become necessary in the recovery of excess insurance receivables.
- 2.2. The DEPARTMENT has no authority to initiate legal action against any excess insurer or other third party on behalf of FWCIGA.
- 2.3. The DEPARTMENT has no authority to commit FWCIGA to any settlement or commutation. All settlements or commutations must be approved by FWCIGA in writing.
- 3. **DELIVERABLES.** The DEPARTMENT agrees to render the following services or deliverables on a semiannual basis:

A progress report on the services rendered by the DEPARTMENT pursuant to the *Scope of Work*. The report will include a financial summary on billed recoverables for each claim subject to recovery from the excess insurer.

4. **DELIVERY SCHEDULE.** The services or other deliverables specified in Paragraph 3 above shall be delivered to FWCIGA on the following schedule:

The semiannual progress report shall be provided to FWCIGA by the 20<sup>th</sup> of January and the 20th of July of each year this Agreement is in effect. The first report will be due on January 20, 2018.

### 5. FWCIGARESPONSIBILITES.

- 5.1. FWCIGA will share with the DEPARTMENT all payment detail records, files, and knowledge within its possession or control arising from workers' compensation insurance coverage provided by FWCF.
- 5.2. FWCIGA is not responsible for developing the data necessary to support settlement or commutation efforts.
- 5.3. FWCIGA agrees not to unreasonably withhold approval of an offer of settlement or commutation.

### 6. COMPENSATION.

- 6.1. The DEPARTMENT will only be compensated for services rendered pursuant to this Agreement if a recovery is obtained for FWCIGA.
- 6.2. As used in this paragraph the term "claim" shall include requests for reimbursement on a per occurrence basis ("specific") as well as requests for reimbursement on the aggregate policies ("aggregate").
- 6.3. As used in this paragraph "cumulative gross recovered" shall mean for each specific claim and for each aggregate claim, the total amount of excess insurance that is collected on or after the commencement date of this Agreement from the excess insurer, including any amounts recovered after the commencement date of this Agreement for billings submitted by the DEPARTMENT to the excess insurer before the commencement date of this Agreement.
- 6.4. The DEPARTMENT will be compensated on a per billing per claim basis with the understanding that each claim may be subject to multiple billings. The DEPARTMENT's compensation for each billing to an excess insurer shall be as follows:
  - 6.4.1. If the cumulative gross recovered for a claim is \$250,000 or less, the DEPARTMENT will retain 10% of the amount recovered for the billing;
  - 6.4.2. If the cumulative gross recovered for a claim is between \$250,001 \$500,000 the DEPARTMENT will retain 8% of the amount recovered for the billing; and
  - 6.4.3. If the cumulative gross recovered for a claim is above \$500,001, the DEPARTMENT will retain 6% of the amount recovered for the billing.
- 6.5. The DEPARTMENT will bear the costs and expenses it incurs in connection with this Agreement. Notwithstanding the foregoing, FWCIGA will bear all of the costs and expenses incurred by the DEPARTMENT in connection with the provision of expert witness services as referenced in subsection 2.1.3 of this Agreement.
- 7. PAYMENT SCHEDULE. The DEPARTMENT will deduct its compensation as outlined in Section 6.4. from any excess insurance receivables, it recovers before it remits the balance to FWCIGA. Documentation supporting the gross recovery and deducted compensation will be provided. All recoveries will be processed and forwarded when received from the excess insurer.
- 8. **CONTRACT MODIFICATION.** All changes must be mutually agreed upon by the parties and incorporated in written amendments to this Agreement.

### 9. TERMINATION OF AGREEMENT.

9.1. The DEPARTMENT or FWCIGA may cancel this Agreement at any time for any

- reason upon the submission of a sixty (60) day prior written notice and balance of excess insurance recovery is remitted to FWCIGA.
- 9.2. This Agreement shall terminate upon the DEPARTMENT's satisfactory completion of the services and other units of Deliverables described or referenced in Paragraphs 3 and 4.
- 9.3. This Paragraph in no way limits either party's right to terminate this Agreement for breach thereof and to pursue damages for breach.
- 9.4. LENGTH OF SERVICE. This Agreement shall conclude when services are completed, and final payment is rendered to FWCIGA.
- 9.5. No party may assign this Agreement or delegate its duties hereunder.
- 10. GIFTS. Employees and/or agents of the DEPARTMENT comply fully with the state and department laws and regulations regarding gifts and are prohibited from accepting gifts from any organization and/or person regulated by or doing business with the DEPARTMENT.

### 11. RECORDS.

- 11.1. The DEPARTMENT will preserve all documents, records, and other papers created or utilized by the DEPARTMENT in the performance of its responsibilities under this Agreement for five years after the expiration of the Agreement and all pending matters, or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <a href="http://dos.myflorida.com/library-archives/records-management/general-records-schedules/">http://dos.myflorida.com/library-archives/records-management/general-records-schedules/</a>), whichever is longer.
- 11.2. All documents, records, other papers, or information developed or received by the DEPARTMENT pursuant to this Agreement are to be revealed only to FWCIGA, pursuant to FWCIGA's express instructions in each individual instance, pursuant to Court Order, or as otherwise required by law.
- 11.3. Pursuant to the provisions of chapter 119, Florida Statutes, both FWCIGA and the Department have a duty to provide reasonable public access to all records or other material made or received in connection with the transaction of official business, unless such record is made exempt or confidential and exempt by law.
- 11.4. Both the FWCIGA and the DEPARTMENT will ensure that exempt or confidential and exempt public records are not disclosed except as permitted by this Agreement or by public records law.
- 11.5. The DEPARTMENT will restrict disclosure of confidential records solely to those employees of the DEPARTMENT having a need to know such information in order to accomplish the purposes of this Agreement and will advise each such employee, before he or she receives access to the information, of the obligations of DEPARTMENT under this Agreement, and require each such employee to maintain

those obligations.

- 11.6. Each party will notify the other if it receives a request for access to records under public records laws and will cooperate with each other in the discharge of their independent duties to comply with the provisions of chapter 119, Florida Statutes.
- 12. NO SUBCONTRACTING. FWCIGA expects the DEPARTMENT to perform all work hereunder personally or through the DEPARTMENT's employee staff under the DEPARTMENT's direct control and employment, unless expressly provided otherwise herein. No sub-contract may be made and no independent expert or consultants may be retained by the DEPARTMENT, without the specific and explicit written consent of FWCIGA in each instance.
- 13. DISPUTES. Any unresolved disputes rising in connection to this Agreement or work hereunder, will be resolved under Florida Law, and jurisdiction and venue shall be in the Circuit Court, Second Judicial Circuit, Leon County, Florida.

### 14. CONTRACT ADMINISTRATION.

- 14.1. The Department's Contract Manager and the FWCIGA's Contract Manager shall be identified to include their name, address, and telephone number. Contract Managers may be changed with prior written notification.
- 14.2. All written and verbal approvals referenced in this Agreement must be obtained from the parties' Contract Managers or designated representatives. Notices required to be in writing must be delivered or sent to the parties' Contract Managers or designated representatives by hand delivery, certified mail, or receipted courier and shall be deemed received on the date received or the date of the certification of receipt.
- 14.3. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed this Agreement.

FLORIDA WORKERS COMPENSATION	DEPARTMENT OF FINANCIAL SERVICES
INSURANCE GUARANTY ASSOCIATION	

Sandra J. Robinson, Executive Director

Date: 6/5/2017

Salma Zacur, Deputy Receiver

Date: 6-5-2017