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10
11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO

13
14 **INSURANCE COMMISSIONER OF THE STATE
OF CALIFORNIA,**

15 Applicant,

16 v.

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

19 Respondent.
20

No. 320049

**[PROPOSED] ORDER
GRANTING VERIFIED
APPLICATION FOR ORDER
AUTHORIZING PROPOSAL
TO DISBURSE ASSETS TO
STATE INSURANCE
GUARANTY ASSOCIATIONS
OR FUNDS**

21 Applicant Insurance Commissioner of the State of California's verified application for
22 order authorizing proposal to disburse assets to state insurance guaranty associations or funds,
23 having come before this Court in Department 301 on June 28, 2004, and the Court having
24 considered the motion, and GOOD CAUSE APPEARING, THE COURT MAKES THE
25 FOLLOWING ORDER:

26 1. The Commissioner's proposal to disburse assets of the estate of HIH America in the
27 amount of \$25,000,000 to various state insurance guaranty associations or funds, as set forth in
28 the Attachment to this Order is APPROVED.

1 2. The Commissioner's proposal to transfer the assets of the estate of HIH America in
2 the amount of \$25,000,000 to various state insurance guaranty associations or funds, as set forth
3 in the Attachment to this Order is APPROVED.

4 3. The Order approving the transfer to assets to each of the state insurance guaranty
5 associations or funds, as set forth in the Attachment to this Order, shall be subject to the
6 execution of an agreement with each guaranty association or fund to return the distributed assets,
7 as required, to pay claims of secured creditors and claims falling within the priorities established
8 in Insurance Code section 1033, subdivisions (a)(1) and (a)(2).

9 4. The Commissioner's proposal to release to the California Insurance Guarantee
10 Association a California general statutory deposit of \$3,000,000, to be included in the calculation
11 of all deposits of HIH America in the State of California and to be taken as an offset of the
12 distribution to the California Insurance Guarantee Association pursuant to Insurance Code
13 section 1035.5, subdivision (d), is APPROVED.

4 5. The Commissioner shall take any and all action necessary to accomplish the
15 purposes of the Order requested herein.

17 Dated

Judge of the Superior Court

ATTACHMENT TO ORDER

The Commissioner shall distribute and pay each guaranty fund the following amount:

1	State Compensation Fund of Arizona	\$0
2.	California Insurance Guarantee Association	\$16,593,367
3.	Colorado Insurance Guaranty Association	\$722,866
4.	Florida Workers' Comp. Ins. Guaranty Assn.	\$115,604
5.	Hawaii Insurance Guaranty Association	\$1,150,329
6.	Illinois Insurance Guaranty Fund	\$2,881,408
7.	Indiana Insurance Guaranty Association	\$157,642
8.	Iowa Insurance Guaranty Association	\$4,869
9.	Kentucky Insurance Guaranty Association	\$62,319
10.	Michigan Property & Casualty Guaranty Assn.	\$2,040,991
1.	Missouri Prop. & Casualty Ins. Guaranty Assn.	\$0
12.	Nebraska Property & Liability Ins. Association	\$38,496
13.	Nevada Insurance Guaranty Association	\$252,820
14.	Oregon Insurance Guaranty Association	\$0
15.	Texas Property & Casualty Ins. Association	\$0
16.	Utah Property & Casualty Ins. Guaranty Assn.	\$19,174
17.	Wisconsin Insurance Security Fund	\$960,115

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12 COUNTY OF SAN FRANCISCO

13 **INSURANCE COMMISSIONER OF THE STATE**
14 **OF CALIFORNIA,**

15 Applicant,

16 v.

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

19 Respondent.

No. 320049

**VERIFIED APPLICATION
FOR ORDER AUTHORIZING
PROPOSAL TO DISBURSE
ASSETS TO STATE
INSURANCE GUARANTY
ASSOCIATIONS OR FUNDS;
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT THEREOF**

Date: June 28, 2004
Time: 9:30 a.m.
Dept: 301
Judge: Hon. James R. Warren

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9 the State of California

10 SUPERIOR COURT OF CALIFORNIA
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13 **INSURANCE COMMISSIONER OF THE STATE**
14 **OF CALIFORNIA,**

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17 **HIH AMERICA COMPENSATION & LIABILITY**
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FOR ORDER AUTHORIZING
PROPOSAL TO DISBURSE
ASSETS TO STATE
INSURANCE GUARANTY
ASSOCIATIONS OR FUNDS;
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT THEREOF**

Date: June 28, 2004

Time: 9:30 a.m.

Dept: 301

Judge: Hon. James R. Warren

22 TO EACH PARTY AND ATTORNEY OF RECORD IN THIS ACTION:

23 PLEASE TAKE NOTICE THAT the hearing on the Verified Application for Order
24 Authorizing Proposal to Disburse Assets to State Insurance Guaranty Associations or Funds filed
25 by applicant Insurance Commissioner of the State of California ("Commissioner") has been set
26 for June 28, 2004 at 9:30 a.m., or as soon thereafter as counsel can be heard, in Department 301
27 of this Court, at 400 McAllister Street, San Francisco, California.

28 The above-referenced application is based on the ground that the Commissioner, in his

1 capacity as the court-appointed liquidator of respondent HHH America Compensation & Liability
2 Insurance Company ("HHH America" or the "Company"), is statutorily required under Insurance
3 Code section 1035.5 to make timely application to this Court for approval of a proposal to
4 disburse the Company's assets, as they become available, to the California Insurance Guarantee
5 Association or other similar entities. The application is based on this notice, the application
6 itself, the Commissioner's memorandum of points and authorities in support of the application,
7 and such oral argument as may be presented at the hearing on the application.

8 Dated: 5/26/04

9 BILL LOCKYER
10 Attorney General

11 RANDALL P. BORCHERDING
12 Supervising Deputy Attorney General

13 ANNE MICHELLE BURR
14 Deputy Attorney General

15 DAVID LEW
16 Deputy Attorney General

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19 Attorneys for Applicant Insurance Commissioner
20 of the State of California
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1 **VERIFIED APPLICATION FOR ORDER AUTHORIZING PROPOSAL FOR**
2 **DISBURSEMENT OF ASSETS TO STATE INSURANCE GUARANTY**
3 **ASSOCIATIONS OR FUNDS**

4 **FACTUAL BACKGROUND**

5 The Commissioner was appointed as conservator of respondent HIH America by this
6 Court on March 30, 2001 and was thereafter appointed as liquidator of HIH America by this
7 Court on May 8, 2001, pursuant to Insurance Code sections 1011 and 1016, respectively. As
8 liquidator, the Commissioner has been directed to liquidate and wind up the business affairs of
9 HIH America in accordance with the applicable provisions of the Insurance Code.

10 As part of the Commissioner's responsibilities as liquidator, Insurance Code section
11 1035.5, subdivision (a) provides:

12 Within 120 days of the issuance of an order directing the winding up and
13 liquidation of the business or an insolvent insurer under Section 1016, the
14 commissioner shall make application to the court for approval of a proposal to disburse
15 the insurer's assets, from time to time as such assets become available, to the
16 California Insurance Guarantee Association, or the California Life and Health
17 Insurance Guarantee Association, and to any entity or person performing a similar
18 function in another state.

19 On October 22, 2001, this Court approved the Commissioner's request, pursuant to
20 Insurance Code section 1035.5, to make an initial distribution of \$45,000,000 to the California
21 Insurance Guarantee Association from a workers' compensation special deposit that the
22 Commissioner held as trustee for payment of the Company's obligations on workers'
23 approval of the Court, the Company had insufficient assets to make any additional distributions
24 of assets to other state guaranty funds pursuant to Insurance Code section 1035.5. The
25 Commissioner advised the Court, however, that should it become economically feasible to make
26 additional distributions, the Commissioner would return to this Court for authorization.

27 The Commissioner has recently received substantial additional funds by virtue of a
28 cancellation agreement with reinsurer Hannover Re and now requests approval to make an early
access distribution to the California Insurance Guarantee Association and other state insurance
guaranty associations or funds. Specifically, as of March 31, 2004, the Commissioner as

1 Liquidator of HIH America, held a total of \$66,085,036 in net available assets, including
2 approximately \$27.8 million secured from the cancellation agreement with Hannover re. (See
3 attached Exhibit A ("HIH America, 2nd Quarter 2004 Early Access Distribution Analysis of
4 assets available for distribution").)

5 From May 8, 2001 through March 31, 2003, a total of 17 guaranty funds have paid a
6 total of \$213,283,791 in losses and loss adjustment expenses on behalf of HIH America.
7 Specifically, the State Compensation Fund of Arizona has paid \$496,229, the California
8 Insurance Guarantee Association has paid \$191,132,699, the Colorado Insurance Guaranty
9 Association has paid \$1,084,082, the Florida Workers Compensation Insurance Guaranty
10 Association has paid \$173,372, the Hawaii Insurance Guaranty Association has paid \$1,725,14
11 the Illinois Insurance Guaranty Fund has paid \$12,558,328, the Indiana Insurance Guaranty
12 Association has paid \$277,177, the Iowa Insurance Guaranty Association has paid \$7,301, the
13 Kentucky Insurance Guaranty Association has paid \$93,460, the Michigan Property and Casualty
14 Guaranty Association has paid \$3,098,543, the Missouri Property and Casualty Insurance
15 Association has paid \$730, the Nebraska Property and Liability Insurance Association has paid
16 \$57,732, the Nevada Insurance Guaranty Association has paid \$979,033, the Oregon Insurance
17 Guaranty Association has paid \$828, the Texas Property and Casualty Insurance Association has
18 paid \$130,491, the Utah Property and Casualty Insurance Guaranty Associations has paid
19 \$28,755, and the Wisconsin Insurance Security Funds has paid \$1,439,883. (See attached
20 Exhibit B ("HIH Insurance 2nd quarter 2004 Early Access Distribution Detail of individual IGA
21 distribution amounts."))

22 The Commissioner's proposal with respect to HIH America is to distribute and pay
23 66.6801 percent of the paid losses and loss adjustment expenses of each of the above-referenced
24 guaranty funds, for a total payment to all funds of \$25,000,000. Subtracting the total proposed
25 distribution of \$25,000,000 from HIH America's total net available assets of \$66,085,036 would
26 leave HIH America with remaining net assets in the amount of over \$40,000,000. (See attached
27 Exhibit A ("HIH Insurance 2nd quarter 2004 Early Access Distribution Analysis of assets
28 available for distribution."))

1 In calculating the amount of payment to each guaranty fund, the Commissioner has
2 offset from the proposed distribution the amount of any statutory deposit held by HHH America in
3 that particular state, pursuant to Insurance Code section 1035.5, subdivision (d). The
4 Commissioner proposes to distribute and pay each guaranty fund the following amount:

5	1	State Compensation Fund of Arizona	\$0
6	2	California Insurance Guarantee Association	\$16,593,367
7	3	Colorado Insurance Guaranty Association	\$722,866
8	4	Florida Workers' Comp. Ins. Guaranty Assn.	\$115,604
9	5	Hawaii Insurance Guaranty Association	\$1,150,329
10	6	Illinois Insurance Guaranty Fund	\$2,881,408
11	7	Indiana Insurance Guaranty Association	\$157,642
12	8	Iowa Insurance Guaranty Association	\$4,869
13	9	Kentucky Insurance Guaranty Association	\$62,319
14	10	Michigan Property & Casualty Guaranty Assn.	\$2,040,991
15	11	Missouri Prop. & Casualty Ins. Guaranty Assn.	\$0
16	12	Nebraska Property & Liability Ins. Association	\$38,496
17	13	Nevada Insurance Guaranty Association	\$252,820
18	14	Oregon Insurance Guaranty Association	\$0
19	15	Texas Property & Casualty Ins. Association	\$0
20	16	Utah Property & Casualty Ins. Guaranty Assn.	\$19,174
21	17	Wisconsin Insurance Security Fund	\$960,115

22 (See attached Exhibit B ("2nd quarter 2004 Early Access Distribution Detail of individual IGA
23 distribution amounts."))

24 In distributing \$16,593,367 to the California Insurance Guarantee Association, the
25 Commissioner has offset a workers' compensation statutory deposit containing \$107,802,030,
26 along with a California general statutory deposit of \$3,052,014.^{1/} By this application, the

27
28 1. On October 22, 2001, this Court issued an order authorizing the Commissioner to release the California
workers' compensation deposit to the California Insurance Guarantee Association. At the time that the order was issued,
the Commissioner had calculated that the deposit contained \$116,750,000. The Commissioner has since discovered,

1 Commissioner requests the Court's authorization to release the \$3,052,014 statutory deposit to
2 the California Insurance Guarantee Association.

3 In distributing \$722,866 to the Colorado Insurance Guaranty Association, the
4 Commissioner has offset statutory deposits of HIH America on deposit with the State of
5 Colorado in the total amount of \$0.

6 In distributing \$115,604 to the Florida Workers' Compensation Insurance Guaranty
7 Association, the Commissioner has offset statutory deposits of HIH America on deposit with the
8 State of Florida in the total amount of \$0.

9 In distributing \$1,150,329 to the Hawaii Insurance Guaranty Association, the
10 Commissioner has offset statutory deposits of HIH America on deposit with the State of Hawaii
11 in the total amount of \$0.

12 In distributing \$2,881,408 to the Illinois Insurance Guaranty Fund, the Commissioner
13 has offset statutory deposits of HIH America on deposit with the State of Illinois in the total
14 amount of \$5,492,493. The \$5,492,493 in deposit is comprised of a \$3,942,493 workers'
15 compensation statutory deposit, as well as a \$1,550,000 general statutory deposit that was
16 retained by the State of Illinois when an Illinois-domiciled subsidiary of HIH America merged
17 into HIH America.

18 In distributing \$157,642 to the Indiana Insurance Guaranty Association, the
19 Commissioner has offset statutory deposits of HIH America on deposit with the State of Indiana

20
21 In distributing \$4,869 to the Iowa Insurance Guaranty Association, the Commissioner
22 has offset statutory deposits of HIH America on deposit with the State of Iowa in the total
23 amount of \$0.

24 In distributing \$62,319 to the Kentucky Insurance Guaranty Association, the
25 Commissioner has offset statutory deposits of HIH America on deposit with the State of
26 Kentucky in the total amount of \$0.

27
28 however, that there was an error in the calculation, and the deposit should have been valued at \$107,802,030. The
California Insurance Guarantee Association has been advised of the error in the valuation of the deposit.

1 In distributing \$2,040,991 to the Michigan Property and Casualty Insurance Guaranty
2 Association, the Commissioner has offset statutory deposits of HIH America on deposit with the
3 State of Michigan in the total amount of \$25,120.

4 In distributing \$38,496 to the Nebraska Property and Liability Insurance Guaranty
5 Association, the Commissioner has offset statutory deposits of HIH America on deposit with the
6 State of Nebraska in the total amount of \$0.

7 In distributing \$252,820 to the Nevada Insurance Guaranty Association, the
8 Commissioner has offset statutory deposits of HIH America on deposit with the State of Nevada
9 in the total amount of \$400,000.

10 In distributing \$19,174 to the Utah Property and Casualty Insurance Guaranty
11 Association, the Commissioner has offset statutory deposits of HIH America on deposit with the
12 State of Utah in the total amount of \$0.

13 In distributing \$960,115 to the Wisconsin Insurance Guaranty Fund, the
14 Commissioner has offset statutory deposits of HIH America on deposit with the State of
15 Wisconsin in the total amount of \$0. (See attached Exhibit B ("HIH Insurance 2nd quarter 2004
16 Early Access Distribution Detail of individual IGA distribution amounts.").)

17 No distribution will be made to the State Compensation Fund of Arizona, which has
18 paid \$496,229 in losses and loss adjustment expenses on behalf of HIH America, because as of
19 March 31, 2004, HIH America had \$1,959,177 on deposit with the State of Arizona to offset any
20 payments made by the State Compensation Fund of Arizona on behalf of HIH America claims.
21 After offsetting the payments made by the State Compensation Fund of Arizona against the
22 statutory deposits, HIH America still has \$1,628,291 in statutory deposits available to cover
23 payments made by the State Compensation Fund of Arizona.

24 No distribution will be made to the Missouri Insurance Guaranty Association, which
25 has paid \$730 in losses and loss adjustment expenses on behalf of HIH America, because as of
26 March 31, 2004, HIH America had \$110,000 on deposit with the State of Missouri to offset any
27 payments made by the Missouri Insurance Guaranty Association on behalf of HIH America
28 claims. After offsetting the payments made by the Missouri Insurance Guaranty Association

1 against the statutory deposits, HIH America still has \$109,514 in statutory deposits available to
2 cover payments made by the Missouri Insurance Guaranty Association.

3 No distribution will be made to the Oregon Insurance Guaranty Association, which has
4 paid \$828 in losses and loss adjustment expenses on behalf of HIH America, because as of
5 March 31, 2004, HIH America had \$965,609 on deposit with the State of Oregon to offset any
6

7 After offsetting the payments made by the Oregon Insurance Guaranty Association against the
8 statutory deposits, HIH America still has \$965,057 in statutory deposits available to cover
9

10 No distribution will be made to the Texas Property and Casualty Insurance
11 Association, which has paid \$130,491 in losses and loss adjustment expenses on behalf of HIH
12 America, because as of March 31, 2004, HIH America had \$105,000 on deposit with the State of
13 Texas to offset any payments made by the Texas Property and Casualty Insurance Association on
14 behalf of HIH America claims. After offsetting the payments made by the Texas Property and
15 Casualty Insurance Association against the statutory deposits, HIH America still has \$17,988 in
16 statutory deposits available to cover payments made by the Texas Property and Casualty
17 Insurance Association. (See attached Exhibit B ("HIH Insurance 2nd quarter 2004 Early Access
18 Distribution Detail of individual IGA distribution amounts.").)

19 In accordance with Insurance Code section 1035.5, subdivision (b)(1), the
20
21 administration and the payment of claims of secured creditors and claims falling within the
22
23 the total proposed distribution of \$25,000,000 from available net assets of \$66,085,036 leaves
24 remaining net assets in the amount of \$41,085,036 for the payment of expenses of
25 administration, and all other unrecorded liabilities and contingencies. The Commissioner will
26 seek approval of an additional early access distribution when such liabilities and contingencies
27 become known and are quantified.
28

1 In accordance with Insurance Code section 1035.5, subdivision (b)(4), the
2 Commissioner will secure from the 13 guaranty funds receiving a distribution an agreement to
3 return the distributed assets, as required, to pay claims of secured creditors and claims falling
4 within the priorities established in Insurance Code section 1033, subdivisions (a)(1) and (a)(2).
5 (A true and correct copy of the draft agreement is attached as Exhibit C.

6 As detailed above, the Liquidator has complied with the requirements of Insurance
7 Code section 1035.5 for disbursement of assets to insurance guaranty associations and,
8 accordingly, this Court should approve the instant application.

9 WHEREFORE, the Commissioner respectfully requests, based on this Application,
10

11 1. Approving the Commissioner's proposal to disburse a total of \$25,000,000 of the
12 net assets of the estate of HIH America to the 13 state guaranty associations and funds set forth
13 above and in the amounts set forth above, made subject to the execution of an agreement with
14 each guaranty association or fund to return the distributed assets, as required, to pay claims of
15 secured creditors and claims falling within the priorities established in Insurance Code section
16 1033, subdivisions (a)(1) and (a)(2).

17 2. Authorizing the Commissioner to transfer a total of \$25,000,000 of the net assets of
18 the estate of HIH America to the 13 state guaranty associations and funds set forth above and in
19 the amounts set forth above, made subject to the execution of an agreement with each guaranty
20 association or fund to return the distributed assets, as required, to pay claims of secured creditors
21 and claims falling within the priorities established in Insurance Code section 1033, subdivisions
22 (a)(1) and (a)(2).

23 3. Authorizing the Commissioner to release to the California Insurance Guarantee
24 Association a California general statutory deposit of \$3,052,014, which will be included in the
25 calculation of all deposits of HIH America in the State of California and will be taken as an
26 offset of the distribution to the California Insurance Guarantee Association pursuant to Insurance
27 Code section 1035.5, subdivision (d).
28

1 4. Authorizing the Commissioner to take any and all action necessary to accomplish
2 the purposes of the Order requested herein.

3 Dated: *5/26/04*

4 BILL LOCKYER
Attorney General

5 RANDALL P. BORCHERDING
6 Supervising Deputy Attorney General

7 ANNE MICHELLE BURR
Deputy Attorney General

8 DAVID LEW
9 Deputy Attorney General

10 *David Lew*

11 DAVID LEW

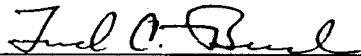
12 Attorneys for Applicant Insurance Commissioner
13 of the State of California

VERIFICATION

I, Fred A. Buck , state that I am a Special Deputy Insurance Commissioner of the State of California; that I have read the VERIFIED APPLICATION FOR ORDER AUTHORIZING PROPOSAL TO DISTRIBUTE ASSETS TO STATE INSURANCE GUARANTY ASSOCIATIONS OR FUNDS and know the contents thereof; that the same is true of my knowledge, except as to the matters which are therein stated upon information and belief and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 19, 2004 in San Francisco, California.



Fred A. Buck
Special Deputy Insurance Commissioner

MEMORANDUM OF POINTS AND AUTHORITIES

Insurance Code section 1035.5 provides as follows:

Notwithstanding the provisions of Article 14 (commencing with Section 1010), with regard only to those insurers subject to this article:

(a) Within 120 days of the issuance of an order directing the winding up and liquidation of the business or an insolvent insurer under Section 1016, the commissioner shall make application to the court for approval of a proposal to disburse the insurer's assets, from time to time as such assets become available, to the California Insurance Guarantee Association, or the California Life and Health Insurance Guarantee Association, and to any entity or person performing a similar function in another state.

(b) The proposal shall at least include the following provisions for

(1) Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors (to the extent of the value of the security held) and claims falling within the priorities established in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 1033.

(2) Disbursement of the assets marshaled to date and subsequent disbursements of assets as they become available.

(3) Equitable allocation of disbursements to each of the associations entitled thereto.

(4) The securing by the commissioner from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the commissioner such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1033 in accordance with the priorities. No bond shall be required of any association.

(5) A full report to be made by the association to the commissioner accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on the assets, and any other matter as the court may direct.

(c) The commissioner's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made by the associations for which such associations could assert a claim against the commissioner, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of the claim payments made or to be made by the associations, then disbursements shall be in the amount of available assets. The reserves of the insolvent insurer on the date of the order of liquidation shall be used for purposes of determining the pro rata allocation of funds among eligible associations.

(d) The commissioner shall offset the amount disbursed to any entity or person performing a function in any other state similar to that function performed by the California Insurance Guarantee Association, or the California Life and Health Insurance Guarantee Association, by the amount of any statutory deposit, premiums, or any other asset of the insolvent insurer held in that state.

1 (e) Notice of such application shall be given to the associations in and to
2 the commissioners of insurance of each of the states. Any such notice shall be
3 deemed to have been given when deposited in the United States certified mails,
4 first-class postage prepaid, at least 30 days prior to submission of such application
5 to the court. Action on the application may be taken by the court provided the
6 above required notice has been given and provided further that the
7 commissioner's proposal complies with paragraphs (1) and (4) of subdivision (b).

8 The proposal for which the Commissioner seeks court approval in this application
9 fully satisfies the statutory provisions of section 1035.5. First, the Commissioner will retain
10 general assets of HIH America in the amount of \$41,085,036 to fund the estate's general
11 administrative expenses and claims of secured creditors, pursuant to Insurance Code section
12 1035.5, subdivision (b)(1). Second, the Commissioner proposes to disburse, on a pro rata basis,
13 to each of the 13 guaranty funds eligible for a distribution, funds which the Commissioner has
14 determined to be the "available assets" of the estate, pursuant to section 1035.5, subdivisions
15 (b)(2) & (c). Third, the proposal provides for an equitable allocation of certain assets to the state
16 insurance guaranty funds, pursuant to section 1035.5, subdivision (b)(3). Fourth, disbursement
17 of the assets will be subject to an agreement by each of the state insurance guaranty funds to, if
18 necessary, return assets previously disbursed to pay claims of secured creditors, pursuant to
19 section 1035.5, subdivision (b)(4). Fifth, disbursements of the assets will also be subject to an
20 agreement by each of the state insurance guaranty funds to make a full report to the
21 Commissioner accounting for all assets disbursed to each fund, all disbursements made
22 therefrom, and any interest earned by the guaranty fund on the assets, as required by section
23 1035.5, subdivision (b)(5). Finally, the Commissioner will offset the amount disbursed to any
24 entity or person performing a function in any other state similar to that function performed by the
25 California Insurance Guarantee Association by the amount of any statutory deposit, premiums, or
26 any other asset that HIH America held in that state, pursuant to section 1035, subdivision (d).
27 Notice of this application has been given in accordance with the provisions of section 1035,
28 subdivision (e).

29 Furthermore, apart from satisfying the statutory provisions of the regulation of
30 workers' compensation insurance provided for under the Insurance Code, the Commissioner's
31 proposal falls within the ambit of his broad statutory discretion. The California Legislature has

1 afforded to the Commissioner, acting in his capacity as the court-appointed liquidator of an
2 insolvent insurer, substantial discretion under the Insurance Code to fashion appropriate
3 procedures necessary to carry out his statutory duties. (*Calfarm Ins. Co. v. Deukmejian* (1989)
4 48 Cal.3d 805, 824-825; *Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10 Cal.2d 307, 329. As
5 the court-appointed liquidator of HIH America, the Commissioner has the express authority to,
6 among other things, take such actions as he deems necessary to “carry on and conduct the
7 business and affairs” of the Company. (Ins. Code, § 1037, subd. (a).) Section 1037, subdivisions

8
9
10 Upon taking possession of the property and business of any person in any
11 proceeding under this article, the commissioner, exclusively and except as
12 otherwise expressly provided by this article, either as conservator or liquidator . . .
13 [s]hall have authority . . . to carry on and conduct the business and affairs of that
14 person or so much thereof as to him . . . may seem appropriate . . . [and also]
15 [s]hall have authority to compound, compromise or in any other manner negotiate
16 settlements of claims against that person upon such terms and conditions as the
17 commissioner shall deem to be most advantageous to the estate of the person
18 being administered . . . or otherwise dealt with under this article.

19
20 Section 1037 further provides the Commissioner, as the appointed liquidator of HIH America,
21 with unspecified “[g]eneral powers” which shall not be construed to exclude:

22 in any manner his . . . right to perform and to do such other acts not herein
23 specifically enumerated, or otherwise provided for, which the commissioner may
24 deem necessary or expedient for the accomplishment or in aid of the purpose of
25 such proceedings.

26
27 In this case, the Commissioner’s proposal falls within the ambit of his broad
28 insurance company by Commissioner may lawfully be made without court order and trial court
had power to ratify and confirm Commissioner’s actions]; *Garris v. Carpenter* (1939) 33
Cal.App.2d 649 [Commissioner exercises very broad judgment and discretion in performance of
duties].) Judicial approval of the Commissioner’s proposal, and the Agreement entered into with
each of the 13 state insurance guaranty funds, will ensure that the conduct of the business and the
winding down of HIH America are conducted efficiently and in the best interests of its
policyholders and creditors.

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CONCLUSION

For all of the foregoing reasons, the Commissioner respectfully requests that the verified application for order authorizing the proposal for disbursement of assets to a total of 13 state insurance guaranty funds be granted.


Dated: 5/26/04

BILL LOCKYER
Attorney General

RANDALL P. BORCHERDING
Supervising Deputy Attorney General

ANNE MICHELLE BURR
Deputy Attorney General

DAVID LEW
Deputy Attorney General



DAVID LEW

Attorneys for Applicant Insurance Commissioner
of the State of California

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EXHIBIT A



HHH Insurance

2nd quarter 2004 Early Access Distribution Analysis of assets available for distribution

Assets and constraints evaluated as of: March 31, 2004

Liquid assets:

Cash balances and pooled investments	77,051,104
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Priority claims, restrictions, and constraints:

Secured liabilities	29,953	
Class 1 liabilities - current	3,936,115	
Class 1 budget - 7 years	7,000,000	
Provision for other class 2 liabilities		
Total constraints		(10,966,068)
Net available assets		66,085,036

Proposed percentage distribution of available assets	38%
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Proposed current distribution amount (rounded)	<u>\$ 25,000,000</u>
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EXHIBIT B

HIH Insurance
2nd quarter 2004 Early Access Distribution
Detail of individual IGA distribution amounts

Based on a gross cumulative distribution of 66.6801%
 (See separate detail of losses and credits)

IGA Full Name	Total losses	Gross cumulative distribution (66.6801%)	Total credits	Balance	Current distribution
Alabama Insurance Guaranty Association	-	-	-	-	-
Alaska Insurance Guaranty Association	-	-	-	-	-
Arizona State Compensation Insurance Fund	496,229	330,886	1,959,177	(1,628,291)	-
Arizona Property/Casualty Insurance Guaranty Fund	-	-	-	-	-
Arkansas Property & Casualty Guaranty Fund	-	-	105,000	(105,000)	-
California Insurance Guarantee Association	191,132,699	127,447,411	110,854,044	16,593,367	16,593,367
Colorado Insurance Guaranty Association	1,084,082	722,866	-	722,866	722,866
Connecticut Insurance Guaranty Association	-	-	-	-	-
Delaware Insurance Guaranty Association	-	-	-	-	-
District of Columbia Insurance Guaranty Association	-	-	-	-	-
Florida Insurance Guaranty Association	-	-	-	-	-
Florida Workers' Compensation Insurance Guaranty Association	173,372	115,604	-	115,604	115,604
Georgia Insurers Insolvency Pool	-	-	675,398	(675,398)	-
Hawaii Insurance Guaranty Association	1,725,146	1,150,329	-	1,150,329	1,150,329
Idaho Insurance Guaranty Association	-	-	250,000	(250,000)	-
Illinois Insurance Guaranty Fund	12,558,328	8,373,901	5,492,493	2,881,408	2,881,408
Indiana Insurance Guaranty Association	277,177	184,822	27,180	157,642	157,642
Iowa Insurance Guaranty Association	7,301	4,869	-	4,869	4,869
Kansas Insurance Guaranty Fund	-	-	31,659	(31,659)	-
Kentucky Insurance Guaranty Association	93,460	62,319	-	62,319	62,319
Louisiana Insurance Guaranty Association	-	-	-	-	-
Maine Insurance Guaranty Association	-	-	-	-	-
Maryland Property & Casualty Insurance Guaranty Corporation	-	-	-	-	-
Massachusetts Insurer Insolvency Fund	-	-	-	-	-
Massachusetts Department of Insurance	-	-	-	-	-
Michigan Property & Casualty Insurance Guaranty Association	3,098,543	2,066,111	25,120	2,040,991	2,040,991
Minnesota Insurance Guaranty Association	-	-	-	-	-
Mississippi Insurance Guaranty Association	-	-	-	-	-
Missouri Insurance Guaranty Association	730	486	110,000	(109,514)	-
Montana Insurance Guaranty Association	-	-	-	-	-
Nebraska Property & Liability Insurance Guaranty Association	57,732	38,496	-	38,496	38,496
Nevada Insurance Guaranty Association	979,033	652,820	400,000	252,820	252,820
New Hampshire Insurance Guaranty Association	-	-	-	-	-
New Jersey Stock Workers' Compensation Security Fund	-	-	-	-	-
New Jersey Property-Liability Insurance Guaranty Association	-	-	-	-	-

HIH Insurance
2nd quarter 2004 Early Access Distribution
Detail of individual IGA distribution amounts

Based on a gross cumulative distribution of 66.6801%
 (See separate detail of losses and credits)

IGA Full Name	Total losses	Gross cumulative distribution (66.6801%)	Total credits	Balance	Current distribution
New Mexico Property & Casualty Insurance Guaranty Association	-	-	344,289	(344,289)	-
New York Insurance Department - Liquidation Bureau	-	-	-	-	-
North Carolina Insurance Guaranty Association	-	-	-	-	-
North Dakota Insurance Guaranty Association	-	-	-	-	-
Ohio Insurance Guaranty Association	-	-	-	-	-
Oklahoma Property & Casualty Insurance Guaranty Association	-	-	100,000	(100,000)	-
Oregon Insurance Guaranty Association	828	552	965,609	(965,057)	-
Pennsylvania Workers' Compensation Security Fund	-	-	-	-	-
Pennsylvania Insurance Guaranty Association	-	-	-	-	-
Rhode Island Insurers Insolvency Fund	-	-	-	-	-
South Carolina Property & Casualty Insurance Guaranty Association	-	-	-	-	-
South Dakota Insurance Guaranty Association	-	-	-	-	-
Tennessee Insurance Guaranty Association	-	-	-	-	-
Texas State Board of Insurance	130,491	87,012	105,000	(17,988)	-
Utah Property & Casualty Insurance Guaranty Association	28,755	19,174	-	19,174	19,174
Vermont Property & Casualty Insurance Guaranty Association	-	-	-	-	-
Virginia Property & Casualty Insurance Guaranty Association	-	-	-	-	-
Washington Insurance Guaranty Association	-	-	-	-	-
West Virginia Insurance Guaranty Association	-	-	-	-	-
Wisconsin Insurance Security Fund	1,439,883	960,115	-	960,115	960,115
Wyoming Insurance Guaranty Association	-	-	-	-	-
TOTALS	213,283,791	142,217,773	121,444,969	20,772,804	25,000,000

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EXHIBIT C

AGREEMENT FOR DISBURSEMENT OF FUNDS
PURSUANT TO SECTION 1035.5 OF THE CALIFORNIA
INSURANCE CODE

This Agreement is entered into on _____ between _____
_____ and the California Insurance Commissioner as Liquidator
("Liquidator") of HIH America Compensation & Liability Insurance Company ("HIH").

WHEREAS, HIH is insolvent, and an order under California Insurance Code
section 1016 has been entered appointing the California Insurance Commissioner as
Liquidator of HIH and directing the Liquidator to wind up and liquidate the business and
affairs of HIH, and

WHEREAS, the Liquidator proposes, pursuant to California Insurance Code,
section 1035.5, after reserving amounts necessary for payment of expenses of
administration and the payment of claims of secured creditors (to the extent of the value
of security held) and claims falling within the priorities established in subdivisions (1)
and (2) of the California Insurance Code section 1033, to distribute available assets of
HIH on an equitable allocation to the _____. As consideration for the
agreement by the Liquidator of HIH to make a distribution of \$ _____ to the
_____ agrees pursuant to California Insurance Code,
section 1035.5:

1. To return to the Liquidator of HIH such assets disbursed by the Commissioner
to _____, as may be required to pay claims of secured creditors and claims
falling within the priorities established in subparagraphs (1) and (2) inclusive of the
California insurance Code, as it presently exists or as amended.

2. To make a full report to the Liquidator, accounting for all assets so disbursed to the _____, all disbursements made therefrom, any interest earned by the _____ on such assets, and any other matter as the court may direct.

3. If any legal action is necessary to enforce this agreement, the _____ agrees that such action shall be commenced in the Superior Court of the State of California, for the County of San Francisco, in the liquidation proceeding of HIH by way of Order to Show Cause and the _____ agrees for this purpose only to subject itself to the jurisdiction of the Superior Court of the State of California for the County of San Francisco by way of said Order to Show Cause procedure.

Dated: _____, 2004

JOHN GARAMENDI
Insurance Commissioner of the State
Of California,
Liquidator of HIH America
Compensation & Liability Insurance
Company

By: _____
Fred Buck
Special Deputy Insurance Commissioner

Dated _____, 2004

[Name of Fund]

By: _____

PROOF OF SERVICE

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

No. **San Francisco County Superior Court No. 320049**

I am employed in the County of San Francisco, California. I am over the age of 18 years and not a party to the within entitled cause; my business address is 425 Market Street, 23rd Floor, San Francisco, California 94105.

On **May 28, 2004**, I served the following document(s):

Verified Application for Order Authorizing Proposal to Disburse Assets to State Insurance Guaranty Associations of Funds; Memorandum of Points and Authorities in Support Thereof

[Proposed] Order Granting Verified Application for Order Authorizing Proposal to Disburse Assets to State Insurance Guaranty Associations or Funds

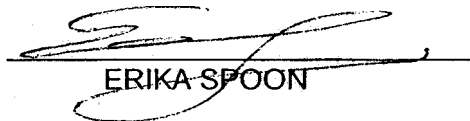
on the parties through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

- (A) **By First Class Mail:** I caused each such envelope to be placed in the internal mail collection system at the California Department of Insurance (Conservation & Liquidation Office) with first-class postage thereon fully prepaid in a sealed envelope, for deposit in the United States Postal Service that same day in the ordinary course of business.
- (B) **By Overnite Mail:** I caused each such envelope to be placed in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.
- (C) **By Facsimile:** I caused such document to be served via facsimile electronic equipment transmission (fax) on the parties in this action by transmitting a true copy to the following fax numbers listed under each addressee below.

TYPE OF SERVICE
A

ADDRESSEE
See Attached List

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on **May 28, 2004**, at San Francisco, California.


ERIKA SPOON