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**ELECTRONICALLY  
FILED**  
*Superior Court of California,  
County of San Francisco*  
**06/04/2015**  
**Clerk of the Court**  
BY: MAURA RAMIREZ  
Deputy Clerk

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

13 **INSURANCE COMMISSIONER OF THE**  
14 **STATE OF CALIFORNIA,**  
15 Applicant,  
16 v.  
17 **HIH AMERICA COMPENSATION &**  
18 **LIABILITY INSURANCE COMPANY, a**  
19 **California domiciled insurance company,**  
20 Respondent.

Reservation No. 06010805-11  
Case No. CPF 01 320049  
**NOTICE OF HEARING ON  
APPLICATION FOR COURT  
APPROVAL OF INSURANCE  
COMMISSIONER'S ASSIGNMENT FOR  
VALUE OF PROOFS OF CLAIM**  
Date: August 5, 2015  
Time: 9:30 a.m.  
Dept: 302  
Judge: Hon. Ernest H. Goldsmith

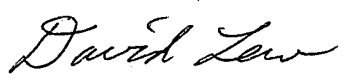
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22 TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:  
23 PLEASE TAKE NOTICE that on August 5, 2015, at 9:30 a.m. or as soon thereafter as the  
24 matter may be heard in Department 302 of the San Francisco Superior Court, the Insurance  
25 Commissioner of the State of California ("Commissioner"), in his capacity as conservator and  
26 liquidator of HIH America Compensation & Liability Insurance Company ("HIH America"), will  
27 apply to the Court for an order approving the Commissioner's assignment of two proofs of claim  
28 to Amberley Alternative Assets, Ltd. for value.

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The Application is made pursuant to Insurance Code section 1037, subdivision (d), which requires the Commissioner to obtain court approval of any transaction involving real or personal property where the market value of the property involved exceeds \$20,000. The Application will be based on the Application itself, the memorandum of points and authorities filed in support thereof and the declaration of Dick Oshita filed in support thereof.

Dated: June 2, 2015

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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15 Applicant,

16 v.

17 **HIH AMERICA COMPENSATION &  
18 LIABILITY INSURANCE COMPANY, a  
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**APPLICATION FOR COURT  
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COMMISSIONER'S ASSIGNMENT FOR  
VALUE OF PROOFS OF CLAIM**

Date: August 5, 2015

Time: 9:30 a.m.

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Judge: Hon. Ernest H. Goldsmith

21  
22 **APPLICATION**

23 The Insurance Commissioner of the State of California ("Commissioner"), in his capacity  
24 as the court-appointed liquidator of HIH America Compensation and Liability Insurance  
25 Company ("HIH America"), has entered into an agreement for the assignment of two proofs of  
26 claim in the HIH America estate to Amberley Alternative Assets, Ltd. ("Amberley") for value.  
27 Because Insurance Code section 1037, subdivision (d) requires the Commissioner to obtain court  
28 approval of any transaction involving real or personal property where the market value of the

1 property involved exceeds \$20,000, as is the case here, application for court approval of the  
2 proposed assignment of claims is being made. The Commissioner has concluded that it is in the  
3 best interest of the creditors of HIH America to enter into the proposed assignment of claims for  
4 value.

### 5 **FACTUAL BACKGROUND IN SUPPORT OF APPLICATION**

6 1. The Commissioner was appointed as conservator of HIH America by this Court on  
7 March 30, 2001 and was thereafter appointed as liquidator of HIH America by this Court on May  
8 8, 2001, pursuant to Insurance Code sections 1011 and 1016, respectively. (Declaration of Dick  
9 Oshita in Support of Application for Court Approval of Insurance Commissioner's Assignment  
10 for Value of Proofs of Claim ("Oshita Declaration") at ¶ 6.)

11 2. As liquidator, the Commissioner has been directed to liquidate and wind up the  
12 business affairs of HIH America in accordance with the applicable provisions of the Insurance  
13 Code. (Oshita Declaration at ¶ 7.)

14 3. HIH America was authorized to transact the business of workers' compensation in  
15 California (and numerous other states) under the authority of a Certificate of Authority issued by  
16 the Commissioner. (Oshita Declaration at ¶ 8.)

17 4. At approximately the same time that HIH America was placed into conservation, and  
18 then liquidation, in 2001 by order of this Court, the company's Australian parent, HIH Casualty  
19 & General Insurance, Ltd., ("HIH Casualty"), entered into parallel liquidation proceedings in  
20 Australia. (Oshita Declaration at ¶ 9.)

21 5. The Commissioner, as liquidator of HIH America, has two approved claims in the  
22 Australian liquidation of HIH Casualty in the total amount of \$3,736,295. (Oshita Declaration at  
23 ¶ 10.)

24 6. The first approved claim is in the amount of \$2,302,429, and is comprised of amounts  
25 owing on an Intercompany Reinsurance Treaty in which HIH America was a party. (Oshita  
26 Declaration at ¶ 11.)

27 7. The second approved claim was assigned to the Commissioner by a sister company,  
28 HIH America Insurance Company of Hawaii ("HIH Hawaii"), as part of its liquidation. The

1 claim resulted from HIH Hawaii's participation with HIH Casualty in a Quota Share Reinsurance  
2 treaty. HIH Hawaii's claim was approved by the Australian liquidator in the amount of  
3 \$1,433,866. (Oshita Declaration at ¶ 12.)

4 8. The Australian liquidator of HIH Casualty has paid a total of \$1,396,696.53 to date  
5 on the two claims as of the time the claims were evaluated for sale in March 2015. (Oshita  
6 Declaration at ¶ 13.)

7 9. The Australian liquidator of HIH Casualty's most recent published report, *Scheme*  
8 *Administrator's Annual Report to Creditors as of June 30, 2014*, has projected a distribution  
9 percentage of 34 percent to 36 percent on claims in the categories which include the two  
10 approved claims held by HIH America. (Oshita Declaration at ¶ 14.)

11 10. As of the March 2015 evaluation of the proof of claims for sale, approximately 33  
12 percent of each claim in the categories which include the two HIH America claims has already  
13 been distributed. As a result, the remaining additional payout on each of the two HIH America  
14 claims is anticipated to be in the one percent to three percent range. This would result in a  
15 combined total remaining payout on the two HIH America claims in the range of \$114,383.67 to  
16 \$132,737.41, with completion of the payouts to conclude at an uncertain future date. (Oshita  
17 Declaration at ¶ 15.)

18 11. The Commissioner anticipates closing the liquidation of the estate of HIH America in  
19 the near future. In contrast, the Australian liquidator has not given a time certain for the closure  
20 of the HIH Casualty estate, but has projected that the Australian liquidation is unlikely to be  
21 resolved for a period of two to three years. So that the closure of the liquidation of HIH America  
22 can move forward in an expeditious manner, it is in the estate's interest to assign the two claims  
23 for value. (Oshita Declaration at ¶ 16.)

24 12. The Liquidator has negotiated an agreement with Amberley for the assignment of the  
25 two HIH America claims to Amberley in consideration for payment to the HIH America estate of  
26 the amount of \$120,000 for both claims. A true and correct copy of the Assignment of Claims  
27 agreement is attached to the Oshita Declaration at Exhibit A. (Oshita Declaration at ¶ 17.)  
28



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18 **LIABILITY INSURANCE COMPANY, a**  
19 **California domiciled insurance company,**

20 Respondent.

Reservation No. 06010805-11

Case No. CPF 01 320049

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
APPLICATION FOR COURT  
APPROVAL OF INSURANCE  
COMMISSIONER'S ASSIGNMENT FOR  
VALUE OF PROOFS OF CLAIM**

Date: August 5, 2015

Time: 9:30 a.m.

Dept: 302

Judge: Hon. Ernest H. Goldsmith

21  
22  
23 **INTRODUCTION**

24 The Insurance Commissioner of the State of California ("Commissioner"), as the court-  
25 appointed liquidator of the insolvent estate of HIH America Compensation and Liability  
26 Insurance Company ("HIH America"), seeks court approval for the assignment of two HIH  
27 America proofs of claim to Amberley Alternative Assets, Ltd. ("Amberley") for value. As  
28

1 explained below, the terms of the proposed assignment are in the best interests of the creditors of  
2 the insolvent estate and represent a fair and reasonable value for the assigned claims.

### 3 ARGUMENT

#### 4 APPROVAL OF THE COMMISSIONER'S ASSIGNMENT OF TWO HIH 5 AMERICA CLAIMS FOR VALUE IS WARRANTED

6 The Commissioner seeks court approval of a proposed assignment of two claims held by  
7 HIH America, an insolvent insurer for which the Commissioner has been appointed as liquidator.  
8 Under section 1016 of the Insurance Code, the Commissioner is statutorily empowered to  
9 liquidate and wind up the business of HIH America. To accomplish this objective, the California  
10 Legislature has afforded to the Commissioner substantial discretion under the Insurance Code to  
11 fashion appropriate procedures necessary to carry out his statutory duties. (*Calfarm Ins. Co. v.*  
12 *Deukmejian* (1989) 48 Cal.3d 805, 824-825; *Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10  
13 Cal.2d 307, 329.)

14 As the court-appointed liquidator of HIH America, the Commissioner has the express  
15 authority to, among other things, take such actions as he deems necessary to "collect all moneys  
16 due that person and to do such other acts as are necessary or expedient to collect, conserve, or  
17 protect its assets, property, and business . . ." (Ins. Code, § 1037, subd. (a).) Such actions  
18 include the collection of "all debts due and claims belonging to that person" (Ins. Code, § 1037,  
19 subd. (b)) and the acquisition and disposition of property "upon such terms and conditions as the  
20 commissioner may deem proper." (Ins. Code, § 1037, subd. (d).) However, no transaction  
21 involving real or personal property may be made with respect to property that exceeds the sum of  
22 \$20,000 in value without first obtaining court permission. (*Ibid.*) Section 1037 further provides  
23 the Commissioner, as the appointed liquidator of HIH America, with unspecified "[g]eneral  
24 powers" which shall not be construed to exclude:

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



1       The goal of these statutory provisions is to ensure that the Commissioner, as liquidator, is  
2 properly empowered to do whatever he believes is necessary to accomplish the conservation and  
3 liquidation of an insolvent insurer in a manner that best serves the policyholders, creditors and  
4 other interested parties, as well as the general public.

5       The actions for which the Commissioner seeks court approval fall within the ambit of his  
6 broad statutory discretion under section 1037. Judicial approval of the Commissioner's decision  
7 to enter an agreement for the assignment of two HIH America claims for value is rational because  
8 it seeks to expedite and facilitate the closure of the HIH America liquidation and promote the  
9 orderly wind-up of the company. Through the assignment of the two HIH America claims to  
10 Amberley, the estate stands to benefit by an infusion of \$120,000, which in the Commissioner's  
11 view, represents a fair and reasonable value for the claims. Judicial approval of the assignment of  
12 the claims for value will help ensure that the conduct of the business and the winding down of  
13 HIH America are conducted efficiently and in the best interests of its policyholders and creditors.

14       California case law supports the broad grant of powers accorded the Commissioner when  
15 he is conserving, rehabilitating and/or liquidating insurance companies. For example, in its  
16 opinion in *In Re Executive Life Insurance Company* (1995) 32 Cal.App.4th 344, the Court of  
17 Appeal noted that:

18               The Commissioner is an officer of the state (*Caminetti v. Pac. Mutual L. Ins. Co.*  
19 (1943) 22 Cal.2d 344, 354 [139 P.2d 908]) who, when he or she is a conservator,  
20 exercises the state's police power to carry forward the public interest and to protect  
21 policyholders and creditors of the insolvent insurer. (*Carpenter v. Pacific Mut. Life*  
*Ins. Co.* (1937) 10 Cal.2d 307, 330-331 [74 P.2d 761].)

22 (*Id.* at p. 356.) The Court of Appeal then went on to explain:

23               In exercising this power, the Commissioner is vested with broad discretion.  
24 (*Commercial Nat. Bank v. Superior Court, supra*, 14 Cal.App.4th at p. 402.) This  
25 discretion is subject to statutory limitations and the requirement that the exercise of  
26 discretion be neither arbitrary nor improperly discriminatory. (*Carpenter v. Pacific*  
*Mut. Life Ins. Co., supra*, 10 Cal.2d at p. 329.) The Commissioner as conservator of  
27 the insolvent insurer is also a trustee for the benefit of all creditors and other persons  
interested in the insolvency estate. (§ 1057.)

28 (*Id.*, at p. 356 [emphasis added].) The Court of Appeal then concluded that:

1 The trial court reviews the Commissioner's actions under the abuse of discretion  
2 standard. (*Commercial Nat. Bank v. Superior Court, supra*, 14 Cal.App.4th 393,  
3 398): was the action arbitrary, i.e. unsupported by a rational basis, or is it contrary to  
a specific statute, a breach of the fiduciary duty of the conservator as trustee, or  
improperly discriminatory.

4 (*Id.*, at p. 358 [emphasis added].)

5 The standard of review used to examine the Commissioner's exercise of discretion also  
6 serves as a "yardstick" for evaluating the propriety of the Commissioner's request to approve the  
7 assignment of the HIH America claims for value. In applying this standard to these facts, the  
8 Commissioner's actions constitute an appropriate act within his statutory authority as liquidator  
9 that can and should be approved.

10 Within the framework of the specific elements mentioned by the Court of Appeal in  
11 *Executive Life*, the Commissioner's request for approval of the assignment of claims for value is  
12 reasonable because it seeks to collect debts and enhance the assets of the estate in liquidation.  
13 Further, the agreement is reasonable because it allows the Commissioner to carry out his statutory  
14 and contractual obligations in the most cost-effective and efficient manner.

15 In short, the Commissioner has entered into an agreement for the assignment of claims for  
16 value which will result in the collection of \$120,000 for the HIH America estate. The  
17 Commissioner's action in entering into this agreement meets the requirements of *Executive Life*  
18 and is taken pursuant to specific regulatory authority. Accordingly, it is respectfully requested  
19 that this Court issue an order approving the Commissioner's assignment for value of proofs of  
20 claim.

## 21 CONCLUSION

22 For all of the foregoing reasons, the Commissioner requests that this Court issue an order  
23 (1) approving the assignment for value of the HIH America proofs of claim and (2) authorizing  
24 the Commissioner to take any action necessary to accomplish the purposes of the order prayed for  
25 herein.

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Dated: June 2, 2015

Respectfully Submitted,

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



DAVID LEW  
Deputy Attorney General  
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*Commissioner of the State of California*

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19 Respondent.  
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Reservation No. 06010805-11

Case No. CPF 01 320049

**DECLARATION OF DICK OSHITA IN  
SUPPORT OF APPLICATION FOR  
COURT APPROVAL OF INSURANCE  
COMMISSIONER'S ASSIGNMENT FOR  
VALUE OF PROOFS OF CLAIM**

Date: August 5, 2015

Time: 9:30 a.m.

Dept: 302

Judge: Hon. Ernest H. Goldsmith

21  
22 I, Dick Oshita, make this declaration in San Francisco, California, under penalty of perjury  
23 of the laws of the State of California and declare:

24 1. I am the Reinsurance Manager of the California Conservation and Liquidation Office  
25 (CLO) of the California Department of Insurance.

26 2. I supervise all matters relating to reinsurance for the CLO as to the insolvent estate of  
27 HIH America Compensation & Liability Insurance Company (HIH America). I have over 26  
28 years experience in the area of reinsurance.

1           3. I am familiar with the records to which I attest, which are business records of the  
2 CLO, and which were prepared in the regular course of business.

3           4. I am familiar with the day-to-day operations of the CLO and of the liquidation of the  
4 insolvent estate addressed in this declaration through my position at the CLO.

5           5. The Insurance Commissioner of the State of California ("Commissioner"), in his  
6 capacity as the court-appointed liquidator of the insolvent estate of HIH America Compensation  
7 and Liability Insurance Company ("HIH America") seeks court approval for his assignment for  
8 value of two proofs of claim to Amberley Alternative Assets, Ltd. ("Amberley").

9           6. The Commissioner was appointed as conservator of HIH America by this Court on  
10 March 30, 2001 and was thereafter appointed as liquidator of HIH America by this Court on May  
11 8, 2001, pursuant to Insurance Code sections 1011 and 1016, respectively.

12           7. As liquidator, the Commissioner has been directed to liquidate and wind up the  
13 business affairs of HIH America in accordance with the applicable provisions of the Insurance  
14 Code.

15           8. HIH America was authorized to transact the business of workers' compensation in  
16 California (and numerous other states) under the authority of a Certificate of Authority issued by  
17 the Commissioner.

18           9. At approximately the same time that HIH America was placed into conservation, and  
19 then liquidation, in 2001 by order of this Court, the company's Australian parent, HIH Casualty  
20 & General Insurance, Ltd., ("HIH Casualty"), entered into parallel liquidation proceedings in  
21 Australia.

22           10. The Commissioner, as liquidator of HIH America, has two approved claims in the  
23 Australian liquidation of HIH Casualty in the total amount of \$3,736,295.

24           11. The first approved claim is in the amount of \$2,302,429, and is comprised of amounts  
25 owing on an Intercompany Reinsurance Treaty in which HIH America was a party.

26           12. The second approved claim was assigned to the Commissioner by a sister company,  
27 HIH America Insurance Company of Hawaii ("HIH Hawaii"), as part of its liquidation. The  
28 claim resulted from HIH Hawaii's participation with HIH Casualty in a Quota Share Reinsurance

1 treaty. HIH Hawaii's claim was approved by the Australian Liquidator in the amount of  
2 \$1,433,866.

3 13. The Australian liquidator of HIH Casualty has paid a total of \$1,396,696.53 to date  
4 on the two claims as of the time the claims were evaluated for sale in March 2015.

5 14. The Australian liquidator of HIH Casualty's most recent published report, *Scheme*  
6 *Administrator's Annual Report to Creditors as of June 30, 2014*, has projected a distribution  
7 percentage of 34 percent to 36 percent on claims in the categories which include the two  
8 approved claims held by HIH America.

9 15. As of the March 2015 evaluation of the proof of claims for sale, approximately 33  
10 percent of each claim in the categories which include the two HIH America claims has already  
11 been distributed. As a result, the remaining additional payout on each of the two HIH America  
12 claims is anticipated to be in the one percent to three percent range. This would result in a  
13 combined total remaining payout on the two HIH America claims in the range of \$114,383.67 to  
14 \$132,737.41, with completion of the payouts to conclude at an uncertain future date.

15 16. The Commissioner anticipates closing the liquidation of the estate of HIH America in  
16 the near future. In contrast, the Australian liquidator has not given a time certain for the closure  
17 of the HIH Casualty estate, but has projected that the Australian liquidation is unlikely to be  
18 resolved for a period of two to three years. So that the closure of the liquidation of HIH America  
19 can move forward in an expeditious manner, it is in the estate's interest to assign the two claims  
20 for value.

21 17. The Liquidator has negotiated an agreement with Amberley for the assignment of the  
22 two HIH America claims to Amberley in consideration for payment to the HIH America estate of  
23 the amount of \$120,000 for both claims. A true and correct copy of the Assignment of Claims  
24 agreement is attached to the Oshita Declaration at Exhibit A.

25 18. The agreement with Amberley requires court approval as a condition for the  
26 assignment of the two claims.

27 19. The Commissioner believes that the agreed-upon payment of \$120,000 to the HIH  
28 America estate for the assignment of its two claims is fair and reasonable. If the Commissioner

1 were to wait for the Australian liquidator to complete payment on the claims, the estimated final  
2 distribution would be in the range of \$114,383.67 to \$132,737.41. The payment of \$120,000 falls  
3 well within that range and reflects a fair value for the transfer of these assets, especially when a  
4 present value discount, as well as a reasonable risk factor discount, are taken into account.

5 20. I have personal knowledge of the events to which I attest, all of which I acquired in  
6 the course of my employment with the CLO. I am over the age of eighteen years and could  
7 competently testify to all of the events to which I attest.

8 I hereby execute this declaration under penalty of perjury of the states of the State of  
9 California in San Francisco, California, on the 28<sup>th</sup> day of May, 2015.

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12 \_\_\_\_\_  
13 Dick Oshita

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# EXHIBIT A



## ASSIGNMENT OF CLAIMS

### 1. Assignment of Claims

HIH America Compensation & Liability Insurance Company in Liquidation ("Assignor") in consideration of the sum of \$120,000 (the "Purchase Price"), the sufficiency of which is hereby acknowledged, does hereby assign and transfer to Amberley Alternative Assets Limited, and its successor and assigns (the "Assignee") with offices at Walsingham House, 35 Seething Lane, London, EC3N 4AH, all of Assignor's right, title, and interest in the cash distributions on two approved claims in the liquidation of HIH Casualty & General Insurance Ltd., as more fully described in Attachment A, ("Approved Claims"), that have not been actually received by or credited to Assignor as of April 1, 2015.

### 2. Representations and Warranties

A. Representations of Assignor. Assignor represents and warrants to Assignee that (a) Assignor has not previously assigned, participated, sold, factored, pledged or otherwise transferred its rights concerning the Approved Claims designated in Attachment A to any third party, in whole or in part; (b) Assignor is the sole owner of, and has good legal and beneficial title to the Approved Claims described in Attachment A, free and clear of any liens, security interest or encumbrances of any kind or nature whatsoever; (c) except for payments received by Assignor prior to April 1, 2015, no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the rights being assigned; (d) neither the execution, delivery or performance of this Assignment nor the consummation of the transactions contemplated hereby will violate or contravene any law, rule, regulation, order, agreement, or instrument affecting Assignor or the rights to the Approved Claims; and (e) except for the approval of the HIH America Liquidation Court, no other consent is required for this Agreement to be binding and enforceable upon the Assignor.

B. Mutual Representations. Assignor and Assignee each represents and warrants to the other that: (a) it has adequate information concerning the rights being assigned to make an informed decision regarding the sale and purchase of the rights to the Approved Claims, and it has independently made its own analysis and decision to enter into this Assignment; (b) it has obtained or will obtain all consents and/or

acknowledgements, if any are needed, as a condition to, or otherwise in connection with, the execution, delivery and performance by it of this Agreement; (c) this Assignment constitutes the valid, legal and binding agreement of such party, enforceable against it in accordance with its terms. Assignor and Assignee acknowledge that: (i) the Purchase Price being paid by Assignee hereunder may differ both in kind and amount from the amount ultimately distributed with respect to the Approved Claims; and (ii) except as expressly set forth in this Assignment, neither Assignee, Assignor, nor any agent or representative of either has made any representation or warranties whatsoever to any other party hereto regarding the Approved Claims.

### **3. Payment of Purchase Price**

Assignee's obligation to pay the Purchase Price and to acquire the rights to further payments and distribution under the Approved Claims shall be subject to the satisfaction of each of the following conditions: (i) Assignee shall have received this assignment duly executed on behalf of Assignor; (ii) Assignee shall have received a copy of the Order of the HIH America Liquidation Court approving the transfer of Assignor's rights under the Approved Claims to Assignee and that Assignee will be entitled to receive all future distributions in respect to the Approved Claims and (iii) Assignor will provide wiring instructions to Assignee concerning the Purchase Price. The Purchase Price will be paid to Assignor in accordance with the wire instructions provided by Assignor, and will be paid within five business days of satisfaction of the conditions set forth herein in Section 3.

### **4. Further Assurances; Authority and Claim Enforcement**

Each party agrees to (i) execute and deliver, or cause to be executed and delivered, all such further documents as may be required, and (ii) take or cause to be taken all such other and further actions as the other party may reasonably request to effectuate the intent and purpose of this Agreement. Assignor hereby irrevocably appoints Assignee as its true and lawful attorney with respect to the Approved Claims and authorizes Assignee to act in Assignor's name, place and stead, to demand, sue for, compromise and recover all such consideration which is now, or may hereafter become due with respect to the Approved Claims herein assigned. Assignor grants unto Assignee full authority to do all things lawful and necessary to enforce the Assignor's rights under the Approved Claims pursuant to this Assignment. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such power at Assignee's sole option.

## 5. Notices and Distributions

As soon as is reasonably practicable upon the satisfaction of the conditions in Paragraph 3 herein, but in no event later than five business days thereafter, the Assignor shall transmit to the Australian Liquidator the Notice described in Attachment B. Thereafter, Assignor will forward to the Assignee any notices received from the Australian Liquidator with respect to the Approved Claims. Assignor further agrees that any future distribution received by Assignor on account of the Approved Claims, including any distribution received after April 1, 2015, shall upon full satisfaction of the conditions described in Paragraph 3 herein, constitute property of the Assignee to which the Assignee has an absolute right, and that Assignor will hold such property in restricted funds and will, at its own expense, deliver to Assignee within five (5) business days of receipt by Assignor any such distribution, together with any endorsement or document necessary to transfer such distribution to Assignee.

Notice to Assignor shall be provided to the following:

David Wilson, Deputy Liquidator  
HIH America Compensation & Liability Insurance Company in Liquidation  
P.O. Box 26894  
San Francisco, CA 94126-0894

With a copy to:

Jennifer Chambers  
California Department of Insurance  
45 Fremont Street, 24<sup>th</sup> Floor  
San Francisco, CA 94105

Notices to Assignee shall be provided to the following:

Sarah Bell  
Amberley Alternative Assets Limited  
Southgate House  
Southgate Street  
Gloucester  
GL1 1UB  
United Kingdom

## **6. Survival and Transferability**

The terms of this Assignment shall be binding upon, and shall inure to the benefit of Assignor, Assignee, and their respective successors and assigns. Assignor hereby acknowledges that Assignee may reassign the Transferred Rights together with all right, title, and interest of Assignee in and to this Assignment without consent of Assignor.

## **7. Governing Law, Jurisdiction, and Miscellaneous**

This Assignment constitutes the legal, valid, binding, and enforceable obligation of Assignor and Assignee, and is executed by each of Assignor's and Assignee's duly authorized representative. Headings in this Assignment are for convenience only and shall have no effect on the interpretation of this Assignment. THIS ASSIGNMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW PRINCIPLES. ANY ACTION RELATING TO THIS ASSIGNMENT MAY BE BROUGHT ONLY IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN FRANCISCO IN THE MATTER OF *INSURANCE COMMISSIONER vs. HIH AMERICA COMPENSATION & LIABILITY INSURANCE COMPANY*, Case No. CPF-01-320049 ("HIH America Liquidation Court"). ASSIGNOR AGREES THAT SERVICE OF PROCESS MAY BE MADE UPON IT BY MAILING A COPY OF SAID PROCESS TO ASSIGNOR AT THE ADDRESS SET FORTH ABOVE. IN ANY ACTION HEREUNDER, ASSIGNOR WAIVES ANY RIGHT TO DEMAND A TRIAL BY JURY.

## **8. Entire Agreement**

This Assignment constitutes the entire agreement between Assignor and Assignee with respect to the transaction contemplated herein and supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, representations and warranties in respect thereof, all of which have become merged and finally integrated into this Assignment upon the payment of the Purchase Price.

## **9. Counterparts**

This Assignment may be executed in multiple counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Transmission by telecopy, facsimile or other form of electronic transmission of an executed counterpart of this Agreement

shall be deemed to constitute due and sufficient delivery of such counterpart. Each fully executed counterpart of this Assignment shall be deemed to be a duplicate original.

**10. Modification and Waiver**

This Agreement shall not be changed, modified or amended except by an agreement in writing executed by all of the parties hereto. This Assignment has been drafted jointly by the parties hereto in full consultation with their respective attorneys, and no ambiguity in the terms of this Assignment shall be interpreted or construed against either of the parties hereto on the basis of the source of its preparation.

IN WITNESS WHEREOF, Assignor has duly executed this Assignment on this 17<sup>th</sup> day of April, 2015.

**ASSIGNOR: HIH America Compensation & Liability Insurance  
Company In Liquidation**

By: David E Wilson

Name: DAVID E WILSON

Title: SASCAAC Deputy Insurance Commissioner

**ASSIGNEE: Amberley Alternative Assets Limited**

By: Stephen Baxter

Name: STEPHEN BAXTER

Title: DIRECTOR

## ATTACHMENT A

### SCHEDULE OF APPROVED CLAIMS

1. Claim of HIH America Compensation & Liability Insurance Company in Liquidation in the amount of USD 2,302,429 against HIH Casualty & General Insurance Ltd., (ABN: 47 008 482 291).
2. Claim of HIH America Insurance Company of Hawaii in the amount of USD 1,433,866, against HIH Casualty & General Insurance Ltd., as assigned to HIH America Compensation & Liability Insurance Company. (ABN: 47 008 482 291)

ATTACHMENT B

[Name of Australian Liquidator Contact]

Date:

Dear \_\_\_\_\_:

The California Insurance Commissioner, as Liquidator of HIH America Compensation & Liability Insurance Company ("HIH America) advises that, effective [insert date], HIH America has assigned to Amberley Alternative Assets Limited (the "Assignee"), all of the Liquidator's right, title and interest in the following claims in the liquidation of HIH Casualty & General Insurance Ltd ("HIH Casualty"):

1. Claim of HIH America in the amount of USD 2,302,429 against HIH Casualty (ABN: 47 008 482 291)
2. Claim of HIH America in the amount of USD 1,433,866, against HIH Casualty (ABN: 47 008 282 291)

You are thus instructed and authorized to direct all notices and proceeds to the Assignee, at the following address:

Amberley Alternative Assets Limited  
Southgate House  
Southgate Street  
Gloucester GL1 1UB  
Attention: Sarah Bell

I enclose documentation relating to the two claims, as well as an Order from HIH America's Liquidation Court authorizing the assignment of claims to Amberley.

Please sign and the enclosed duplicate of this Notice as acknowledgement of your receipt. You may email a signed copy to my email address at: [chambersj@insurance.ca.gov](mailto:chambersj@insurance.ca.gov). Please do not hesitate to contact me if you have any questions.

Yours truly,

Jennifer Chambers  
Attorney III  
California Department of Insurance

Cc: Dick Oshita  
Sarah Bell

Enclosures

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) 622-2270  
7 E-mail: David.Lew@doj.ca.gov  
Attorneys for Applicant Insurance Commissioner of  
8 the State of California

**ELECTRONICALLY  
FILED**  
*Superior Court of California,  
County of San Francisco*  
**06/04/2015**  
**Clerk of the Court**  
BY: MAURA RAMIREZ  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11  
12  
13 **INSURANCE COMMISSIONER OF THE**  
14 **STATE OF CALIFORNIA,**

15 Applicant,

16 v.

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

20 Respondent.

Reservation No. 120314-03

Case No. CPF-01-320049

**DECLARATION OF SERVICE**

Date: January 28, 2015  
Time: 9:30 a.m.  
Dept: 302  
Judge: Hon. Ernest H. Goldsmith

21 SEE ATTACHED.  
22  
23

24 SF2001CV0406  
90459092.doc  
25  
26  
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28



**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 June 4, 2015, I served the followings:

- **NOTICE OF PAYMENT FOR COURT REPORTER'S FEE;**
- **NOTICE OF HEARING ON APPLICATION FOR COURT APPROVAL OF INSURANCE COMMISSIONER'S ASSIGNMENT FOR VALUE OF PROOFS OF CLAIM;**
- **APPLICATION FOR COURT APPROVAL OF INSURANCE COMMISSIONER'S ASSIGNMENT FOR VALUE OF PROOFS OF CLAIM;**
- **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR COURT APPROVAL OF INSURANCE COMMISSIONER'S ASSIGNMENT FOR VALUE OF PROOFS OF CLAIM; and**
- **DECLARATION OF DICK OSHITA IN SUPPORT OF APPLICATION FOR COURT APPROVAL OF INSURANCE COMMISSIONER'S ASSIGNMENT FOR VALUE OF PROOFS OF CLAIM.**

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:

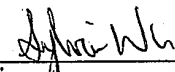
Conservation and Liquidation Office  
P. O. Box 26894  
San Francisco, CA 94126-0894

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

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

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 June 4, 2015, at Oakland, California.

Sylvia Wu  
Declarant

  
Signature