

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

IN RE: The Receivership of
ARIES INSURANCE COMPANY,
a Florida Corporation.

CIVIL ACTION NO.: 02-CA-1128

**THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES, DIVISION OF
REHABILITATION AND LIQUIDATION'S MOTION TO RE-OPEN CASE and
MOTION FOR ORDER APPROVING DISCHARGE ACCOUNTING STATEMENT,
DIRECTING FINAL DISCHARGE, AND AUTHORIZING DESTRUCTION OF
OBSOLETE RECORDS**

The Florida Department of Financial Services, Division of Rehabilitation And Liquidation, As Receiver For Aries Insurance Company ("DEPARTMENT") by and through its undersigned counsel, moves this Court for entry of an Order reopening this case and approving the Discharge Accounting Statement, for an Order directing final discharge of the Receivership, and for authorization to destroy obsolete records, and in support of its Motion states as follows:

1. Aries Insurance Company ("Aries") was a Florida corporation previously authorized as a domestic insurer in the State of Florida pursuant to Chapter 641, Florida Statutes.
2. On November 14, 2002, this Court entered a Consent Order Appointing the Florida Department of Insurance as Receiver of Aries Insurance Company, for Purposes of Liquidation, Injunction, and Notice of Automatic Stay. On January 7, 2003, the Florida Department of Insurance was re-organized into two entities with the Florida Department of Financial Services, Division of Rehabilitation and Liquidation assuming responsibility for insurance company insolvencies pursuant to Chapter 631, Part I, Florida Statutes.
3. This Court has jurisdiction over the Aries receivership and is "authorized to make all necessary or proper orders to carry out the purpose of" the Florida Insurers Rehabilitation and Liquidation Act, Section 631.021(1), Florida Statutes.

4. On November 30, 2018, this Court entered an *Order Placing Case on Inactive Status and Administratively Closing File*. The Order administratively closed the pending case from active status until further order from this Court.

5. The Court approved the Receiver's First Interim Claims Report and Recommendation on Claims on October 11, 2007; the Receiver's Second Interim Claims Report and Recommendation on July 19, 2012; the Receiver's Third Interim Claims Report and Recommendation on October 2, 2013, and the Receiver's Final Claim Report on February 1, 2017.

5. The Department obtained the Federal Release and the Court approved the Release Agreement on June 30, 2017.

6. Despite the Department's best efforts, some approved claims may have inadequate current address information and/or may not have provided the Department with a form W-9, required by the Internal Revenue Service. The total unclaimed property in the estate is listed below. The Department recommends that said funds be transferred to the Division of Unclaimed Property, Department of Financial Services, as "unclaimed property" pursuant to Section 717.119, Florida Statutes and/or to the unclaimed property units of other states as appropriate.

7. The Department's Discharge Accounting Statement – Projected for June 30, 2020 (the "Discharge Accounting") is attached hereto as **Exhibit 1**. As shown in the Discharge Accounting, the estimated value of all assets of the Aries Receivership estate is projected to be \$ 340,543.37 as of June 30, 2020. **See Schedule A to Exhibit 1**. Of that \$340,543.37, \$285,156.88 will be forwarded by the Department to the unclaimed property unit(s) of the state(s) reflected in the claimants' last address of record in the Department's files.

8. The Department would retain \$800.00 as a reserve for "wind up" expenses of the Receivership.

9. The Department borrowed \$65,000.00 from the Insurance Regulatory Trust Fund (RFT). There are not sufficient funds in the Aries Receivership Estate to pay off the money borrowed from RFT at discharge. The remaining balance is projected to be approximately \$10,413.51.

10. The Department requests an order authorizing the Department to first remit to the RFT any surplus expense funds remaining after discharge, and once loan is paid in full to remit the funds to the appropriate corresponding guaranty fund association: Florida Insurance Guaranty Association (“FIGA”) or the Florida Workers’ Compensation Insurance Guaranty Association (“FWCIGA”).

11. Upon approval of the Department’s request for final discharge, the records of the Aries receivership estate will no longer be needed, and it will be necessary to dispose of the obsolete company records. This procedure is in direct compliance with Article 1, Section 24, Florida Constitution, Chapters 119 and 257, Florida Statutes, and chapter 1B-24 and 1B-26.003, Florida Administrative Code. The Department will further give notice of its intent to the United States Department of Justice as agreed in the federal Release Agreement.

12. Although such recovery is unlikely, the Department requests an order authorizing it to remit to the RTF, FIGA or FWCIGA any assets which may be recovered following the discharge of this receivership 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 request an Order that all mortgages, notes, judgments, or other liens in favor of Aries recorded with any Clerk of Circuit or County Court in the state of Florida, that have not been previously assigned, sold, or transferred by the Department are deemed assigned to FIGA; additionally, for the Court to recognize the Department’s assignment to FIGA of the Receiver’s rights, title and interest in the following judgments and assignment of all rights, title, claims in actions to collect the two judgments, including the right to pursue execution of the judgments through the two pending actions in Panama and Colombia, as further described below, or through any separate action which may be required:

a. *Florida Department of Financial Services as Receiver for The Aries Insurance*

Co. v. Marcos Fraynd, Paul Fraynd, Saul Fraynd, and Franny Fraynd, Case No. 2006-CA-8827 CA 40 (Fla. 11th Jud. Cir. Ct. Miami-Dade Cnty.), in the amount of \$76,088,177.47, plus post judgment interest at 6% from the date of judgment through June 30,2020 of \$42,063,211.53;

- b. *Florida Department of Financial Services as Receiver of The Aries Insurance Company v. Marcos Fraynd a/k/a Marcos Fraynd Szyler or Marcos Franynd, Paul Fraynd a/k/a Paul Fraynd Rabinovich, Paul Peretz Fraynd Rabinovich, Paul Peretz Frajnd, Pault Peretz Frajnd Rabinovich or Paul Peretz Frajnd R., Saul Fraynd a/k/a Saul Fraynd Rabinovich, and Fanny Fraynd a/k/a Fanny Fraynd Singer and Fanny Fraynd de Singer*, Case No. 02-1128-K (Fla. 2nd. Jud. Cir. Ct. Leon Cnty), in the amount of \$39,452,356.00.;
- c. Corte Suprema de Justicia, Sala Civil, Sentencia SC2476-2019, Solicitud de Exequatur Departamento de Servicios Financieros del Estado de la Florida, Estados Unidos de America, Magistrado Ponente: Aroldo Wilson Quiroz Monsalvo, 9 de julio de 2019, Radicación No. 11001-02-03-000-2014-01635-00, which translated to English would be Supreme Court of Colombia, Civil Board, Judgment SC2476, Petition of Exequatur Florida Department of Financial Services, United States of America, Justice Proponent: Aroldo Wilson Quiroz Monsalvo, July 9, 2019, Registered No. 11001-02-03-000-2014-01635-00; and
- d. Corte Suprema de Justicia, Sala Cuarta de Negocios Generales, Expediente No.1114-2014. Solicitud de Reconocimiento y Ejecución de Sentencia Extranjera, Ponente: Magistrado Hernan de Leon, Clase: Exequatur, which

you can translate as Supreme Court of Justice of Panama, Fourth Board of General Affairs, Docket File No.1114-2014. Request of Recognition and Execution of Foreign Judgment, Proponent Justice: Hernan de Leon, Class: Exequatur.

14. The Department requests an Order that it shall be fully and finally discharged of its responsibilities in this receivership as of 11:59 P.M. on June 30, 2020, subject to the terms stated above.

WHEREFORE, the Department respectfully requests the Court grant this Motion and enter an Order:

- A. Granting the Department's Motion to Reopen Case.
- B. Approving and adopting the Department's Discharge Accounting Statement.
- C. Authorizing and directing the Department to transfer any unclaimed funds to the unclaimed property unit(s) of the state(s) reflected in the claimants' last address of record in the Department's files, including the Florida Division of Unclaimed Property;
- D. Authorizing and directing the Department to retain \$800.00 as a reserve for wind up expenses of the Department;
- E. Authorizing the Department to remit any surplus expense funds remaining after discharge to RTF until loan is paid in full and then to FIGA or FWCIGA as appropriate;
- F. Authorizing the Department, after final discharge, to destroy any obsolete records in the Department's possession;
- G. Authorizing the Department to remit to RTF until loan is paid in full and then to FIGA or FWCIGA as appropriate any assets, other than recoveries from judgments assigned below, which may be recovered following the discharge of this receivership if, in the Department's sole discretion, the value of the recovered assets does not justify the re-opening of

this receivership estate. Additionally, authorizing the Department to remit any amounts recovered from judgments assigned below to the RTF, FIGA, FWCIGA, or appropriate assigned party.

H. As of the date and time of the Department's discharge as Receiver of Aries Insurance Company, all mortgages, notes, subrogation judgments, final judgments, or other liens in favor of Aries recorded with any Clerk of Circuit or County Court in the state of Florida, that have not been previously assigned, sold, or transferred by the Department are deemed assigned to the Florida Insurance Guaranty Association. As of the date and time of the Department's discharge as Receiver of Aries Insurance Company, all workers compensation insurance premium judgments in favor of Aries recorded with any Clerk of Circuit or County Court in the state of Florida, that have not been previously assigned, sold, or transferred by the Department are deemed assigned to the Florida Workers Compensation Insurance Guaranty Association. Additionally, the Court recognizes the Receiver's assignment to the Florida Insurance Guaranty Association all of the Receiver's rights, title and interest in the following judgments and assignment of all rights, title, claims in actions to collect the two judgments, including the right to pursue execution of the judgments through the two pending actions in Panama and Colombia, as further described below, or through any separate action which may be required:

- a. *Florida Department of Financial Services as Receiver for The Aries Insurance Co. v. Marcos Fraynd, Paul Fraynd, Saul Fraynd, and Franny Fraynd*, Case No. 2006-CA-8827 CA 40 (Fla. 11th Jud. Cir. Ct. Miami-Dade Cnty.), in the amount of \$76,088,177.47, plus post judgment interest at 6% from the date of judgment, through June 30, 2020 of \$42,063,211.53;

- b. *Florida Department of Financial Services as Receiver of The Aries Insurance Company v. Marcos Fraynd a/k/a Marcos Fraynd Szylar or Marcos Franynd, Paul Fraynd a/k/a Paul Fraynd Rabinovich, Paul Peretz Fraynd Rabinovich, Paul Peretz Frajnd, Pault Peretz Frajnd Rabinovich or Paul Peretz Frajnd R., Saul Fraynd a/k/a Saul Fraynd Rabinovich, and Fanny Fraynd a/k/a Fanny Fraynd Singer and Fanny Fraynd de Singer*, Case No. 02-1128-K (Fla. 2nd. Jud. Cir. Ct. Leon Cnty), in the amount of \$39,452,356.00;
- c. Corte Suprema de Justicia, Sala Civil, Sentencia SC2476-2019, Solicitud de Exequatur Departamento de Servicios Financieros del Estado de la Florida, Estados Unidos de America, Magistrado Ponente: Aroldo Wilson Quiroz Monsalvo, 9 de julio de 2019, Radicación No. 11001-02-03-000-2014-01635-00, which translated to English would be Supreme Court of Colombia, Civil Board, Judgment SC2476, Petition of Exequatur Florida Department of Financial Services, United States of America, Justice Proponent: Aroldo Wilson Quiroz Monsalvo, July 9, 2019, Registered No. 11001-02-03-000-2014-01635-00; and
- d. Corte Suprema de Justicia, Sala Cuarta de Negocios Generales, Expediente No.1114-2014. Solicitud de Reconocimiento y Ejecución de Sentencia Extranjera, Ponente: Magistrado Hernan de Leon, Clase: Exequatur, which you can translate as Supreme Court of Justice of Panama, Fourth Board of General Affairs, Docket File No.1114-2014. Request of Recognition and Execution of Foreign Judgment, Proponent Justice: Hernan de Leon, Class: Exequatur.

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, 2020.

IT IS HEREBY CERTIFIED that a true and correct copy of this Motion for Discharge was electronically filed with the Clerk of Courts by using the ECF system and electronically noticed this 12th day of June 2020.

/s/ Yamile Benitez-Torviso
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served all parties who have entered an appearance on the ECF system with a copy of this Motion.

/s/ Yamile Benitez-Torviso
YAMILE BENITEZ-TORVISO
SENIOR ATTORNEY
Florida Bar No. 0151726

Aries Insurance Company
Discharge Accounting Statement
Projected for June 30, 2020 Discharge

ASSETS

	<u>Amount</u>	
Cash	\$ 340,543.37	Schedule A
Total Assets	<u>\$ 340,543.37</u>	

LIABILITIES

	<u>Recommended Disbursement</u>
Outstanding Amounts from Distribution to Unclaimed Property	285,156.88
State Reg Trust Fund	65,000.00
Total Liabilities	<u>\$ 350,156.88</u>

WINDUP SUMMARY

Funds Available for Windup Expenses	(9,613.51)	
Projected Windup Expenses	<u>(800.00)</u>	Schedule D
Balance (Any Remaining Funds to FIGA)	<u>(10,413.51)</u>	

Index to Attached Schedules:

Schedule A - Available Cash Projection
Schedule B - Allocated State Funds Expensed
Schedule C - Interest Earnings Projection
Schedule D - Receiver Windup Expenses
Schedule E - Contributed Equity and Advances from the Regulatory Trust Fund

Aries Insurance Company
Available Cash Projection
Projected for June 30, 2020 Discharge

	Cash Bal. as of February 29, 2020	Mar-20	Apr-20	May-20	Jun-20
Beginning Pooled Cash Balance		\$ 373,644.29	\$ 355,931.37	\$ 352,019.37	\$ 348,107.37
Legal Fees & Expenses (Actual)		\$ 14,064.75	\$ -	\$ -	
Legal Fees & Expenses (Estimated)					\$ 9,252.00
Direct Receiver Expenses (Actual or Estimated)					
Rent-Storage, Postage, Temp, Help,		2,800.00	2,800.00	2,800.00	2,800.00
Sub-total		2,800.00	2,800.00	2,800.00	2,800.00
Allocated Receiver Expenses (Estimated)					
Labor & Benefits		1,660.00	1,660.00	1,660.00	1,660.00
Indirect Expenses		52.00	52.00	52.00	52.00
Sub-total		1,712.00	1,712.00	1,712.00	1,712.00
Cash Balance Before Interest Earnings		355,067.54	351,419.37	347,507.37	339,943.37
Interest Earnings					
Pooled Cash:					
Actual SPIA Earnings for February to be credited on 3/1/2020		863.83			
Estimate based on assume SPIA APR on the previous month's average Pooled Cash balance (Sch. D)			600.00	600.00	600.00
Ending Pooled Cash Balance	\$	373,644.29	\$ 355,931.37	\$ 352,019.37	\$ 348,107.37
			\$ 340,543.37		

Assumptions for Allocated Receiver Expenses:

¹ Labor & Benefits: This estimate is based on a four month actual average.

November Actual	\$ 1,033.04
December Actual	669.36
January Actual	2,205.39
February Actual	2,734.86
Sub-total	6,642.65
4 mth. actual average (rounded)	\$ 1,660.00

² Indirect Expenses: This estimate is Aries' estimated pro rata share of the Receiver's estimated total indirect expenses. The pro rata share calculation is based on Aries' estimated total assets divided by the Receiver's estimated total assets for all receiverships.

Estimated Total Asset %	0.20%
Estimated Total for the Receiver	\$ 26,000.00
Estimated Expense	\$ 52.00

Aries Insurance Company
Allocated State Funds Expensed
Estimated from March 2020 through the Projected Discharge Date of June 30, 2020
THIS STATEMENT INCLUDED FOR INFORMATION PURPOSES ONLY - AMOUNTS NOT PART OF DISTRIBUTION CALCULATION

	March	April	May	June	Totals	
Accrued Allocated State of Florida Expenses (Estimated)						
Labor & Benefits	\$ 50.00	\$ 50.00	\$ 50.00	\$ 50.00	\$ 200.00	¹
Indirect Expenses	100.00	100.00	100.00	100.00	\$ 400.00	²
Total	\$ 150.00	\$ 150.00	\$ 150.00	\$ 150.00	\$ 600.00	³

Assumptions for Allocated State of Florida Expenses:

¹ Labor & Benefits: This estimate is based on a four month actual average.

November Actual	32.62
December Actual	20.97
January Actual	72.30
February Actual	70.08
Sub-total	195.97
4 mth. actual average (rounded)	<u>\$ 50.00</u>

² Indirect Expenses: This estimate is Aries' estimated pro rata share of the Receiver's estimated total indirect expenses. The pro rata share calculation is based on Aries' estimated total assets divided by the Receiver's estimated total assets for all receiverships.

Estimated Total Asset %	0.20%
Estimated Total for the State	<u>\$ 50,000.00</u>
Estimated Expense	<u>\$ 100.00</u>

³ Per current Receiver policies and procedures, these accumulated amounts are recorded contributed equity to the estate.

Aries Insurance Company
Interest Earnings Projection - Pooled Cash
Projected for June 30, 2020 Discharge

Interest accrued for March 2020

Beginning cash balance	373,644.29
Ending cash balance	355,931.37
Average cash balance	364,787.83
Assumed SPIA interest rate (Annualized)	2.00%
Subtotal (Annualized)	7,295.76

Accrual for March	\$ 600.00
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Interest accrued for April 2020

Beginning cash balance	355,931.37
Ending cash balance	352,019.37
Average cash balance	353,975.37
Assumed SPIA interest rate (Annualized)	2.00%
Subtotal (Annualized)	7,079.51

Accrual for April	\$ 600.00
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Interest accrued for May 2020

Beginning cash balance	352,019.37
Ending cash balance	348,107.37
Average cash balance	350,063.37
Assumed SPIA interest rate (Annualized)	2.00%
Subtotal (Annualized)	7,001.27

Accrual for May	\$ 600.00
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Interest accrued for June 2020

Aries Insurance Company
Receiver Windup Expenses
Projected for June 30, 2020 Discharge

Discharge Expenses (Projected for Post 6/30/2020)

2019-2020 Tax Returns

800.00

Total

\$	800.00
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Aries Insurance Company
Statement of Contributed Equity from Regulatory Trust Fund Estimated Balances
Projected for Discharge by 6/30/2020

I. Contributed Equity Balance as of 2/29/2020		\$	706,097.87
	Accrual for March - June 2020 (Estimate from Schedule B)	\$	<u>600.00</u>
Total		\$	<u>600.00</u>
Projected Contributed Equity Balance as of 6/30/2020		\$	<u><u>706,697.87</u></u>