

**FILED**  
**01-12-2024**  
**CIRCUIT COURT**  
**DANE COUNTY, WI**  
**2023CV001310**

STATE OF WISCONSIN : CIRCUIT COURT : DANE COUNTY  
BRANCH 15

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In the Matter of the Liquidation of:

Wisconsin Reinsurance Corporation and 1<sup>st</sup> Auto &  
Casualty Insurance Company

Case No. 2023CV1310

Case Code: 30703

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**NOTICE OF MOTION AND MOTION TO APPROVE EARLY ACCESS  
AGREEMENTS**

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TO: All Interested Parties

**NOTICE**

PLEASE TAKE NOTICE that the Commissioner of Insurance of the State of Wisconsin, Nathan Houdek, as Liquidator of Wisconsin Reinsurance Corporation and 1<sup>st</sup> Auto & Casualty Insurance Company (the “Commissioner” or the “Liquidator”), brings this Motion to Approve Early Access Agreements (the “Motion”) for hearing, if necessary, before the Circuit Court for Dane County, in the Dane County Courthouse, 215 S. Hamilton Street, Madison, WI 53703-3285, on a date and at a time to be determined by the Court. Objections to the Motion, along with supporting documentation, shall be filed with the Court and served on the Commissioner, by his attorneys, James A. Friedman, Zachary P. Bemis, and Anthony S. Baish of Godfrey & Kahn, S.C., and any other party who has filed an appearance in this action within 14 days of the filing of the Motion.

**MOTION**

Nathan Houdek, Commissioner of Insurance of the State of Wisconsin, as Liquidator of Wisconsin Reinsurance Corporation (“WRC”) and 1<sup>st</sup> Auto & Casualty Insurance Company (“1<sup>st</sup>

Auto” and collectively, the “Companies”), hereby moves the Court, pursuant to Wis. Stat. § 645.72, to enter an Order approving the Early Access Agreements attached hereto as Exhibits A and B. As grounds for this Motion, the Commissioner states as follows:

1. On June 21, 2023, the Court entered an order placing the Companies into rehabilitation, and on July 27, 2023, the Court approved a Rehabilitation Plan for the Companies.

2. On November 1, 2023, the Commissioner filed a petition to terminate the rehabilitation and requested an order to place the Companies into liquidation. The Court granted the petition on January 2, 2024 (the “Liquidation Order”), placing the Companies into liquidation effective January 1, 2024.

3. The Liquidation Order appointed the Commissioner as Liquidator of the Companies and Justin Schrader of Noble Consulting Services, Inc. as Special Deputy Liquidator, each with all the powers and protections set forth in chapter 645 of the Wisconsin Statutes.

4. Wis. Stat. § 645.72(1) provides that the Liquidator shall, subject to the approval of and under the direction of the Court, “pay dividends as promptly as possible to security funds” in accordance with subsection (2) of the statute.

5. Wis. Stat. § 645.72(2):

- a. Requires the Liquidator to pay dividends to security funds to satisfy their subrogation claims, provided the payments do not exceed the security funds’ total claims;
- b. Requires such payments “as frequently as practicable and in sums as large as possible” without sacrificing asset values or inequitably allocating assets among subrogated funds; and

- c. Allows the Liquidator to protect against inequitable allocations by making payments subject to a binding agreement by the security funds to repay any portions of the dividends later found to be in excess of an equitable allocation.

6. The Liquidator anticipates the Wisconsin Insurance Security Fund (“WISF”) periodically will submit to the Liquidator a summary of claims payments and reserves made by or on behalf of WISF, as well as a summary of WISF’s administrative expenses, related to policy claims arising out of policies written by WRC or for which WRC would otherwise be responsible.

7. In the event he receives such submissions from WISF, the Liquidator will determine whether there are sufficient liquid funds to make early access distributions to WISF and will verify that the total sums of such distributions would be no more than WISF’s incurred claims and administrative expenses.

8. The Liquidator and WISF have executed an Early Access Agreement, attached hereto as Exhibit A, governing early access distributions to WISF consistent with Wis. Stat. § 645.72(2). The Early Access Agreement does not permit the Liquidator to make early access distributions to WISF unless the Court approves the agreement. (Ex. A, ¶ 4.) With this Motion, the Liquidator seeks the Court’s approval of the Early Access Agreement.

9. The Liquidator anticipates certain guaranty funds, including the WISF, likewise periodically will submit to the Liquidator summaries of claims and reserves made by or on behalf of such funds, as well as summaries of their administrative expenses, related to policy claims arising out of policies written by 1<sup>st</sup> Auto or for which 1<sup>st</sup> Auto would otherwise be responsible.

10. In the event he receives such submissions from a guaranty fund, the Liquidator will determine whether there are sufficient liquid funds to make early access distributions to the guaranty fund and will verify that the total sums of such distributions would be no more than the fund's incurred claims and administrative expenses.

11. With this Motion, the Liquidator seeks the Court's approval to enter into an Early Access Agreement, attached hereto as Exhibit B, with each such guaranty fund, as appropriate.

NOW, THEREFORE, for the reasons stated above and based on the entire record in this action, the Liquidator asks the Court to enter an order approving the Early Access Agreements.

Dated at Madison, Wisconsin this 12<sup>th</sup> day of January, 2024.

Respectfully submitted,

GODFREY & KAHN, S.C.

By: Electronically signed by James A. Friedman

James A. Friedman  
State Bar No. 1020756  
Zachary P. Bemis  
State Bar No. 1094291  
Anthony S. Baish  
State Bar No. 1031577

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# **EXHIBIT A**

## EARLY ACCESS AGREEMENT

THIS EARLY ACCESS AGREEMENT is entered into on this 2nd day of January, 2024, between Justin Schrader, Special Deputy Liquidator, as Liquidator of Wisconsin Reinsurance Corporation ("Liquidator"), and the undersigned Wisconsin Insurance Security Fund ("WISF").

WHEREAS, Wisconsin Reinsurance Corporation ("WRC") is a Wisconsin domiciled corporation previously authorized to transact insurance business in the States of Arkansas, Illinois, Iowa, Missouri, Montana, North Dakota, South Dakota, and Wisconsin; and

WHEREAS, on January 2, 2024, the Circuit Court in and for Dane County, Wisconsin, (the "Court") entered its an Order Terminating Rehabilitation and Order for Liquidation with Finding of Insolvency ("Liquidation Order") effective January 1, 2024; and

WHEREAS, Wis. Stat. §645.72, provides, in relevant part, that the Liquidator shall, under the direction of the Court, pay dividends as promptly as possible to security funds and other creditors in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims and permits the Liquidator to apply to this Court for authorization to make early access payments out of the general assets of the insurer to any security fund entitled thereto (hereinafter referred to as "Early Access"); and

WHEREAS, the WISF has submitted to the Liquidator a summary of the claims payments and reserves made by or on behalf of the WISF and a summary of the WISF's administrative expenses; and

WHEREAS, the Liquidator and the WISF acknowledge and agree that neither the Liquidator's review of the WISF'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 WISF may be entitled to under Wis. Stat. §645.72; and

WHEREAS, the Liquidator has determined that it has sufficient liquid funds available to make an Early Access distribution to the WISF and that the total sums of all Early Access distributions, including this distribution, is less than the WISF's incurred claims and administrative expenses; and

WHEREAS, the Liquidator has applied, or will apply, to the Court for an order permitting the Liquidator to make an Early Access distribution to the WISF pursuant to Wis. Stat. §645.72, for the partial payment of claims and administrative expenses.

NOW THEREFORE, the Liquidator and the WISF agree as follows:

1. The Parties agree to provide each other with reasonable access to certain business records and information, as follows:

A. The WISF will provide the Liquidator with access, during normal business hours, to the books, records and files of the WRC held by the WISF and will respond affirmatively and in good faith to all reasonable requests from the Liquidator for information, files and documents pertaining to the adjudication, administration and payment of covered claims by the WISF.

B. The Liquidator will provide the WISF with access, during normal business hours, to the books, records and files of the WRC held by the Liquidator and will respond affirmatively and in good faith to all reasonable requests from the WISF for information, files and documents pertaining to the WISF's performance of its statutory obligations including information, files and documents pertaining to insurance coverages issued by the WRC, claims against the WRC and unearned premiums on each in-force policy of the WRC.

2. Beginning with the quarter ending March 31, 2024, and on at least a quarterly basis thereafter, the Liquidator shall provide the WISF with a reasonably detailed and current statement of the estate's financial condition, including a statement of (a) available assets, (b) aggregate WISF claims paid, (c) aggregate WISF claims reserves, and (d) any other assets or liabilities, contingent or actual, that have the potential to materially impact the estate's financial condition. The Liquidator shall provide this information as soon as it is available following the close of each quarter. The estate may designate such statements confidential and the WISFs will maintain them in confidence.

3. The WISF will make periodic financial reports to the Liquidator no less frequently than quarterly, through Uniform Data Standards ("UDS") or in another form acceptable to the Liquidator, 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 Liquidator. The reports shall be sent to the Liquidator electronically via the Secure UDS server housed by the National Conference of Insurance Guaranty Funds or by such other means as designated by the Liquidator.

4. Provided this Agreement is approved by the Court, the Liquidator hereby agrees to make periodic Early Access disbursements to the WISF subject to the terms of this Agreement. The Liquidator may file periodically, its Petition to Distribute Available Assets ("Petition"). The Petition shall provide for *pro rata* Early Access disbursements to the WISF in amounts no more than the sum of the WISF's covered obligations, allocated loss adjustment expenses paid by the WISF in its most recent financial report (see Section 3 above), and a reasonable estimate of reserves for unpaid but known covered obligations and allocated loss adjustment expenses reported the Liquidator.

5. The WISF agrees to return to the Liquidator within 60 days all or any portion of any Early Access disbursements acquired by the WISF pursuant to this Agreement, if the Liquidator determines that such repayment is necessary to pay claims or expenses which the Liquidator determines to be of equal or superior priority. Should it be necessary for the WISF to make an assessment in order to return the relevant portion of the disbursement to the Liquidator, the WISF shall have 90 days within which to return the disbursement. In the event the WISF is required to repay to the Liquidator any Early Access disbursements, the WISF will pay the Liquidator in cash or other liquid assets as may be acceptable to the Liquidator.

6. Pursuant to Wis. Stat. §645.72, the WISF understands and agrees that any distribution made pursuant to this Agreement constitutes partial payment on any claim which the WISF may have in the liquidation of WRC and that it will not share in any final distribution of assets from the WRC liquidation 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 WRC, the Liquidator will be given reasonable access to the financial accounts, records and procedures of the WISF with respect to the receipt of assets or the payment of covered claims. The WISF will, within 30 days after receipt of a written request from the Liquidator, return to the Liquidator any Early Access disbursements made pursuant to this Agreement which are more than the amount ultimately determined by the Liquidator to be due the WISF as a final distribution of the assets of WRC. The Liquidator and the WISF shall cooperate in planning the destruction or other final disposition of the information, files and documents received by the WISF from WRC or the Liquidator.

8. The WISF's execution of this Agreement and acceptance of any amount distributed thereunder, shall be without prejudice to the WISF's rights with respect to final or other distributions from the estate of WRC. Without limiting the generality of the foregoing, the WISF reserves its rights to assert whatever claim it deems appropriate with respect to the composition of and priority to be afforded to the WISF's claim for its payment of losses, expenses or other amounts, and its rights with respect to any issues relating to what assets



constitute the assets of the estate or otherwise relating to WRC, including but not limited to policyholder collateral and post-insolvency large deductible reimbursements.

9. This Early Access Agreement shall be construed in accordance with Wisconsin 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 Dane County Circuit Court. The WISFs submission to the aforementioned jurisdiction is solely for the purposes of enforcement of this Agreement and not for any other purpose.

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

Liquidator:

Justin Schrader  
Special Deputy Liquidator  
Wisconsin Reinsurance Corporation (WRC), in Liquidation  
2810 City View Drive  
Madison, WI 53718

WISF:

See address identified in signature block below.

11. This Agreement merges all prior offers and agreements of every kind as related to Early Access and expresses the full and final intent of the parties and shall be effective only upon Court approval.

12. This Agreement supersedes all earlier Early Access agreements and will apply to all future Early Access Distributions to the WISF. It will be attached to all future Early Access petitions filed by the Liquidator.

13. This Agreement shall not be modified, except by an instrument in writing, executed by the authorized representatives of both parties, and subject to Court approval.

14. This Agreement may be executed in any number of counterparts, any or all of which may contain the signature of only one of the Parties, and all of which together shall be considered a single original document.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated below:

Wisconsin Reinsurance Corporation, in Liquidation


By and through Justin Schrader, Special Deputy Liquidator, as Liquidator of Wisconsin Reinsurance Corporation (WRC)

By:  \_\_\_\_\_

Printed Name: Justin C. Schrader

Date: January 2, 2024

Wisconsin Insurance Security Fund

By:  \_\_\_\_\_

Printed Name: Allan Patek

Title: Executive Director

Date: January 2, 2024

Address: 2820 Walton Commons Lane, Suite 135  
Madison, WI 53718

# **EXHIBIT B**

## EARLY ACCESS AGREEMENT

THIS EARLY ACCESS AGREEMENT is entered into on this 2nd day of January, 2024, between the Justin Schrader, Special Deputy Liquidator of 1<sup>st</sup> Auto & Casualty Insurance Company ("Liquidator"), and the undersigned Insurance Guaranty Associations ("Guaranty Association").

WHEREAS, 1<sup>st</sup> Auto & Casualty Insurance Company, ("1<sup>st</sup> Auto"), is a Wisconsin domiciled corporation previously authorized to transact insurance business in the States of Arkansas, Illinois, Iowa, Missouri, South Dakota, and Wisconsin; and

WHEREAS, on January 2, 2024, the Circuit Court in and for Dane County, Wisconsin, (the "Court") entered an Order Terminating Rehabilitation and Order for Liquidation with Finding of Insolvency ("Liquidation Order") effective January 1, 2024; and

WHEREAS, Wis. Stat. § 645.72, provides, in relevant part, that the Liquidator shall under the direction of the Court, pay dividends as promptly as possible to security funds and other creditors in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims and permits the Liquidator to apply to this Court for authorization to make early access payments out of the general assets of the insurer to any security entitled thereto (hereinafter referred to as "Early Access"); and

WHEREAS, the Guaranty Association has submitted to the Liquidator 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 Liquidator and the Guaranty Association acknowledge and agree that neither the Liquidator'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 Wis. Stat. chapter 645; and

WHEREAS, the Liquidator 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 Liquidator has applied or will apply to the Court for an order permitting the Liquidator to make an Early Access distribution to the Guaranty Association pursuant to Wis. Stat. chapter 645, for the partial payment of claims and administrative expenses.

NOW THEREFORE, the Liquidator and the Guaranty Association agree as follows:

1. The Parties agree to provide each other with reasonable access to certain business records and information, as follows:

A. The Guaranty Association will provide the Liquidator with access, during normal business hours, to the books, records and files of 1<sup>st</sup> Auto held by the Guaranty Association and will respond affirmatively and in good faith to all reasonable requests from the Liquidator for information, files and documents pertaining to the adjudication, administration and payment of covered claims by the Guaranty Association.

B. The Liquidator will provide the Guaranty Association with access, during normal business hours, to the books, records and files of 1<sup>st</sup> Auto held by the Liquidator and will respond affirmatively and in good faith to all reasonable requests from the Guaranty Association for information, files and documents pertaining to the Guaranty Association's performance of its statutory obligations including information, files and documents pertaining to insurance coverages issued by 1<sup>st</sup> Auto, claims against 1<sup>st</sup> Auto and unearned premiums on each in-force policy of 1<sup>st</sup> Auto.

2. Beginning with the quarter ending December 31, 2023, and on at least a quarterly basis thereafter, the Liquidator shall provide the Guaranty Association with a reasonably detailed and current statement of the estate's financial condition, including a statement of (a) available assets, (b) aggregate guaranty association claims paid, (c) aggregate guaranty association claims reserves, and (d) any other assets or liabilities, contingent or actual, that have the potential to materially impact the estate's financial condition. The Liquidator shall provide this information as soon as it is available following the close of each quarter. The estate may designate such statements confidential, and the guaranty associations will maintain them in confidence.

3. The Guaranty Association will make periodic financial reports to the Liquidator no less frequently than quarterly, through Uniform Data Standards ("UDS") or in another form acceptable to the Liquidator, 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 Liquidator. The reports shall be sent to the Liquidator electronically via the Secure UDS ("SUDS") server housed by the National Conference of Insurance Guaranty Funds or by such other means as designated by the Liquidator.

4. Provided this Agreement is approved by the Court; the Liquidator hereby agrees to make periodic Early Access disbursements to the Guaranty Association subject to the terms of this Agreement. The Liquidator shall file periodically, but at least annually, its Petition to Distribute Available Assets ("Petition"). The Petition shall provide for *pro rata* Early Access disbursements to the Guaranty Association in amounts no more than the sum of the Association's covered obligations, allocated loss adjustment expenses paid by each Guaranty Association in its most recent financial report (see Section 3 above), and a reasonable estimate of reserves for unpaid but known covered obligations and allocated loss adjustment expenses that the Association expects pay within one year. These Early Access distributions will be paid from the available assets of 1<sup>st</sup> Auto. In the instance that 1<sup>st</sup> Auto's available assets do not equal or exceed the covered obligations to be paid by the Guaranty Association, then the Early Access disbursement shall be in the amount of such available assets, if any.

5. The Guaranty Association will not be penalized, by offset or otherwise, by the amount of any special deposit or any other statutory deposit or asset of the insolvent insurer held in that state unless the Association has actually received such deposit or asset.

6. The Guaranty Association agrees to return to the Liquidator within 60 days all or any portion of any Early Access disbursements acquired by the Guaranty Association pursuant to this Agreement, if the Liquidator determines that such repayment is necessary to pay claims or expenses which the Liquidator determines to be of equal or superior priority. Should it be necessary for the Guaranty Association to make an assessment in order to return the relevant portion of the disbursement to the Liquidator, the Guaranty Association shall have 90 days within which to return the disbursement. In the event the Guaranty Association is required to repay to the Liquidator any Early Access disbursements, the Guaranty Association will pay the Receiver in cash or other liquid assets as may be acceptable to the Liquidator.

7. Pursuant to Wis. Stat. chapter 645, 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 liquidation of 1<sup>st</sup> Auto and that it will not share in any final distribution of assets from 1<sup>st</sup> Auto liquidation until claimants of an equal priority receive an equal *pro rata* distribution on their claims.

8. Prior to the final distribution of the assets of 1<sup>st</sup> Auto, the Liquidator will be given reasonable access to 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 Liquidator, return to the Liquidator any Early Access disbursements made pursuant to this Agreement which are more than the amount ultimately determined by the Liquidator

to be due the Guaranty Association as a final distribution of the assets of 1<sup>st</sup> Auto. The Liquidator and the Guaranty Association shall cooperate in planning the destruction or other final disposition of the information, files and documents received by the Guaranty Association from 1<sup>st</sup> Auto or the Liquidator.

9. The Guaranty Association's execution of this Agreement and acceptance of any amount distributed thereunder, shall be without prejudice to the Association's rights with respect to final or other distributions from the estate of 1<sup>st</sup> Auto. Without limiting the generality of the foregoing, the Guaranty Association reserves its rights to assert whatever claim it deems appropriate with respect to the composition of and priority to be afforded to the Guaranty Associations claim for its payment of losses, expenses or other amounts, and its rights with respect to any issues relating to what assets constitute the assets of the estate or otherwise relating to 1<sup>st</sup> Auto, including but not limited to policyholder collateral and post-insolvency large deductible reimbursements.

10. This Early Access Agreement shall be construed in accordance with Wisconsin state 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 Circuit Court for Dane County, Wisconsin. The Guaranty Associations submission to the aforementioned jurisdiction is solely for the purposes of enforcement of this Agreement and not for any other purpose.

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

Liquidator:

Justin Schrader  
Special Deputy Liquidator  
1<sup>st</sup> Auto & Casualty Insurance Company, in Liquidation  
2810 City View Drive  
Madison, WI 53718

Guaranty Assoc.:

See address identified in signature block below.

12. This Agreement merges all prior offers and agreements of every kind as related to Early Access and expresses the full and final intent of the parties and shall be effective only upon Court approval.

13. This Agreement supersedes all earlier Early Access agreements and will apply to all future Early Access Distributions to the Guaranty Association. It will be attached to all future Early Access petitions filed by the Liquidator.

14. This Agreement shall not be modified, except by an instrument in writing, executed by the authorized representatives of both parties, and subject to Court approval.

15. This Agreement may be executed in any number of counterparts, any, or all of which may contain the signature of only one of the Parties, and all of which together shall be considered a single original document.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated below:

1<sup>st</sup> Auto & Casualty Insurance Company, in Liquidation  
By and through Justin Schrader, Special Deputy Liquidator

By: \_\_\_\_\_

Printed Name: Justin C. Schrader

Date: January 2, 2024

"Guaranty Association"

By: \_\_\_\_\_

Printed Name:

Date:

Address: