

**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

**DEPARTMENT'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 Ten Million Eight Hundred Thousand Dollars and No Cents (\$10,800,00.00) 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. On March 4, 2021, this Court entered an *Order Authorizing Disbursement of Early Access Funds to the Florida Insurance Guaranty Association*, providing the Florida Insurance Guaranty Association with an early access disbursement of Fifteen Million Dollars and No Cents (\$15,000,000.00).
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 previous disbursements totaling \$15,000,000.00 ordered by this Court and the \$10,800,000.00 early access disbursement prayed for in this application. 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, 2021 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 Ten Million Eight Hundred Thousand Dollars and No Cents (\$10,800,000.00) to the Florida Insurance Guaranty Association.

Respectfully Submitted on this the 25th day of February 2022.

/s/ Yamile Benitez-Torviso

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

EARLY ACCESS AGREEMENT

THIS EARLY ACCESS AGREEMENT is entered into on this 16th 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: 12/14/2020

FLORIDA INSURANCE GUARANTY ASSOCIATION

By: 
NAME: Thomas D. Streukens
TITLE: Executive Director

Date signed: 12/14/2020

**Florida Department of Financial Services, Division of Rehabilitation and
Liquidation
Windhaven Insurance Company in Liquidation
Statement of Affairs
12/31/2021**

	Estimated Realizable Value
ASSETS	
Pooled Cash in SPIA Due from the Admin Fund	\$20,746,531.35
Short Term Investments-Restricted	91,624,133.67
Allowance - Short Term Investments	(91,624,133.67)
Accrued Interest Receivable	13,684.07
Advance to Guaranty Associations	15,000,000.00
Total Assets	<u>\$35,760,215.42</u>
LIABILITIES	
Class 1 Administrative Claims	
Class 1 - Guaranty Associations	26,240,857.52
Class 2 Loss Claims	
Class 2 - Guaranty Associations	38,698,619.06
Class 2 - Other	120,000.00
Class 3 Unearned Premium Claims under Non-assessable Policies	
Class 3 - Guaranty Associations	726,685.47
Class 3 - Other	1,408,893.76
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>\$75,287,718.71</u>
EQUITY	
Contributed Equity - State of Florida	197,257.92
Estate Equity	(39,724,761.21)
Excess (Deficiency) of Assets over Liabilities	<u>(\$39,527,503.29)</u>
Total Liabilities and Equity	<u>\$35,760,215.42</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 12/31/2021**

	Fiscal Year to Date	Since Date of Liquidation
CASH RECEIPTS		
Premium Collections	\$0.00	\$2,341,997.91
Reinsurance Recoveries	0.00	11,167,307.44
Subrogation and Salvage Recoveries	157,485.89	1,975,329.55
Litigation Recoveries	0.00	30,920.00
Tax Recoveries	0.00	2,434,345.88
Other Collections / Recoveries	13,436.40	843,397.81
Sale of Personal Property Inventory	0.00	102.50
Sale of Real Property Inventory	0.00	11,950,000.00
Receipts Before Investment Activities	170,922.29	30,743,401.09
Interest and Dividend Receipts	107,057.79	821,200.48
Sale of Short Term Investment	0.00	106,148.80
Receipts From Investment Activities	107,057.79	927,349.28
Total Cash Receipts	277,980.08	31,670,750.37
CASH DISBURSEMENTS & DISTRIBUTIONS		
Professional Fees and Expenses	125,874.99	1,552,578.40
Salaries and Fringe Benefits	282,518.71	3,250,467.35
Employee Welfare	670.94	5,939.50
Travel Expenses	0.00	46,484.59
Admin Expenses	1,583.98	2,862,521.34
Equipment and Furniture Expenses	4,522.33	68,264.09
Rent, Building and Equipment	746.79	1,247.60
Taxes	0.00	96,000.83
Disbursements	415,917.74	7,883,503.70
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
Early Access-Guaranty Associations	0.00	15,000,000.00
Total Distributed	0.00	15,000,000.00
Disbursements & Distributions Before Investment Activities	415,917.74	22,883,503.70
Financial Expenses	12,642.97	74,300.03
Disbursements for Investment Activities	12,642.97	74,300.03
Total Cash Disbursements & Distributions	428,560.71	22,957,803.73
Net Increase (Decrease) In Cash	(150,580.63)	8,712,946.64
Beginning Cash Balance:		
Beginning Cash	20,897,111.98	(13,640,524.78)
Adjustments to Beginning Cash	0.00	25,674,109.49
Adjusted Beginning Cash Balance	20,897,111.98	12,033,584.71
Ending Cash Balance	20,746,531.35	20,746,531.35

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, 2021

Short Term Investments - Restricted

Description	Balance 7/1/21	Adjustments	Balance 12/31/21
GL Trust #0200	68,576,935.04	0.00	68,576,935.04
GL Trust #0400	23,047,198.63	0.00	23,047,198.63
	<u>91,624,133.67</u>	<u>0.00</u>	<u>91,624,133.67</u>

Allowance - Short Term Investments - Restricted

Description	Balance 7/1/21	Adjustments	Balance 12/31/21
GL Trust #0200	(68,576,935.04)	0.00	(68,576,935.04)
GL Trust #0400	(23,047,198.63)	0.00	(23,047,198.63)
	<u>(91,624,133.67)</u>	<u>0.00</u>	<u>(91,624,133.67)</u>

Total Short Term Investments - Net of Allowances

0.00

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, 2021

Accrued Interest Receivable

Description		Balance 7/1/21	Accrued	Received	Balance 12/31/21
State Treasury	SPIA, 4-20-0-010000-00000	7,930.92	90,465.44	(84,712.29)	13,684.07
Totals:		7,930.92	90,465.44	(84,712.29)	13,684.07

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, 2021

Advance to Guaranty Associations

Description	Balance 7/1/21	Advanced	Recovered	Balance 12/31/21
Florida Insurance Guarantee Association	15,000,000.00	0.00	0.00	15,000,000.00
Totals:	15,000,000.00	0.00	0.00	15,000,000.00

Florida Department of Financial Services, Division of Rehabilitation and Liquidation

Windhaven Insurance Company in Liquidation

Notes to Financial Statements

Dated December 31, 2021

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, 2021 through June 30, 2022. 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. **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.
7. **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.
8. **Secured Claims.** The Greenlight funds held until a reconciliation has been completed.
9. **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, Class 2 and Class 3 claim liabilities are based upon Guaranty Association estimates.
 - Filed Proof of Claims forms are currently being processed and all liabilities are subject to change.
10. **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.
11. **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.
12. **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, 2021**

13. **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.