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1 KAMALA D. HARRIS
Attorney General of California
2 JOYCE E. HEE
Supervising Deputy Attorney General
3 DAVID LEW
Deputy Attorney General
4 State Bar No. 77186
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2225
Fax: (510) 622-2121
7 E-mail: David.Lew@doj.ca.gov
Attorneys for Applicant Insurance Commissioner of
8 the State of California

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

13 INSURANCE COMMISSIONER OF THE
14 STATE OF CALIFORNIA,

Case No. CPF-01-320049

15 Applicant,

INSURANCE COMMISSIONER'S
STATUS REPORT AND UPDATED
CLOSING PLAN

16 v.

17 HIH AMERICA COMPENSATION &
18 LIABILITY INSURANCE COMPANY, a
California domiciled insurance company,

19 Respondent.
20

21 INTRODUCTION

22
23 The Insurance Commissioner of the State of California (Commissioner), in his capacity as
24 the court-appointed liquidator of HIH America Compensation & Liability Insurance Company
25 (HIH America), an insolvent insurer, submits this status report update as part of his ongoing
26 efforts to wind-up the affairs of the liquidation estate. The Commissioner's report presents a
27 synopsis of the milestone events for the HIH America estate liquidation and informs that the
28 Commissioner is close to resolving all pending issues in this estate.

By Fax

1 **BACKGROUND INFORMATION**

2 HIH America, a property and casualty insurer domiciled in California, was licensed to
3 transact workers' compensation insurance in the following states: California, Arizona, Colorado,
4 Florida, Illinois, Indiana, Iowa, Kentucky, Michigan, Missouri, Nebraska, Nevada, Oregon, South
5 Dakota, Texas, Utah and Wisconsin. HIH America was placed into conservation by this Court on
6 March 30, 2001, and into liquidation on May 8, 2001. The Commissioner was appointed as the
7 liquidator of the insolvent HIH America estate and ordered to wind up the affairs of the company.
8 As a result of this Court's order and finding of insolvency, the insurance guaranty associations (or
9 IGAs) for each state in which HIH America transacted insurance became responsible for paying
10 the claims of that state's residents. In turn, the IGA of each affected state filed a claim against the
11 HIH America estate. (Such claims are considered "Class 2" claims, arising under Insurance Code
12 section 1033, subdivision (a)(2).)¹

13 **CLAIMS**

14 One of the Commissioner's key duties, in winding up the affairs of HIH America, is to
15 marshal the assets of the estate and to pay the claims of the estate's creditors. To this end, the
16 Commissioner mailed approximately 78,032 Proof of Claim (POC) forms to persons who might
17 be interested in the insurer's assets. The final date to submit a claim against the insolvent estate
18 was December 2, 2001. The Commissioner received approximately 2,005 timely returned POCs
19 for a total amount of \$101,201,137.70.

20 Section 1033 delineates into classes the priority for which claims and fees are to be paid in
21 the liquidation of a California insurer. The priorities are as follows: Class 1: expenses of
22 administration; Class 2: claims of state guaranty funds and claims for return premium; Class 3:
23 claims having preference under the laws of the United States; Class 4: unpaid insurer examination
24 fees due to the State of California; Class 5: taxes due to the State of California; Class 6: claims
25 having preference under the laws of the State of California; and Class 7: claims of creditors not
26 included in Classes 1 through 6.

27 _____
28 ¹ Unless otherwise indicated, all statutory references are to the Insurance Code.

1 Based on his analysis of the assets of the estate, the Commissioner determined early on that
2 sufficient assets did not exist to pay claims below Class 2 claims. Consequently, the
3 Commissioner elected not to expend estate assets adjudicating claims below Class 2. Claimants
4 of claims below Class 2 were advised, however, that if a major change in the financial picture
5 occurred, the Commissioner's Conservation & Liquidation Office (CLO) would contact them to
6 adjudicate their claims.

7 With respect to the claims of state insurance guaranty associations, the CLO receives
8 financial information from the IGAs on a quarterly basis. As of June 30, 2014, total IGA
9 liabilities were \$775,936,450. The figure includes each IGA's actual paid claims, return premium
10 claims and administrative expenses, plus reserves for future liabilities.

11 Importantly, state IGA statutes vary in their treatment of return premium claimants. Some
12 states allow return premium claims to be paid in full. Other states allow limited payments by the
13 guaranty fund; for example, return premium claimants can have their claim limited by a
14 deductible or cap. A Class 2 claim of an IGA, therefore, exists in the HIH America liquidation to
15 the extent that a particular state guaranty fund statute does not cover all or part of a return
16 premium claim. In this estate, the return premium claims have all been determined and
17 \$1,726,042 is the total amount due on this particular type of Class 2 claim.

18 **DISTRIBUTIONS TO GUARANTY FUNDS AND OTHER CLASS 2 CLAIMANTS**

19 Pursuant to section 1035.5 and authorizations from this Court, the Commissioner has
20 released a total of \$328,499,928 to Class 2 creditors in the form of release of workers'
21 compensation statutory deposits and four early access distributions. This amount includes
22 \$327,903,200 in statutory deposit releases and early access distributions to the IGAs, plus a court
23 approved interim distribution to non-IGA claimants in the amount of \$596,728, as discussed
24 below.

25 **Release of Workers' Compensation Statutory Deposits**

26 Insurers writing workers' compensation insurance must comply with the statutory deposit
27 requirement of the state in which the insured resides. Deposits are held by a state as security to
28 protect its residents against unpaid workers' compensation claims. During the course of this

1 liquidation, the Commissioner released statutory deposit amounts totaling \$118,844,868.
2 Specifically, with court approval, the Commissioner released \$110,794,046 in deposit amounts
3 held by the California Insurance Guaranty Association (CIGA) and also entered into agreements
4 with the states of Arizona, Illinois, Indiana, Michigan, Missouri, Nevada and Oregon to allow
5 each state to access the deposits held within each state to pay workers' compensation claims. The
6 statutory deposits held by the non-California states totaled \$8,050,822.

7 **Early Access Distributions**

8 With respect early access distributions, following the HIH America estate's infusion of
9 funds from reinsurer Hannover Re (see discussion below), on June 28, 2004, this Court approved
10 the Commissioner's request to make a first early access distribution to CIGA and to other IGAs in
11 the amount of \$25,000,000. This Court approved a second early access distribution on December
12 29, 2005, in the amount of \$85,000,000. On November 7, 2006, this Court approved the
13 Commissioner's request for a third early access distribution in the amount of \$51,860,398. A
14 fourth, and likely the last, early access distribution in the amount of \$50,381,120 was made
15 pursuant to an order of this Court on November 2, 2011. These various distributions to state
16 IGAs totaled \$209,058,333.

17 In sum, the Commissioner has released \$118,844,867 in statutory deposits, \$209,058,333 in
18 IGA early access distributions and \$596,728 to other Class 2 creditors, for a total of \$328,499,928
19 to Class 2 creditors. The Commissioner anticipates making a final distribution in 2015.

20 **COLLECTIONS**

21 The Commissioner is charged with the responsibility of marshaling assets of the insolvent
22 HIH America estate. This includes the responsibility of pursuing premium collections, making
23 payments pursuant to reinsurance treaties, and, when necessary, engaging in litigation.

24 **Premium Collection**

25 When HIH America was newly placed into liquidation, the Commissioner pursued
26 premium collection diligently. Premium collection is now nearly complete and the Commissioner
27 has written off any uncollected balances.

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Reinsurance Treaties

Reinsurance collectibles have been and remain HIH America's largest balance sheet asset. In 2004, the Commissioner entered into two cancellation deeds with reinsurer Hannover Re, with this Court's approval. Cancellation of the deeds (treaties) occurred after lengthy negotiations with the reinsurer and with HIH America's parent, which itself was in liquidation in Australia. The Commissioner's cancellation of the deeds resulted in an infusion into the estate of \$27,791,544.68.

The majority of HIH America's outstanding reinsurance has now been settled by the Commissioner, either via collections and/or commutation. In addition to the Hannover Re proceeds, the Commissioner has received from reinsurers, through June 30, 2013, funds in excess of \$119,402,402, broken down as follows:

General Reinsurance	\$	101,893,002.40
HIH Casualty & General	\$	697,650.55
Continental Casualty	\$	478,658.11
Swiss Re	\$	178,217.25
Finial Re, fka Zurich	\$	508,766.75
National Union & Fire Ins. Co.	\$	<u>15,646,107.00</u>
Total	\$	119,402,402.06

While the Commissioner has collected over \$119 million in reinsurance, he has determined that a sizeable amount of reinsurance--\$113 million--is uncollectable. HIH America had three non-performing reinsurance programs: (1) reinsurance written by HIH Casualty & General Ltd. (\$3.9 million); reinsurance written by Reliance Insurance Company (\$33.5 million); and (3) an intercompany pooling agreement with HIH America affiliates (\$75.6 million). The Commissioner has determined that the reinsurance recoverable in each of the three programs will not be collected for the following reasons:

1 • HIH Casualty & General Ltd. was a subsidiary of HIH America's Australian parent,
2 HIH Insurance Limited. In March of 2001, HIH Insurance Limited and its subsidiaries were
3 placed into provisional liquidation and into liquidation in August 2001, by KMPG Sydney,
4 Australia and subsequently McGrath Nicol & Partners ("Australian Liquidators"). Pursuant to the
5 Australian Liquidators' Scheme of Arrangement, the estimated final distribution percentage is 25
6 percent. The Commissioner has therefore applied a 75 percent disallowance for its claim related
7 to reinsurance in the Australian liquidation.

8 • Reliance Insurance Company is a liquidating estate in Pennsylvania. In October
9 2001, the Commonwealth Court of Pennsylvania ordered Reliance Insurance Company into
10 liquidation. According to the Statutory Liquidator's decision, the Liquidator's proof of claim was
11 assigned a priority level E. The latter classification includes general creditor claims. Because
12 there existed a very low probability of distribution of assets to priority level E claims, the
13 Commissioner applied a 100 percent disallowance for its reinsurance claim in the Reliance estate.

14 • HIH America, along with its participating affiliated insurers, Great States Insurance
15 Company and HIH America Insurance Company of Hawaii, Inc. (HIH Hawaii), entered into a
16 Reinsurance Pooling Agreement in January 1999. Pursuant to the agreement, HIH America
17 reinsured the participating insurers and retroceded back to the participating insurers certain
18 liabilities based on a contractual formula. Affiliates Great States Insurance Company and HIH
19 Hawaii were both ordered into liquidation by their respective domiciliary state, California and
20 Hawaii, in May 2001. All claims submitted under the agreement have been classified as general
21 creditor claims. Because the probability of collection of such claims is extremely low, the
22 Commissioner has applied a 100 percent disallowance with respect to the remaining pooling
23 balances due to the HIH America estate.

24 The Commissioner has made major progress in collecting reinsurance for the HIH America
25 estate and projects finalizing the recovery of all collectible reinsurance. After deducting
26 uncollectible reinsurance, HIH America's reinsurance recoverable is approximately \$155,000 as
27 of June 30, 2014.

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LITIGATION AND LEGAL MATTERS

In addition to the settlement with Hannover Re (discussed above), the key litigation and legal highlights are as follows:

Superior Access Arbitration

This was an action by the Commissioner for recovery of premium and premium collection costs, plus attorneys' fees, against Superior Access Insurance Services, Inc., which was the managing general agent for HIH America. An arbitration occurred in 2007 and resulted in the arbitration panel's issuing an award directing Superior to pay \$1,413,773.43. Superior Access complied with the arbitration decision and paid the funds to the HIH America estate in January 2008.

HIH Hawaii

As previously noted, HIH America's affiliate, HIH Hawaii, was placed into liquidation in Hawaii at about the same time HIH America was placed into liquidation. HIH America and HIH Hawaii were parties to a reinsurance pooling agreement, which resulted in a net balance owing to HIH America and a claim against HIH Hawaii in the latter's liquidation. In an agreement negotiated between the respective liquidators, HIH Hawaii released \$7,120,534 to HIH America as settlement on the intercompany reinsurance obligation and also assigned to the Commissioner HIH Hawaii's remaining claim in the liquidation of their parent company. The parties' agreement was memorialized in a "Re-Designation Agreement," which this Court approved on December 30, 2008.

HIH Australia

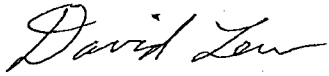
HIH Australia is the parent company to HIH America and is also in liquidation. HIH America has a claim in the liquidation of HIH Australia for \$3,763,315. In addition, as discussed above, HIH America is also the assignee of HIH Hawaii's claim in the Australian liquidation, which increased the total amount of HIH America's claim to \$5,055,470. HIH America has received approximately \$1 million in recoveries to date from the Australian liquidator. Due to the parent company's ongoing liquidation, HIH America remains open to collect the remaining recoveries.

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Dated: 12/3/2014

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
JOYCE E. HEE
Supervising Deputy Attorney General



DAVID LEW
Deputy Attorney General
Attorneys for Applicant Insurance
Commissioner of the State of California

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *Insurance Commissioner of the State of California v. HIH America
Compensation Liability Insurance Company*

Case No.: **CPF-01-320049**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On December 4, 2014, I served the **INSURANCE COMMISSIONER'S STATUS REPORT AND UPDATED CLOSING PLAN** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550, addressed as follows:

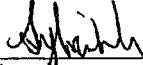
Conservation and Liquidation Office
P. O. Box 26894
San Francisco, CA 94126-0894

Jennifer A. Chambers
Department of Insurance - San Francisco
45 Fremont Street, 24th Floor
San Francisco, CA 94105

C. Guerry Collins, Esq.
Locke Lord Bissell & Liddell LLP
300 S. Grand Ave., Suite 2600
Los Angeles, CA 90071

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 4, 2014, at Oakland, California.

Sylvia Wu
Declarant



Signature