

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

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

Case No.: 2019 CA 002861

**FLORIDA DEPARTMENT OF FINANCIAL SERVICES, DIVISION OF REHABILITATION  
AND LIQUIDATION'S APPLICATION FOR ORDER AUTHORIZING AN EARLY ACCESS  
DISBURSEMENT TO THE FLORIDA INSURANCE GUARANTY ASSOCIATION**

**COMES NOW**, the Florida Department of Financial Services, Division of Rehabilitation and Liquidation as Receiver of Windhaven Insurance Company (hereinafter “Department”), by and through the undersigned counsel, and hereby files this Application for entry of an Order Authorizing the Department to disburse funds in the amount of Nine Hundred Fourteen Thousand, Nine Hundred Twenty-Seven Dollars and No Cents (\$914,927.00) 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 as follows:

1. Windhaven Insurance Company (hereinafter “WIC”) was a corporation authorized pursuant to the Florida Insurance Code to transact business in the State of Florida.
2. On December 12, 2019, this Court entered an *Order Appointing the Florida Department of Financial Services as the Receiver of Windhaven Insurance Company for purposes of Liquidation, Injunction, and Notice of Automatic Stay* (“Liquidation Order”).
3. This Court has authorized three previous early access disbursements totaling Twenty-Six Million, Six Hundred Twenty-One Thousand, Five Hundred Ten Dollars and No Cents (\$26,621,510.00).
4. Pursuant to section 631.021(1), Florida Statutes, this Court has jurisdiction over the 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.

5. Section 631.397, Florida Statutes, provides, in substance, that the Department may disburse assets out of WIC's marshaled assets, as such assets become available, to each guaranty association ("GA") entitled to receive such funds contingent on each GA agreeing to return to the Department such previously disbursed funds as may be required to pay claims of secured creditors and claims having a higher priority than the claims of the GAs.

6. FIGA is one of the guaranty associations contemplated by section 631.397, Florida Statutes.

7. 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 disbursements 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 WIC receivership estate until such allocated distributions to which FIGA is otherwise entitled exceeds the any and all early access disbursements. A copy of the proposed Early Access Agreement is attached hereto and incorporated herein by reference as **Exhibit A**.

8. The Department represents that in accord with section 631.397(2)(a), Florida Statutes, there are sufficient assets in the estate of WIC to permit the proposed early access to FIGA while reserving amounts for the payment of expenses of administration, the payment of claims of secured creditors 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. A copy of the December 31, 2022 Financial Statement is attached hereto as **Exhibit B**.

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

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

**WHEREFORE**, the Department respectfully requests this Court enter an Order authorizing the disbursement of early access funds in the amount of Nine Hundred Fourteen Thousand, Nine Hundred Twenty-Seven Dollars and No Cents (\$914,927.00) to the Florida Insurance Guaranty Association.

**Respectfully Submitted** on this the 17th day of March 2023.

/s/Miriam Victorian  
**Miriam O. 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, Suite 101  
The Atrium  
Tallahassee, FL  
(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/Miriam Victorian  
**Miriam O. Victorian, Chief Attorney**  
Florida Bar No. 355471  
[Miriam.Victorian@myfloridacfo.com](mailto:Miriam.Victorian@myfloridacfo.com)

## 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
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Guaranty Assoc.	Tom Streukens, Executive Director Florida Insurance Guaranty Association Post Office Box 14249 Tallahassee, Florida 32317
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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  
12/31/2022**

	<b>Estimated Realizable Value</b>
<b>ASSETS</b>	
Pooled Cash in SPIA Due from the Admin Fund	\$11,153,843.06
Short Term Investments-Restricted	25,311,818.10
Allowance - Short Term Investments	(25,311,818.10)
Accrued Interest Receivable	15,013.20
Advance to Guaranty Associations	26,621,510.00
Total Assets	<u>\$37,790,366.26</u>

<b>LIABILITIES</b>	
Class 1 Administrative Claims	
Class 1 - Guaranty Associations	21,874,740.84
Class 2 Loss Claims	
Class 2 - Guaranty Associations	38,802,783.34
Class 2 - Other	8,598,327.78
Class 3 Unearned Premium Claims under Non-assessable Policies	
Class 3 - Guaranty Associations	727,253.38
Class 3 - Other	1,408,325.85
Class 5 Employee Claims	71,447.73
Class 6 General Creditor Claims	
Class 6 - Other	56,055,320.16
Class 7 State & Local Government Claims	661.14
Class 8 Late Filed Claims	54,450.05
Class 9 Surplus Notes/Unearned Premium Claims under Assessable Policies	
Class 9 - Other	7,900,000.00
Class 11 Shareholder Claims	10.00
Total Liabilities	<u>\$135,493,320.27</u>

<b>EQUITY</b>	
Contributed Equity - State of Florida	247,644.42
Estate Equity	(97,950,598.43)
Excess (Deficiency) of Assets over Liabilities	(\$97,702,954.01)
Total Liabilities and Equity	<u>\$37,790,366.26</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 12/31/2022**

	Fiscal Year to Date	Since Date of Liquidation
<b>CASH RECEIPTS</b>		
Premium Collections	\$0.00	\$2,341,997.91
Reinsurance Recoveries	557,009.35	11,724,316.79
Subrogation and Salvage Recoveries	549,819.09	2,821,096.27
Litigation Recoveries	1,450,000.00	1,480,920.00
Tax Recoveries	0.00	2,434,345.88
Other Collections / Recoveries	100.73	844,488.88
Sale of Personal Property Inventory	0.00	102.50
Sale of Real Property Inventory	0.00	11,950,000.00
Receipts Before Investment Activities	2,556,929.17	33,597,268.23
Interest and Dividend Receipts	64,151.82	936,190.43
Sale of Short Term Investment	0.00	106,148.80
Receipts From Investment Activities	64,151.82	1,042,339.23
<b>Total Cash Receipts</b>	<b>2,621,080.99</b>	<b>34,639,607.46</b>
<b>CASH DISBURSEMENTS &amp; DISTRIBUTIONS</b>		
Professional Fees and Expenses	373,385.12	2,066,771.44
Salaries and Fringe Benefits	122,127.00	3,562,060.31
Employee Welfare	420.35	6,923.70
Travel Expenses	481.16	47,056.61
Admin Expenses	403.17	2,865,851.55
Equipment and Furniture Expenses	37,753.47	160,081.48
Rent, Building and Equipment	1,657.68	3,782.01
Taxes	(63.71)	95,939.13
Disbursements	536,164.24	8,808,466.23
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
Employee Claims (Class 5)	0.00	0.00
General Creditors Claims (Class 6)	0.00	0.00
Government Claims (Class 7)	0.00	0.00
Late Filed Claims (Class 8)	0.00	0.00
Surplus Notes/Unearned Premium-Assessable Policies Claims (Class 9)	0.00	0.00
Shareholder Claims	0.00	0.00
Early Access-Guaranty Associations	821,510.00	26,621,510.00
<b>Total Distributed</b>	<b>821,510.00</b>	<b>26,621,510.00</b>
Disbursements & Distributions Before Investment Activities	1,357,674.24	35,429,976.23
Financial Expenses	6,180.18	89,372.88
Disbursements for Investment Activities	6,180.18	89,372.88
<b>Total Cash Disbursements &amp; Distributions</b>	<b>1,363,854.42</b>	<b>35,519,349.11</b>
<b>Net Increase (Decrease) in Cash</b>	<b>1,257,226.57</b>	<b>(879,741.65)</b>
<b>Beginning Cash Balance:</b>		
Beginning Cash	9,896,616.49	(13,640,524.78)
Adjustments to Beginning Cash	0.00	25,674,109.49
<b>Adjusted Beginning Cash Balance</b>	<b>9,896,616.49</b>	<b>12,033,584.71</b>
<b>Ending Cash Balance</b>	<b>11,153,843.06</b>	<b>11,153,843.06</b>

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

**Florida Department of Financial Services, Division of Rehabilitation and Liquidation**  
**Windhaven Insurance Company**  
**Schedule of Short Term Investments - Restricted**  
For the Six Months Ended December 31, 2022

**Short Term Investments - Restricted**

Description	Balance 7/1/22	Adjustments	Balance 12/31/22
GL Trust #0200	18,621,814.33	219,074.00	18,840,888.33
GL Trust #0400	6,395,688.47	75,241.30	6,470,929.77
	<u>25,017,502.80</u>	<u>294,315.30</u>	<u>25,311,818.10</u>

**Allowance - Short Term Investments - Restricted**

Description	Balance 7/1/22	Adjustments	Balance 12/31/22
GL Trust #0200	(18,621,814.33)	(219,074.00)	(18,840,888.33)
GL Trust #0400	(6,395,688.47)	(75,241.30)	(6,470,929.77)
	<u>(25,017,502.80)</u>	<u>(294,315.30)</u>	<u>(25,311,818.10)</u>

<b>Total Short Term Investments - Net of Allowances</b>	<u><u>0.00</u></u>
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**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, 2022

**Accrued Interest Receivable**

<b>Description</b>		<b>Balance 7/1/22</b>	<b>Accrued</b>	<b>Received</b>	<b>Balance 12/31/22</b>
State Treasury	SPIA, 4-20-0-010000-00000	4,279.02	68,443.27	(57,709.09)	15,013.20
Totals:		4,279.02	68,443.27	(57,709.09)	15,013.20



**Florida Department of Financial Services, Division of Rehabilitation and Liquidation**  
**Windhaven Insurance Company**  
**Schedule of Advance to Guaranty Association**  
**For the Six Months Ended December 31, 2022**

**Advance to Guaranty Associations**

<b>Description</b>	<b>Balance 7/1/22</b>	<b>Advanced</b>	<b>Recovered</b>	<b>Balance 12/31/22</b>
Florida Insurance Guaranty Association	25,800,000.00	821,510.00	0.00	26,621,510.00
Totals:	25,800,000.00	821,510.00	0.00	26,621,510.00

**Florida Department of Financial Services, Division of Rehabilitation  
and Liquidation**  
**Windhaven Insurance Company in Liquidation**  
**Notes to Financial Statements**  
**Dated December 31, 2022**

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, 2022 through June 30, 2023. 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. **Short Term Investments – Restricted.** Trust funds relate to Greenlight Re & Greenlight Re-Ireland; In the event of default, Receiver may draw upon the trust funds. Greenlight Re and Greenlight Re-Ireland have funded claims as presented in the normal course of business and any remaining balances after all agreements terminate will revert back to Greenlight Re and/or Greenlight Re-Ireland.
6. **Advance to Guaranty Association(s).** Represents funds advanced to guaranty associations for the payment of covered claims and expenses. The guaranty association is obligated to promptly return any or all of these funds if the Receiver determines that repayment of claims of equal or superior priority is necessary.
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.
  - Class 1 and Class 3 claim liabilities are based upon Guaranty Association payments and estimates.
  - Class 2 claims liabilities are based on Guaranty Association payments, estimates and Filed Proof of Claims forms.
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.

**Florida Department of Financial Services, Division of Rehabilitation  
and Liquidation  
Windhaven Insurance Company in Liquidation  
Notes to Financial Statements  
Dated December 31, 2022**

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.