

1 ROB BONTA  
Attorney General of California  
2 LISA W. CHAO  
Supervising Deputy Attorney General  
3 CAROLINE C. LAM  
Deputy Attorney General  
4 State Bar No. 298045  
300 South Spring Street, Suite 1702  
5 Los Angeles, CA 90013-1230  
Telephone: (213) 269-6224  
6 Fax: (916) 731-2144  
E-mail: Caroline.Lam@doj.ca.gov  
7 *Attorneys for Applicant Insurance Commissioner  
of the State of California*

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

ELECTRONICALLY  
**FILED**

Superior Court of California,  
County of San Francisco

**10/03/2022**  
Clerk of the Court

BY: SANDRA SCHIRO  
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10  
11  
12 **INSURANCE COMMISSIONER OF THE  
STATE OF CALIFORNIA,**

13  
14 Applicant,

15 v.

16  
17  
18 **SABLE INSURANCE COMPANY, A  
CALIFORNIA DOMICILED INSURANCE  
19 COMPANY,**

20 Respondent.  
21

Case No. CGC-01-321201

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

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

Date: October 27, 2022

Time: 9:30 a.m.

Dept: 302

Judge: Hon. Richard B. Ulmer Jr.

Trial Date: N/A

Action Filed: May 9, 2001

22  
23  
24 TO ALL PERSONS AND ENTITIES WHO HAVE APPEARED AND ASSERTED AN  
25 INTEREST IN THE ESTATE OF SABLE INSURANCE COMPANY IN LIQUIDATION:

26 PLEASE TAKE NOTICE that on October 27, 2022, at 9:30 a.m. in Department 302 of the  
27 San Francisco County Superior Court, located at 455 Golden Gate Avenue, Suite 11000, San  
28

1 Francisco, California, 94102, the Insurance Commissioner of the State of California will apply to  
2 the Court for a Motion (1) To Reopen Proceedings for a Limited Purpose and (2) For an Order  
3 Approving Distribution of Surplus Reserves to Approved Class 2 Claimants.

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

9  
10 Dated: September 27, 2022

Respectfully submitted,

11 ROB BONTA  
12 Attorney General of California  
13 LISA W. CHAO  
14 Supervising Deputy Attorney General

15 

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

20 SF2001CV0612  
21 65413441.docx  
22  
23  
24  
25  
26  
27  
28

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

10 On May 10, 2001, upon the Insurance Commissioner's application and pursuant to  
11 Insurance Code section 1011, this Court placed Sable into conservation and appointed the  
12 Insurance Commissioner as Conservator of Sable. (See Ins. Code, § 1011; Pearce Decl. ¶ 6.)

13 On July 17, 2001, upon the Insurance Commissioner's application and pursuant to  
14 Insurance Code section 1016, this Court found Sable to be statutorily insolvent, 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. A.)

18 Over the course of the next 10 years, the Liquidator marshaled and monetized Sable's  
19 assets; terminated real estate and equipment leases; disposed of furniture, fixtures, and  
20 equipment; and adjusted claims and released funds to the approved Class 2 claimants, including  
21 insurance guaranty associations (IGAs) that made claims payments to Sable's policyholders.  
(Pearce Decl. ¶ 8.)

22 On May 6, 2011, 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 Sable. (Pearce Decl. ¶ 9, Ex. B.)

26 On July 26, 2011, the Liquidator filed with this Court the Declaration of Robert Fernandez  
27 Confirming Final Distribution of Assets Pursuant to Court Order and Closing the Estate of Sable  
28 Insurance Company (Fernandez Declaration of Compliance). Each approved Class 2 claimant,

1 both IGA and non-IGA, received approximately 45.12% of their approved claim in the  
2 liquidation. Pursuant to this Court’s Order, the Liquidator distributed a total of approximately  
3 \$638,844.00 to approved Class 2 claimants and reserved \$192,617.00 for payment of  
4 administrative expenses and for administrative and closing costs. (Pearce Decl. ¶ 10, Ex. C.)

5 After filing the Fernandez Declaration of Compliance in July 2011, the Liquidator has taken  
6 all actions necessary and in accordance with the terms of this Court’s May 6, 2011, Order. The  
7 Commissioner considers himself discharged as the Conservator and Liquidator of the Sable.  
8 (Pearce Decl. ¶ 11.)

### 9 BASIS FOR REOPENING PROCEEDINGS – SURPLUS RESERVES

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

16 Approximately ten years after the Sable estate was closed, the Reliance liquidation estate  
17 received the Commonwealth Court of Pennsylvania’s approval to release a final distribution of  
18 assets to Reliance’s approved general creditors. As a result, on October 21, 2021, the California  
19 Conservation and Liquidation Office (the CLO) received payments totaling \$1,499,874.66 for the  
20 benefit of the Sable estate from the Reliance liquidation. The recovery represented approximately  
21 4.4% of Sable’s approved claim (\$34,088,060.35) in the Reliance liquidation. (Pearce Decl. ¶  
22 13.)

23 As of July 31, 2022, the CLO is currently holding \$1,496,811 in Sable assets. This balance  
24 is subject to market value fluctuations and administrative expenses associated with essential  
25 estate maintenance. The CLO estimates that it will require approximately \$75,000 in a final  
26 closing reserve to cover the costs to prepare and release a distribution of the Sable America assets  
27 held by the CLO. The amount of the requested closing reserve reflects the expenses estimated  
28 with reopening the proceedings and making the distribution as requested herein. The closing

1 reserves also include estimated costs associated with post-distribution procedures (re-issues and  
2 claimant outreach) and completing final closure requirements such as escheating any unclaimed  
3 assets and submitting a final compliance filing with the court. (Pearce Decl. ¶ 14.)

4 After subtracting the requested closing reserves, the Sable estate has approximately  
5 \$1,421,000 in assets to distribute to approved, Class 2 claimants and therefore respectfully  
6 requests this Court to reopen the Sable proceedings for the sole purpose of authorizing the  
7 Commissioner as Liquidator of Sable to make a pro rata distribution of \$1,421,000 to approved,  
8 Sable Class 2 claimants. (Pearce Decl. ¶ 15.)

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

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

13 1. *Insurance Commissioner of the State of California v. Sable Insurance Company*, Case  
14 No. CGC-01-321201, is reopened for the sole and limited purpose of making a distribution of  
15 surplus assets to Class 2 claimants;

16 2. The Insurance Commissioner is authorized to retain \$75,000 in an administrative  
17 budget to pay for the costs to prepare and release the distribution;

18 3. *Insurance Commissioner of the State of California v. Sable Insurance Company*, Case  
19 No. CGC-01-321201, shall be closed upon the filing of a declaration that the Commissioner has  
20 completed its distribution to Class 2 claimants in accordance with this Court's order in this  
21 matter;

22 4. If there are any assets remaining after the Insurance Commissioner has completed all  
23 his closing tasks, such remainder shall be escheated to the fund appropriated for the maintenance  
24 of the Department of Insurance pursuant to Insurance Code section 12937; and

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

27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: September 27, 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 Sable Insurance  
3 Company (Sable), completed the liquidation of Sable when he made a final distribution of assets  
4 in May 2011. (Declaration of Scott Pearce (Pearce Decl.) ¶ 10, Ex. C.) The Insurance  
5 Commissioner’s Conservation and Liquidation Office (the CLO) has since received a distribution  
6 of \$1,499,874.66 from the Reliance Insurance Company liquidation for the benefit of the Sable  
7 estate.

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

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

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

19 Here, the Insurance Commissioner has determined that there are sufficient surplus assets  
20 to warrant reopening the Sable proceedings in order to make a distribution to Class 2 claimants.

21 **CONCLUSION**

22 The Insurance Commissioner respectfully requests this Court to reopen the above  
23 captioned case for the sole and limited purpose of making a distribution of surplus assets of  
24 approximately \$1,421,000 to approved Sable Class 2 and to authorize the Sable estate to reserve  
25 \$75,000 to pay for the administrative costs to complete the distribution.  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: September 27, 2022

Respectfully submitted,

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*



**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: ***Insurance Commissioner v. Sable Insurance Company***  
Case No.: **CGC-01-321201**

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 with postage thereon fully prepaid that same day in the ordinary course of business.

On September 28, 2022, I served the attached **NOTICE OF MOTION AND MOTION TO REOPEN PROCEEDINGS FOR LIMITED PURPOSE AND MOTION FOR ORDER APPROVING DISTRIBUTION OF SURPLUS RESERVES TO APPROVED CLASS 2 CLAIMANTS; MEMORANDUM OF POINTS AND AUTHORITIES** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230, 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 September 28, 2022, at Los Angeles, California.

Cecilia Apodaca

\_\_\_\_\_  
Declarant

*/s/ Cecilia Apodaca*

\_\_\_\_\_  
Signature

## SERVICE LIST

JOE L. COELHO  
P.O. BOX 3640  
TURLOCK, CA 95381-3640

ST. LOUIS DEVELOPMENT CORPORATION  
THOMAS J. GOEDEL, ASST. COUNSEL  
1200 MARKET ST., RM 314  
ST. LOUIS, MO 63103-2806

ROYAL TRUCKING  
P.O. BOX 6085  
1420 ROYAL INDUSTRIAL WAY  
CONCORD, CA 94524-1085

NEVADA INS. GUARANTY ASSOC.  
1635 Village Center Circle, Ste. 170  
Las Vegas, NV 89134

CF&T AVAILABLE CONCRETE PUMPING, INC.  
ATTN: CHRIS MCDONALD  
1970 NATIONAL AVE  
HAYWARD, CA 94545-1710

ILLINOIS INSURANCE GUARANTY FUND  
150 S. Wacker Drive, Suite 2970  
Chicago, IL 60606

INDIANA INSURANCE GUARANTY ASSOCIATION  
3502 Woodview Trace, Ste. 100  
Indianapolis, IN 46268

MISSOURI P&C INSURANCE GUARANTY ASSOC.  
2210 Missouri Blvd  
Jefferson City, MO 65109

CALIFORNIA INSURANCE GUARANTY ASSOCIATION  
c/o Brad Roeber  
P.O. Box 29066  
Glendale, CA 91209