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*Exempt from filing fees per Govt.
Code § 6103*

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

10/21/2022
Clerk of the Court
BY: EDNALEEN ALEGRE
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.

Case No. CPF-01-320049

**NOTICE OF MOTION AND
MOTION TO REOPEN PROCEEDINGS
FOR LIMITED PURPOSE AND MOTION
FOR ORDER APPROVING
DISTRIBUTION OF SURPLUS
FUNDS TO APPROVED CLASS 2
CLAIMANTS; MEMORANDUM OF
POINTS AND AUTHORITIES**

**[Filed concurrently with Declaration of
Scott Pearce in support thereof]**

21 Date: November 21, 2022
22 Time: 9:30 a.m.
23 Dept: 302
24 Judge: Hon. Richard B. Ulmer Jr.

Trial Date: N/A
Action Filed: March 29, 2021

25 TO ALL PERSONS AND ENTITIES WHO HAVE APPEARED AND ASSERTED AN
26 INTEREST IN THE ESTATE OF HIH AMERICA COMPENSATION & LIABILITY
27 INSURANCE COMPANY IN LIQUIDATION:
28

1 PLEASE TAKE NOTICE that on November 21, 2022, at 9:30 a.m. in Department 302 of
2 the San Francisco County Superior Court, located at 455 Golden Gate Avenue, Suite 11000, San
3 Francisco, California, 94102, the Insurance Commissioner of the State of California will and
4 hereby does apply to the Court for a Motion (1) To Reopen Proceedings for a Limited Purpose
5 and (2) For an Order Approving Distribution of Surplus Funds to Approved Class 2 Claimants.

6 The motion is based upon this Notice of Motion, the Motion to Reopen Proceedings for
7 Limited Purpose and Motion for Order Approving Distribution of Surplus Funds to Approved
8 Class 2 Claimants attached hereto, the Memorandum of Points and Authorities, Declaration of
9 Scott Pearce in support thereof, all papers and pleadings on file in the above numbered case and
10 such other and further evidence as is permitted and requested by the Court at time of hearing.

11
12
13 Dated: October 21, 2022

Respectfully submitted,

14 ROB BONTA
15 Attorney General of California
16 LISA W. CHAO
17 Supervising Deputy Attorney General

18 

19 CAROLINE C. LAM
20 Deputy Attorney General
21 *Attorneys for Applicant Insurance*
22 *Commissioner of the State of California*

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1 **MOTION TO REOPEN PROCEEDINGS FOR LIMITED PURPOSE AND FOR ORDER**
2 **APPROVING DISTRIBUTION OF SURPLUS ASSETS TO APPROVED CLASS 2**
3 **CLAIMANTS**

4 **FACTUAL BACKGROUND**

5 Respondent HIH America Compensation & Liability Insurance Company (HIH America)
6 was a corporation duly organized and existing under and by virtue of the laws of the State of
7 California. Under a Certificate of Authority issued by the Insurance Commissioner in his
8 regulatory capacity, HIH America was authorized to transact the business of liability and
9 workers' compensation insurance. (Declaration of Scott Pearce (Pearce Decl.) ¶ 5.)

10 On March 30, 2001, upon the Insurance Commissioner's application and pursuant to
11 Insurance Code section 1011, this Court appointed the Insurance Commissioner as Conservator of
12 HIH America. (See Ins. Code, § 1011; Pearce Decl. ¶ 6, Ex. A.)

13 On May 8, 2001, upon the Insurance Commissioner's application and pursuant to Insurance
14 Code section 1016, this Court found HIH America to be statutorily insolvent and it terminated the
15 Insurance Commissioner's appointment as Conservator and appointed the Insurance
16 Commissioner as Liquidator (Liquidator or Commissioner). (See Ins. Code, § 1016; Pearce Decl.
17 ¶ 7, Ex. B.)

18 Over the course of the next 15 years, the Liquidator marshaled and monetized HIH
19 America's assets as well as adjusted claims and released funds to the approved Class 2 claimants
20 including insurance guaranty associations (IGAs) that made claims payments to HIH America's
21 policyholders. (Pearce Decl. ¶ 8.)

22 On December 31, 2015, upon the Liquidator's application, this Court entered an Order: (1)
23 Approving Payment of Liquidator's Expenses; (2) Approving the Final Distribution of Assets;
24 and (3) Closing the Estate by terminating the liquidation proceeding and discharging the
25 Insurance Commissioner as Liquidator of HIH America. (Pearce Decl. ¶ 9, Ex. C.)

26 On February 2, 2016, the Liquidator filed with this Court the Declaration of Scott Pearce
27 Confirming Distribution of Assets Pursuant to Court Order and Closing the Estate of HIH
28 America Compensation & Liability Company (Pearce Declaration of Compliance). The amounts
distributed to the Class 2 claimants, both IGA and non-IGA, resulted in a distribution percentage

1 of 55.42% of such claims in the liquidation. Pursuant to this Court’s Order, the Liquidator
2 distributed a total of \$14,823,407 to approved Class 2 claimants and reserved \$489,313 to pay
3 remaining administrative and closing costs associated with the estate. (Pearce Decl. ¶ 10, Ex. D.)

4 After filing the Pearce Declaration of Compliance in February 2016, the Liquidator has
5 taken all actions necessary and in accordance with the terms of this Court’s December 15, 2015,
6 Order. The Commissioner considers himself discharged as the Conservator and Liquidator of the
7 HIH America Compensation & Liability Company. (Pearce Decl. ¶ 11.)

8 **BASIS FOR REOPENING PROCEEDINGS – SURPLUS FUNDS**

9 As part of the HIH America liquidation proceeding the Commissioner as Liquidator filed
10 claims in the Reliance Insurance Company liquidation in Pennsylvania (Reliance). The claims
11 were eventually approved as general creditor claims and monitored for years with little indication
12 of any prospect for a material recovery. Ultimately, the Liquidator could not justify keeping the
13 HIH America estate open and incur additional administrative expenses to await uncertain
14 recoveries from other liquidation estates. (Pearce Decl. ¶ 12.)

15 Approximately five years after the HIH America estate was closed, the Reliance liquidation
16 estate received the Commonwealth Court of Pennsylvania’s approval to release a final
17 distribution of assets to Reliance’s approved general creditors. As a result, on October 21, 2021,
18 the California Conservation and Liquidation Office (the CLO) received payments totaling
19 \$1,470,866.05 for the benefit of the HIH America estate from the Reliance liquidation. The
20 recovery represented approximately 4.4% of HIH America’s approved claim (\$33,428,774) in the
21 Reliance liquidation. (Pearce Decl. ¶ 13.)

22 As of July 31, 2022, the CLO is currently holding \$1,452,426 in HIH America assets. The
23 balance is subject to market value fluctuations and administrative expenses associated with
24 essential estate maintenance. The CLO estimates that it will require approximately \$100,000 in a
25 final closing reserve to cover the costs to prepare and release a distribution of the HIH America
26 assets held by the CLO. The amount of the requested closing reserve reflects the expenses
27 estimated with reopening the proceedings, preparing for and making the distribution, as well as
28 completing all post distribution requirements necessary to properly close the proceeding

1 thereafter. The closing reserves includes estimated costs associated with post-distribution
2 procedures such as re-issuing claim payments and other claimant outreach and completing final
3 closure requirements, including escheating all unclaimed funds and submitting final compliance
4 filings with the court. (Pearce Decl. ¶ 14.)

5 After subtracting the requested closing reserves, the HIH America estate has approximately
6 \$1,352,000 in HIH America assets to distribute on a pro rata basis to approved, Class 2 claimants,
7 and therefore respectfully requests this Court to reopen the HIH America estate proceedings for
8 the sole purpose of authorizing the Commissioner as Liquidator of HIH America to make a pro
9 rata distribution of \$1,352,000 to approved, HIH America Class 2 claimants. (Pearce Decl. ¶ 15.)

10 The list of approved HIH America Class 2 claimants (identified by their proof of claim
11 number) and the amount each will receive from the distribution of surplus funds are submitted
12 with this motion and attached as Exhibit E to the Declaration of Scott Pearce. (Pearce Decl. ¶ 16,
13 Ex. E.)

14 However, the Commissioner further proposes to make a distribution only to approved HIH
15 America Class 2 claimants whose distribution amounts to \$5.00 or more¹. The Commissioner
16 requests a *de minimis* dollar threshold for the distribution of surplus funds because the
17 administrative expenses associated with preparing, issuing, and tracking checks for less than
18 \$5.00 would be many multiples of the total amount distributed for these checks. While the HIH
19 America estate would incur expected expenses for the preparation and mailing of these *de*
20 *minimis* checks, there is significant expense involved with every other aspect of the process, such
21 as tracking uncashed checks, answering inquiries, tracking returned mail, reaching out to
22 claimants, and potentially re-issuing checks that may have been lost. (Pearce Decl. ¶ 17.)

23
24 ¹ There are 87 claimants whose distribution amounts to \$5.00 or more. Out of those 87
25 claimants, 23 claimants are on hold due to “bad addresses,” or incomplete and/or inaccurate
26 addresses that resulted in the CLO’s mailing being returned. The CLO relies on the best-known
27 addresses provided by the creditor, and many of these 23 claimants are on hold from the last
28 distribution. Despite substantial effort to locate these individuals, the CLO has not been able to
obtain better addresses through its additional outreach, including searching through national
address queries and direct mailers. Rather than incur the expense of mailing the present motion,
its supporting documents, and the surplus distribution amounts to the “bad addresses” of the 23
claimants on hold, the CLO will hold these funds and escheat them to the respective state.

1 The amount of administrative expenses the Commissioner would have to reserve in order to
2 distribute the *de minimis* checks would not make economic sense. The sum total distributed to
3 Class 2 claimants whose distribution amounts are less than \$5.00 would be \$146.80. The
4 Commissioner would most likely incur expenses far greater than the total amount of *de minimis*
5 checks in order to distribute these amounts. There are 111 Class 2 claimants whose distribution
6 amounts are less than \$5.00. Of those 111 claimants, 52 have distribution amounts of less than
7 \$1.00. As is evident, it would be wasteful of estate assets to incur expenses of thousands of
8 dollars to issue and track checks of such *de minimis* amounts. Accordingly, the Commissioner
9 seeks the Court’s authorization for the Commissioner to forgo a pro rata distribution to Class 2
10 claimants who would receive *de minimis* checks, or distribution amounts less than \$5.00. The
11 funds that would otherwise be distributed through these *de minimis* checks —\$146.80— will be
12 absorbed as part of the revised closing budget.

13 WHEREFORE, the Insurance Commissioner prays for an order that:

- 14 1. *Insurance Commissioner of the State of California v. HIH America Compensation &*
15 *Liability Insurance Company*, Case No. CPF-01-320049, is reopened for the sole and limited
16 purpose of making a distribution of surplus assets to Class 2 claimants whose pro rata distribution
17 is \$5.00 or greater;
- 18 2. The Insurance Commissioner is authorized to forgo the pro rata distribution to Class 2
19 claimants whose distribution amount is less than \$5.00;
- 20 3. The Insurance Commissioner is authorized to retain \$100,000 in an administrative
21 budget to pay for the costs to prepare and release the distribution;
- 22 4. *Insurance Commissioner of the State of California v. HIH America Compensation &*
23 *Liability Insurance Company*, shall be closed upon the filing of a declaration that the
24 Commissioner has completed its distribution to Class 2 claimants in accordance with this Court’s
25 order in this matter;
- 26 5. If there are any assets remaining after the Insurance Commissioner has completed all
27 his closing tasks, such remainder shall be escheated to the fund appropriated for the maintenance
28 of the Department of Insurance pursuant to Insurance Code section 12937; and

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6. The Insurance Commissioner is authorized to take any action necessary to accomplish the purpose of this Order.

Dated: October 21, 2022

ROB BONTA
Attorney General of California
LISA W. CHAO
Supervising Deputy Attorney General



CAROLINE C. LAM
Deputy Attorney General
*Attorneys for Applicant Insurance
Commissioner of the State of California*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The California Insurance Commissioner, in his capacity as Liquidator of HIH America
3 Compensation & Liability Insurance Company (HIH America), completed the liquidation of HIH
4 America when he made a final distribution of assets in January 2016. (Declaration of Scott
5 Pearce (Pearce Decl.) ¶ 10, Ex. D.) The Insurance Commissioner’s Conservation and Liquidation
6 Office (the CLO) has since received a distribution of \$1,470,866.05 from the Reliance Insurance
7 Company liquidation for the benefit of the HIH America estate. As of July 31, 2022, the CLO is
8 currently holding \$1,452,426 in HIH America assets. The balance is subject to market value
9 fluctuations and administrative expenses associated with essential estate maintenance.

10 California case law supports the broad grant of powers accorded the Commissioner when
11 he is conserving, rehabilitating, and/or liquidating insurance companies.

12 The Insurance Commissioner as liquidator acts on behalf of the company’s creditors and
13 policyholders. In *Jones & Sons v. Independent Insurance Company* (1942) 52 Cal.App.2d 374,
14 378-379, the Court of Appeal noted that “section 1057 of the Insurance Code provides that the
15 Commissioner shall be deemed to be a trustee for all creditors. It was his duty to collect the
16 assets (Ins. Code § 1037) and distribute them ratably among the creditors (Ins. Code § 1037),
17 subject to certain priorities (Ins. Code § 1033)”

18 The Insurance Commissioner as liquidator executes his powers with broad discretion,
19 subject to review by the court under the “abuse of discretion” standard. (*In Re Executive Life*
20 *Insurance Company* (1995) 32 Cal.App.4th 344, 356).

21 Here, the Insurance Commissioner has determined that there are sufficient surplus assets
22 to warrant reopening the HIH America proceedings in order to make a distribution to Class 2
23 claimants. The Insurance Commissioner has further determined it would be wasteful to incur
24 expenses for making a distribution to Class 2 claimants with claims less than \$5.00 because the
25 individual amounts are *de minimis*.

26 **CONCLUSION**

27 The Insurance Commissioner respectfully requests this Court to reopen the above
28

1 captioned case for the sole and limited purpose of making a distribution of surplus assets of
2 approximately \$1,352,000 to approved HIH America Class 2 claimants whose distribution
3 amount is \$5.00 or great; to authorize the HIH America estate to reserve \$100,000 to pay for the
4 administrative costs to complete the distribution and close the proceeding thereafter; and to
5 authorize the Commissioner to forgo any distribution to Class 2 claimants with *de minimis*
6 amounts because distribution of such claims would not be economically prudent.

7
8 Dated: October 21, 2022

Respectfully submitted,

9 ROB BONTA
10 Attorney General of California
11 LISA W. CHAO
12 Supervising Deputy Attorney General



13 CAROLINE C. LAM
14 Deputy Attorney General
15 *Attorneys for Applicant Insurance*
16 *Commissioner of the State of California*

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Insurance Commissioner of the State of California v. HHH American Compensation and Liability Insurance Company, Superior Access Insurance Services, Inc., Moving Party**
Superior Court of California, County of San Francisco, Case No.: CPF-01-320049

I hereby certify that on October 21, 2022, I electronically filed the following documents with the Clerk of the Court by using the Court's electronic filing system (EFS) operated by ACE (Messenger and Attorney Service, Inc.): **NOTICE OF MOTION AND MOTION TO REOPEN PROCEEDINGS FOR LIMITED PURPOSE AND MOTION FOR ORDER APPROVING DISTRIBUTION OF SURPLUS FUNDS TO APPROVED CLASS 2 CLAIMANTS; MEMORANDUM OF POINTS AND AUTHORITIES**

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; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230.

On October 21, 2022, I served the attached **NOTICE OF MOTION AND MOTION TO REOPEN PROCEEDINGS FOR LIMITED PURPOSE AND MOTION FOR ORDER APPROVING DISTRIBUTION OF SURPLUS FUNDS TO APPROVED CLASS 2 CLAIMANTS; MEMORANDUM OF POINTS AND AUTHORITIES** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on October 21, 2022, at Los Angeles, California.

Norma L. Herrera-Gilbody
Declarant

Norma L. Herrera-Gilbody
Signature

Case Name: **Insurance Commissioner of the State of California v. HIH American Compensation and Liability Insurance Company, Superior Access Insurance Services, Inc., Moving Party**
Superior Court of California, County of San Francisco, Case No.: CPF-01-320049

SERVICE LIST

California Insurance Guarantee Association
PO BOX 29066
Glendale, CA 91209-9066

Illinois Insurance Guaranty Fund
150 S Wacker Dr, Ste 2970
Chicago, IL 60606

Michigan P&C Insurance Guaranty Assoc
PO BOX 531266
Livonia, MI 48153-1266

Colorado Insurance Guaranty Association
1720 S Bellaire St., Ste 408
Denver, CO 80222-4320

Wisconsin Insurance Security Fund
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Madison, WI 53718-6797

Nevada Insurance Guaranty Association
3821 W Charleston Blvd Ste. 100
Las Vegas, NV 89102-1863

Indiana Insurance Guaranty Association
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Indianapolis, IN 46268

Florida Worker's Comp Ins. Guaranty Assoc
PO BOX 15159
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Texas P&C Insurance Guaranty Association
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Broadview, IL 60155-3700

Nebraska P&C Insurance Guaranty Association
c/o Western Guaranty Fund Services
1720 South Bellaire St., Suite 408
Denver, CO 80222

Nestle Prepared Foods Co
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Twenty First Century Resources
7486 Woodbriar Ln
West Bloomfield, MI 48322-2887

Kentucky Insurance Guaranty Association
10605 Shelbyville Rd Ste 101
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Warren, MI 48092-1699

Homak Manufacturing
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R & M Trucking., Inc.
3720 River Rd., Ste. 100
Franklin Park, IL 60131-2171

Hartz Construction Co., Inc.
9026 Heritage Pkwy
Woodridge, IL 60517-4939

C & D Heating & Cooling Inc.
160 W York Ave.
West Chicago, IL 60185-1951

Safford Unified School District #1
734 W 11TH ST
Safford, AZ 85546-2967

Kroeschell, Inc.
3222 N Kennicott Ave
Arlington Heights, IL 60004-1428

Melco Transfer, Inc.
PO BOX 604
Manteno, IL 60950-0604

Suburban Job Link Corporation
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Chicago, IL 60604-2233

John & Mary Beth Magouirk
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Best Staff Solutions
3000 Town Ctr Ste 1515
SOUTHFIELD, MI 48075-1186

Northland Investments, Inc.
PO BOX 250
Houghton Lake, MI 48629-0250

Fred Radandt Sons, Inc.
1800 Johnston Dr
Manitowoc, WI 54220-1333

Flooring Resources Corporation
600 Pratt Blvd
Elk Grove Village, IL 60007-5113

Rayner Covering Systems, Inc.
665 Schneider Dr
South Elgin, IL 60177-1162

Rex D. Putnam
339 Moser Dr
Bronson, MI 49028-8319

ODM Tool And Mfg.
9550 Joliet Rd.
Hodgkins, IL 60525-4148

Gary's Metals, Inc.
405 Scout Cabin Rd.
Carterville, IL 62918-3274

Nationwide Installation
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Ada, MI 49301-8367

Machinery Components
1833 Downs Dr.
West Chicago, IL 60185-1805

Total Assurance Company
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Petoskey, MI 49770-8797

Iowa Insurance Guaranty Association
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Des Moines, IA 50309-8004

Ayala Boring Construction
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Gee Cartage, Inc.
PO BOX 118
Lansing, IL 60438-0118

Van Drunen Ford Co., Inc.
3233 183rd St.
Homewood, IL 60430-2601

Polymicro Technologies, Inc
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Phoenix, AZ 85023-1246

Molycorp Metals And Alloys
8220 W Harrison St.
Tolleson, AZ 85353-3330

Poly-Pak & Ship Inc
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Vandalia, IL 62471-3400

Blaise Krautkramer
725 3rd ST
Algoma, WI 54201

Ornelas Construction Company
12520 W Horseshoe Dr.
New Lenox, IL 60451-2388

United Memorial Health System
615 S Bower St
Greenville, MI 48838-2614

Badger Basket Company
PO BOX 227
Edgar, WI 54426-0227

Harry W. Kuhn, Inc.
207 Illinois Ave
Saint Charles, IL 60174-2149

Insulated Panel Co.
3218 Wains Way
Oakland, MI 48363

Lansing Housing Commission
419 Cherry St
Lansing, MI 48933

Kane County Flea Market, Inc.
PO BOX 549
St Charles, IL 60174-0549

J & B Hauling, Inc.
5110 South Rd.
Gurnee, IL 60031-1851

Grier Abrasive Company, Inc.
123 W Taft Dr
South Holland, IL 60473-2034

Olympic Caulking Co
600 Jamison Ln.
Hoffman Estates, IL 60169-4129

RCI Systems, Inc.
1220 W Geneva Dr.
Tempe, AZ 85282-3433

Special Insurance Services
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Springfield, IL 62704-2732

Warwick Publishing Company
Attn: Jaci Schalow
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St Charles, IL 60174-4289

Milwaukee Steel Converting Corp.
400 W Burkhard Ct
Oak Creek, WI 53154-2051

Dean's Eggs Inc.
811 S Ferry Dr
Lake Mills, WI 53551-1832

UAW Local 974
3025 Springfield Rd
East Peoria, IL 61611-4880

Appeal For Charities & Goodwill
50 W 71ST St.
Chicago, IL 60621-3648

Ace Electric
910 S Cumberland Ave.
Park Ridge, IL 60068-4637

Industrial Commission Of Arizona
ATTN: Andrew Wade-Chief Counsel
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Jefferson City, MO 65109-6885

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