

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

In Re: The Receivership of  
Windhaven Insurance Company,  
a Florida corporation.

CASE NO.: 2019 CA 002861

**THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES, DIVISION OF  
REHABILITATION AND LIQUIDATION'S APPLICATION FOR DISBURSEMENT OF  
FUNDS TO THE FLORIDA INSURANCE GUARANTY ASSOCIATION**

The Florida Department of Financial Services, Division of Rehabilitation and Liquidation, as Receiver of Windhaven Insurance Company (hereinafter "The Department"), moves this Honorable Court for an entry of an Order authorizing the Department to disburse funds in the amount of FIFTEEN MILLION DOLLARS AND NO CENTS (\$15,000,000.00) to the Florida Insurance Guaranty Association (hereinafter "FIGA"). These funds are hereinafter referred to as early access funds. In support of its application, the Department states:

1. Section 631.397, Florida Statutes, provides in substance that the Department may disburse assets out of such insurer's marshaled assets, as such assets become available, to each guaranty association entitled thereto.

2. FIGA is one of the guaranty associations contemplated by Section 631.397, Florida Statutes.

3. FIGA will use the funds released from the Windhaven Insurance Company (hereinafter "Windhaven") estate to its current administrative expenses and the covered claims of policyholders and third parties. In compliance with Section 631.397(2)(d), Florida Statutes, The Department and FIGA have executed an Early Access Agreement ("Agreement"). The Agreement provides in substance that FIGA shall return such early access distributions as may be required to pay claims of secured creditors and claims falling within the priority scheme

established by part I of Chapter 631, Florida Statutes. Further, FIGA will not be entitled to share in the funds ultimately distributed from the Windhaven estate until such allocated distributions to which the FIGA is otherwise entitled exceed the early access distributions. The Early Access Agreement is attached hereto as **EXHIBIT A**.

5. The Department represents that in accord with Section 631.397(2)(a), Florida Statutes, there are sufficient assets in the Windhaven estate to permit the proposed early access to the FIGA, while reserving amounts for the payment of expenses of administration, the payment of claims of secured creditors' claims to the extent of the value of the security held, and the payment of claims falling within the priorities established by Part I of Chapter 631, Florida Statutes. See **EXHIBIT B** to this application.

6. In accord with Section 631.397(2)(b), Florida Statutes, if additional assets become available in an amount sufficient to allow further early access distribution, the Department will seek additional authority to disburse same.

7. The Department represents that the proposed early access distribution provides for the equitable allocation of disbursements to each association entitled thereto, consistent with Section 631.397(2)(c), Florida Statutes.

8. FIGA regularly reports to the Department on its activities in the Windhaven estate. These reports include all the information required by section 631.397 (2)(d), Florida Statutes.

WHEREFORE, the Department respectfully requests this Court enter an Order approving the disbursement of early access funds in the amount of FIFTEEN MILLION DOLLARS AND NO CENTS (\$15,000,000.00) to the Florida Insurance Guaranty Association.

Respectfully submitted this 4th day of March 2021.

/s/

**Yamile Benitez-Torviso, Senior Attorney**

Florida Bar No. 0151726

[Yamile.Benitez-Torviso@myfloridacfo.com](mailto:Yamile.Benitez-Torviso@myfloridacfo.com)

Florida Department of Financial Services

Division of Rehabilitation and Liquidation

8350 NW 52 Terrace, Suite 102

Doral, FL 33166

(786) 336-1382 Telephone

**Miriam Victorian, Chief Attorney**

Florida Bar No. 355471

[Miriam.Victorian@myfloridacfo.com](mailto:Miriam.Victorian@myfloridacfo.com)

Florida Department of Financial Services

Division of Rehabilitation and Liquidation

325 John Knox Road

Atrium Building, Suite 101

Tallahassee, FL 32303

(850) 413-4408 Telephone

### **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, Senior Attorney**

Florida Bar No. 0151726

## EARLY ACCESS AGREEMENT

**THIS EARLY ACCESS AGREEMENT** is entered into on this 16<sup>th</sup> day of December, 2020, between the **Florida Department of Financial Services**, as **Receiver of Windhaven Insurance Company**, (“**Department**”) and the **Florida Insurance Guaranty Association** (“**Guaranty Association**”).

**WHEREAS**, Windhaven Insurance Company, (“Windhaven”), was a Florida corporation previously authorized to transact an insurance business in the State of Florida.

**WHEREAS**, on December 30, 2019, the Second Judicial Circuit Court in and for Leon County, Florida, (the “Court”) entered its ***ORDER OF LIQUIDATION, INJUNCTION AND NOTICE OF AUTOMATIC STAY*** effective on January 6, 2020.

**WHEREAS**, Section 631.397(1), Florida Statutes, provides, in relevant part, that the Department may apply to this Court for authorization to “disburse assets out of such insurer’s marshaled assets, as such assets become available, to each association entitled thereto.” (Early Access”); and

**WHEREAS**, the Guaranty Association has requested an advance of funds from the Windhaven Receivership estate in order to fulfill its obligations pursuant to Part V of Chapter 631, Florida Statutes. In support of its request, the Guaranty Association has submitted to the Department a summary of the claims payments and reserves made by or on behalf of the Guaranty Association and a summary of the Guaranty Association’s administrative expenses; and

**WHEREAS**, the Department has reviewed the documents submitted by the Guaranty Association. Based upon this review, the Department has determined that the

Guaranty Association has adequately demonstrated its need for an early access distribution of funds from the receivership estate; and

**WHEREAS**, the Department and the Guaranty Association acknowledge and agree that neither the Department's review of the Guaranty Association's documentation for purposes of early access distribution(s) nor this Early Access Agreement constitute an evaluation of or recommendation on any claim which the Guaranty Association may be entitled to under Section 631.271, Florida Statutes; and

**WHEREAS**, the Department has determined that it has sufficient liquid funds available to make an early access distribution to the Guaranty Association and that the total sums of all early access distributions, to include this distribution, is less than the Guaranty Association's incurred claims and administrative expenses; and

**WHEREAS**, the Department has applied or will apply to the Court for an order permitting the Department to make an early access distribution to the Guaranty Association pursuant to Section 631.397, Florida Statutes, for the partial payment of claims and administrative expenses.

**NOW THEREFORE**, the Department and the Guaranty Association agree as follows:

1. The Guaranty Association will respond in good faith to requests from the Department for information, files and documents. The Department will be permitted full access to the books, records, and files of the Guaranty Association pertaining to the handling and payment of covered claims and administrative expenses incurred by the Guaranty Association in fulfilling its obligations pursuant to Part II, Chapter 631, Florida Statutes.

2. The Guaranty Association will make reports to the Department no less frequently than quarterly, through Uniform Data Standards (“UDS”) or in a form acceptable to the Department, disclosing the status of the following items received, held or processed during the reporting period: current open claims count, open claims reserves, claim payments, salvage or subrogation recoveries, if any, and such other items as may be reasonably required by the Department. The reports shall be sent to the Department electronically via Secure UDS server housed by the NCIGF or mailed to the Department of Financial Services, Division of Rehabilitation and Liquidation, address 325 John Knox Road, Atrium Building, Suite 101, Tallahassee, Florida 32303, or such other location designated by the Department.

3. The Guaranty Association will utilize any payment received pursuant to this Agreement solely for the payment of covered claims as defined by Section 631.271, and Part II, Chapter 631, Florida Statutes, and for the payment of claims handling or administrative expenses as defined by Section 631.271(1)(a)(2), Florida Statutes, relating to the Receivership of Windhaven.

4. The Guaranty Association will establish and maintain separate ledger accounts for the receipt of and payments from any funds received pursuant to this Agreement.

5. The Guaranty Association agrees to promptly return to the Department all or any portion of any early access disbursements acquired by the Guaranty Association pursuant to this Agreement, with any income earned thereon, if the Department determines, at any time, that such repayment is necessary to pay claims or expenses which the Department determines to be of equal or superior priority. In the event the

Guaranty Association is required to repay to the Department any early access disbursements, the Guaranty Association will pay the Department in cash or other liquid assets as may be acceptable to the Department.

6. Pursuant to Section 631.271, Florida Statutes, the Guaranty Association understands and agrees that any distribution made pursuant to this Agreement constitutes partial payment on any claim which the Guaranty Association may have in the Windhaven Receivership and that it will not share in any final distribution of assets from the Windhaven Receivership until claimants of an equal priority receive an equal pro rata distribution on their claims.

7. Prior to the final distribution of the assets of Windhaven, the Department is authorized to audit the financial accounts, records and procedures of the Guaranty Association with respect to the receipt of assets or the payment of covered claims. The Guaranty Association will, within 30 days after receipt of a written request from the Department, return to the Department any early access disbursements made pursuant to this Agreement which are in excess of the amount ultimately determined by the Department to be due the Guaranty Association as a final distribution of the assets of Windhaven. The Department and the Guaranty Association shall cooperate in making arrangements for the destruction or other final disposition of the information, files and documents received by the Guaranty Association from Windhaven or the Department.

8. The Department hereby agrees to distribute to the Guaranty Association the amount set out in the pleading to which this agreement is attached for payment of covered claims and claims handling or administrative expenses as contemplated in Part II, Chapter 631, Florida Statutes. Any and all interest that the Guaranty Association

earns on funds so distributed, shall also be considered early access distributions for purposes of this Agreement.

9. The Department and the Guaranty Association agree that any and all distributions pursuant to this Agreement constitute an equitable allocation of the marshaled assets of the Windhaven Receivership as contemplated by Section 631.397, Florida Statutes.

10. This Early Access Agreement shall be construed in accordance with Florida law. Any legal action by either party to enforce or interpret this Agreement or the parties' obligations under this Agreement shall be commenced, litigated, and adjudicated in and by the Second Judicial Circuit Court, in and for Leon County, Florida.

11. Any notice required to be given to the parties shall be given by regular United States mail, postage prepaid, addressed as follows:

Department:	Toma Wilkerson, Division Director Florida Department of Financial Services Division of Rehabilitation and Liquidation 325 John Knox Road Atrium Building, Suite 101 Tallahassee, Florida 32303
-------------	---

Guaranty Assoc.	Tom Streukens, Executive Director Florida Insurance Guaranty Association Post Office Box 14249 Tallahassee, Florida 32317
-----------------	--

12. This Agreement merges all prior offers and agreements of every kind and expresses the full and final intent of the parties and shall be effective only upon Court approval. This Agreement shall not be modified, except by an instrument in writing, executed by the authorized representatives of the parties, and subject to Court approval.



13. This Agreement supersedes all earlier agreements and will apply to all future Early Access Distributions to the Guaranty Fund. It will be attached to all future early access motions filed by the Department.

**THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES, AS RECEIVER  
OF WINDHAVEN INSURANCE COMPANY**


By: 

NAME: Toma Wilkerson

TITLE: Division Director/Deputy Receiver

Date signed: 12/16/2020

**FLORIDA INSURANCE GUARANTY ASSOCIATION**

By: 

NAME: Thomas D. Streukens

TITLE: Executive Director

Date signed: 12/16/2020

**Florida Department of Financial Services, Division of Rehabilitation and  
Liquidation  
Windhaven Insurance Company in Liquidation  
Statement of Affairs  
12/31/2020**

**Estimated  
Realizable  
Value**

**ASSETS**

SPIA-Restricted	\$11,342,034.94
Pooled Cash in SPIA Due from the Admin Fund	25,379,834.15
Accrued Interest Receivable	27,449.97
Total Assets	<u>\$36,749,319.06</u>

**LIABILITIES**

Secured Claims	11,342,034.94
Class 1 Administrative Claims	
Class 1 - Guaranty Associations	7,754,745.05
Class 2 Loss Claims	
Class 2 - Guaranty Associations	56,009,490.63
Class 3 Unearned Premium Claims under Non-assessable Policies	
Class 3 - Guaranty Associations	725,228.39
Class 3 - Other	1,432,380.61
Class 6 General Creditor Claims	
Class 6 - Other	192,662.90
Class 9 Surplus Notes/Unearned Premium Claims under Assessable Policies	
Class 9 - Other	7,900,000.00
Total Liabilities	<u>\$85,356,542.52</u>

**EQUITY**

Contributed Equity - State of Florida	115,477.05
Estate Equity	(48,722,700.51)
Excess (Deficiency) of Assets over Liabilities	<u>(\$48,607,223.46)</u>
Total Liabilities and Equity	<u>\$36,749,319.06</u>

The accompanying notes & schedules are an integral part of these financial statements  
**UNAUDITED**

Exhibit B

**Florida Department of Financial Services, Division of Rehabilitation and  
Liquidation**

**Windhaven Insurance Company in Liquidation  
Statement of Cash Receipts and Disbursements  
From the Date of Liquidation through 12/31/2020**

	Fiscal Year to Date	Since Date of Liquidation
<b>CASH RECEIPTS</b>		
Premium Collections	\$195,040.94	\$2,341,997.91
Reinsurance Recoveries	0.00	11,101,625.91
Subrogation and Salvage Recoveries	385,538.97	1,563,442.57
Litigation Recoveries	0.00	30,920.00
Tax Recoveries	1,300,333.16	2,434,345.88
Other Collections / Recoveries	2,485.18	866,984.64
Sale of Personal Property Inventory	102.50	102.50
Sale of Real Property Inventory	11,950,000.00	11,950,000.00
Receipts Before Investment Activities	13,833,500.75	30,289,419.41
Interest and Dividend Receipts	277,311.78	506,471.61
Sale of Short Term Investment	0.00	106,148.80
Receipts From Investment Activities	277,311.78	612,620.41
<b>Total Cash Receipts</b>	<b>14,110,812.53</b>	<b>30,902,039.82</b>
<b>CASH DISBURSEMENTS &amp; DISTRIBUTIONS</b>		
Professional Fees and Expenses	564,072.19	982,637.84
Salaries and Fringe Benefits	975,213.90	2,313,061.02
Employee Welfare	1,949.22	3,589.90
Travel Expenses	0.00	46,436.62
Admin Expenses	357,716.23	2,874,224.36
Equipment and Furniture Expenses	19,245.49	37,091.43
Rent, Building and Equipment	696.89	(129.04)
Taxes	95,852.02	96,069.00
Disbursements	2,014,745.94	6,352,981.13
Distributions		
Administrative Claims (Class 1)	0.00	0.00
Loss Claims (Class 2)	0.00	0.00
Unearned Premium-Non-Assessable Policies Claims (Class 3)	0.00	0.00
General Creditors Claims (Class 6)	0.00	0.00
Surplus Notes/Unearned Premium-Assessable Policies Claims (Class 9)	0.00	0.00
Total Distributed	0.00	0.00
Disbursements & Distributions Before Investment Activities	2,014,745.94	6,352,981.13
Financial Expenses	14,820.35	51,365.18
Disbursements for Investment Activities	14,820.35	51,365.18
<b>Total Cash Disbursements &amp; Distributions</b>	<b>2,029,566.29</b>	<b>6,404,346.31</b>
<b>Net Increase (Decrease) in Cash</b>	<b>12,081,246.24</b>	<b>24,497,693.51</b>
<b>Beginning Cash Balance:</b>		
Beginning Cash	24,131,504.78	(13,640,524.78)
Adjustments to Beginning Cash	509,118.07	25,864,700.36
<b>Adjusted Beginning Cash Balance</b>	<b>24,640,622.85</b>	<b>12,224,175.58</b>
<b>Ending Cash Balance</b>	<b>36,721,869.09</b>	<b>36,721,869.09</b>

**Florida Department of Financial Services, Division of Rehabilitation and Liquidation**  
**Windhaven Insurance Company**  
**Schedule of SPIA - Restricted**  
**For the Six Months Ended December 31, 2020**

**SPIA - Restricted**

<b>Description</b>	<b>Balance 7/1/20</b>	<b>Adjustments/Deposits</b>	<b>Interest</b>	<b>Transfers/Distributions</b>	<b>Balance 12/31/20</b>
SPIA - 500	11,221,637.54	0.00	120,397.40	0.00	11,342,034.94
Greenlight Re. Ltd. & Re. Ireland					
Total:	11,221,637.54	0.00	120,397.40	0.00	11,342,034.94

**Florida Department of Financial Services, Division of Rehabilitation and Liquidation**  
**Windhaven Insurance Company**  
**Schedule of Accrued Interest Receivable**  
**For the Six Months Ended December 31, 2020**

**Accrued Interest Receivable**

<b>Description</b>		<b>Balance 7/1/20</b>	<b>Accrued</b>	<b>Received</b>	<b>Balance 12/31/20</b>
State Treasury	SPIA, 4-20-0-010000-00000	22,870.67	152,213.46	(147,634.16)	27,449.97
Totals:		22,870.67	152,213.46	(147,634.16)	27,449.97

**Florida Department of Financial Services, Division of Rehabilitation and Liquidation**  
**Windhaven Insurance Company**  
**Schedule of Secured Claims**  
For the Six Months Ended December 31, 2020

**Secured Claims**

<b>Description</b>	<b>Balance 7/1/20</b>	<b>Adjustments/Deposits</b>	<b>Interest</b>	<b>Transfers/Distributions</b>	<b>Balance 12/31/20</b>
Reinsurance settlement proceeds from Greenlight RE.	11,221,637.54	0.00	120,397.40	0.00	11,342,034.94
Total:	11,221,637.54	0.00	120,397.40	0.00	11,342,034.94

**Florida Department of Financial Services, Division of Rehabilitation  
and Liquidation**  
**Windhaven Insurance Company in Liquidation**  
**Notes to Financial Statements**

**Dated December 31, 2020**

1. **Estate Information.** Windhaven Insurance Company was a property and casualty organization domiciled in Florida placed in liquidation on January 6, 2020.
2. **Basis of Presentation.** The accompanying financial statements have been prepared on a modified cash basis of accounting using a fiscal year of July 1, 2020 through June 30, 2021. The assets are stated at their estimated realizable values, while the liabilities are stated at their gross filed amounts and are periodically adjusted as evaluated, adjudicated and/or paid. Interest is accrued and reinsurance receivables are only posted when billed to reinsurers. In addition, the statements do not provide accruals for all future administrative expenses to liquidate the estate or costs to pursue or litigate claims against others.
3. **Unaudited.** The accompanying financial statements have not been audited by an independent certified public accountant and no opinion is expressed on their compliance with generally accepted accounting principles.
4. **Pooled Investments.** The majority of the invested assets of the estates are combined into two main pooled accounts: The Receiver's operating account held at Wells Fargo and the Special Purpose Investment Account held at the State of Florida Treasury. Each estate's share of the pooled investments is presented on the accompanying financial statements as "Pooled Cash Due from the Admin Fund".
5. **Special Purpose Investment Account (SPIA) – Restricted.** Represent funds wired to the Receiver from Guy Carpenter regarding two Greenlight companies, Re, Ltd. And Re Ireland for sliding commissions and claim payments held. The Receiver is holding these funds in a segregated account until reconciliation.
6. **Secured Claims.** The Greenlight funds held until a reconciliation has been completed.
7. **Claims.** Unless otherwise noted, the Statement of Affairs contains claim liabilities by priority class pursuant to 631.271, Florida Statutes. Unless otherwise stated, the claim liabilities reported are gross filed, un-adjudicated, and have not been reduced by any early access payments from the Florida Receiver. Claim liability numbers are based upon the most current available information and documentation provided to the Receiver from both internal and external sources.
  - Claim liabilities are based upon Guaranty Association estimates.
8. **Interest Distributions.** For companies placed into receivership on or after July 1, 2012, Section 631.271, Florida Statutes authorizes the payment of interest on claims in Classes 1-9 prior to making any payment on shareholder claims. At this time, the Receiver does not anticipate having sufficient assets in this estate to pay all claims for Classes 1-9. Accordingly, this statement does not reflect an interest reserve for Classes 1-9 allowed claims.
9. **Federal Priority.** The federal government has taken the position that pursuant to 31 U.S.C.A. 3713 a federal government claim must be paid first, when a debtor to the United States is insolvent. The federal government has also taken the position that it is not subject to state insurance liquidation claim's proceedings deadlines. To establish finality, shield itself from potential liability, and ultimately discharge the estate, the Receiver will request a federal release from the U.S. Department of Justice.
10. **Contributed Equity – State of Florida.** The Receiver will, from time to time, expend public funds to carry out certain duties during the course of liquidating an insurance company. The Division accounts for these expenditures as a contribution of equity by the State.
11. **Excess (Deficiency) of Assets over Liabilities.** The excess or (deficiency) represents the estimated realizable value of assets after deducting the current estimate of liabilities. This excess or (deficiency) does not take into consideration any estimates for future administrative costs to liquidate the estate or costs to pursue or litigate claims against others.