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10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO  
12

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 FOR SECOND  
DISTRIBUTION OF ASSETS  
TO STATE INSURANCE  
GUARANTY ASSOCIATIONS  
OR FUNDS; MEMORANDUM  
OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

20 Date: December 29, 2005  
21 Time: 9:30 a.m.  
22 Dept: 301  
23 Judge: Hon. James L. Warren  
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OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Date: December 29, 2005  
Time: 9:30 a.m.  
Dept: 301  
Judge: Hon. James L. Warren

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

24 PLEASE TAKE NOTICE THAT the hearing on the Verified Application for Order  
25 Authorizing Proposal for Second Distribution of Assets to State Insurance Guaranty Associations  
26 or Funds filed by applicant Insurance Commissioner of the State of California ("Commissioner")  
27 has been set for December 29, 2005 at 9:30 a.m., or as soon thereafter as counsel can be heard, in  
28 Department 301 of this Court, at 400 McAllister Street, San Francisco, California.

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

9 Dated:

10           BILL LOCKYER  
11           Attorney General

12           RANDALL P. BORCHERDING  
13           Supervising Deputy Attorney General

14           ANNE MICHELLE BURR  
15           Deputy Attorney General

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18           *David Lew*  
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20           DAVID LEW

21           Attorneys for Applicant Insurance Commissioner  
22           of the State of California  
23  
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1 **VERIFIED APPLICATION FOR ORDER AUTHORIZING PROPOSAL FOR SECOND**  
2 **DISTRIBUTION 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 of 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 compensation insurance transacted in this state. At the time that the Commissioner secured the  
24 approval of the Court, the Company had insufficient assets to make any additional distributions  
25 of assets to other state guaranty funds pursuant to Insurance Code section 1035.5. The  
26 Commissioner advised the Court, however, that should it become economically feasible to make  
27 additional distributions, the Commissioner would return to this Court for authorization.

28 Subsequently, having received substantial additional funds by virtue of a cancellation  
agreement with a reinsurer, the Commissioner sought approval from this Court to make an early

1 access distribution to the California Insurance Guarantee Association and other state insurance  
2 guaranty associations or funds. On June 28, 2004, this Court approved the Commissioner's  
3 request, pursuant to Insurance Code section 1035.5, to make such a distribution in the amount of  
4 \$25,000,000.

5 As a result of several reinsurance commutations, the Commissioner has received  
6 substantial additional assets and now requests approval to make a second early access  
7 distribution to the California Insurance Guarantee Association and other state insurance guaranty  
8 associations or funds. Specifically, as of September 30, 2005, net available assets of the estate of  
9 HIH America total \$169,818,453, from which the Commissioner now proposes to make a second  
10 early access distribution in the approximate amount of \$85,000,000. (See attached Exhibit A  
11 ("HIH Insurance, 3rd Quarter 2005 Early Access Distribution").)

12 As of June 30, 2005, a total of 17 guaranty funds have paid a total of \$318,555,983 in  
13 losses on behalf of HIH America. Specifically, the Special Fund of the Industrial Commission of  
14 Arizona has paid \$656,542, the California Insurance Guarantee Association has paid  
15 \$290,158,072, the Colorado Insurance Guaranty Association has paid \$1,074,494, the Florida  
16 Workers Compensation Insurance Guaranty Association has paid \$195,599, the Hawaii Insurance  
17 Guaranty Association has paid \$1,905,090, the Illinois Insurance Guaranty Fund has paid  
18 \$16,266,620, the Indiana Insurance Guaranty Association has paid \$452,029, the Iowa Insurance  
19 Guaranty Association has paid \$7,301, the Kentucky Insurance Guaranty Association has paid  
20 \$69,151, the Michigan Property and Casualty Guaranty Association has paid \$4,757,262, the  
21 Missouri Property and Casualty Insurance Guaranty Association has paid \$730, the Nebraska  
22 Property and Liability Insurance Guaranty Association has paid \$114,815, the Nevada Insurance  
23 Guaranty Association has paid \$902,073, the Oregon Insurance Guaranty Association has paid  
24 \$7,517, the Texas Property and Casualty Insurance Guaranty Association has paid \$115,082, the  
25 Utah Property and Casualty Insurance Guaranty Associations has paid \$40,227, and the  
26 Wisconsin Insurance Security Fund has paid \$1,833,381. (See attached Exhibit B ("HIH  
27 Insurance 3rd quarter 2005 Early Access Distribution Detail of individual IGA distribution  
28 amounts."))

The Commissioner's proposal with respect to HIH America is to distribute and pay 71.3704 percent of the paid losses through June 30, 2005 of each of the above-referenced guaranty funds, for a total payment to all funds of \$85,000,001. Subtracting the total proposed distribution of \$85,000,001 from HIH America's total net available assets of \$169,818,453 would leave HIH America with remaining net assets in the amount of approximately \$85 million. (See attached Exhibit A ("HIH Insurance 3<sup>rd</sup> quarter 2005 Early Access Distribution Analysis of assets available for distribution."))

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

1. Special Fund of Industrial Commission of Arizona	\$0
2. California Insurance Guarantee Association	\$79,699,579
3. Colorado Insurance Guaranty Association	\$44,005
4. Florida Workers' Comp. Ins. Guaranty Assn.	\$23,996
5. Hawaii Insurance Guaranty Association	\$209,342
6. Illinois Insurance Guaranty Fund	\$3,004,541
7. Indiana Insurance Guaranty Association	\$97,418
8. Iowa Insurance Guaranty Association	\$342
9. Kentucky Insurance Guaranty Association	\$0
10. Michigan Property & Casualty Guaranty Assn.	\$1,328,425
11. Missouri Prop. & Casualty Ins. Guaranty Assn.	\$0
12. Nebraska Property & Liability Ins. Association	\$43,448
13. Nevada Insurance Guaranty Association	\$190,993
14. Oregon Insurance Guaranty Association	\$0
15. Texas Property & Casualty Guaranty Ins. Association	\$0
16. Utah Property & Casualty Ins. Guaranty Assn.	\$9,536

\$348,376

In distributing \$79,699,579 to the California Insurance Guarantee Association, the Commissioner has offset statutory deposits of \$110,794,046 and has deducted a previous early access distribution of \$16,593,367 for a total credit of \$127,387,413.

In distributing \$23,996 to the Florida Workers' Compensation Insurance Guaranty Association, the Commissioner has credited a previous early access distribution of \$115,604 (the State of Florida has no special deposits to offset pursuant to Insurance Code section 1035.5, subdivision (d)).

In distributing \$209,342 to the Hawaii Insurance Guaranty Association, the Commissioner has credited a previous early access distribution of \$1,150,329 (the State of Hawaii has no special deposits to offset pursuant to Insurance Code section 1035.5, subdivision (d)).

In distributing \$3,004,541 to the Illinois Insurance Guaranty Fund, the Commissioner has credited a previous early access distribution of \$2,881,408 and has offset statutory deposits of HIH America on deposit with the State of Illinois in the total amount of \$5,723,604, for a total credit of \$8,605,012.

In distributing \$97,418 to the Indiana Insurance Guaranty Association, the Commissioner has credited a previous early access distribution of \$157,642 and has offset statutory deposits of HIH America on deposit with the State of Indiana in the total amount of \$67,555, for a total credit of \$225,197.

1 In distributing \$342 to the Iowa Insurance Guaranty Association, the Commissioner  
2 has credited a previous early access distribution of \$4,869 (the State of Iowa has no special  
3 deposits to offset pursuant to Insurance Code section 1035.5, subdivision (d)).

4 In distributing \$1,328,425 to the Michigan Property and Casualty Insurance Guaranty  
5 Association, the Commissioner has credited a previous early access distribution of \$2,040,991  
6 and has statutory deposits of HIH America on deposit with the State of Michigan in the total  
7 amount of \$25,861, for a total credit in the amount of \$2,066,852.

8 In distributing \$43,448 to the Nebraska Property and Liability Insurance Guaranty  
9 Association, the Commissioner has deducted offset a previous early access distribution of  
10 \$38,496 (the State of Nebraska has no special deposits to offset pursuant to Insurance Code  
11 section 1035.5, subdivision (d)).

12 In distributing \$190,993 to the Nevada Insurance Guaranty Association, the  
13 Commissioner has credited a previous early access distribution of \$252,820 and has offset  
14 statutory deposits of HIH America on deposit with the State of Nevada in the total amount of  
15 \$200,000, for a total credit of \$452,820.

16 In distributing \$9,536 to the Utah Property and Casualty Insurance Guaranty  
17 Association, the Commissioner has credited a previous early access distribution of \$19,174 (the  
18 State of Utah has no special deposits to offset pursuant to Insurance Code section 1035.5,  
19 subdivision (d)).

20 In distributing \$348,376 to the Wisconsin Insurance Guaranty Fund, the Commissioner  
21 has credited a previous early access distribution of \$960,115 (the State of Wisconsin has no  
22 special deposits to offset pursuant to Insurance Code section 1035.5, subdivision (d)). (See  
23 attached Exhibit C ("HIH Insurance 3rd quarter 2005 Early Access Distribution Detail of prior  
24 distributions, stat deposit offsets, and other credits").)

25 No distribution will be made to the Special Fund of the Industrial Commission of  
26 Arizona, which has paid \$656,542 in losses, because Arizona still has a balance of \$1,529,728  
27 remaining in its special deposit of \$1,997,854.

28

1 No distribution will be made to the Kentucky Insurance Guaranty Association, which  
2 has paid \$69,151 in losses, because after crediting its last distribution of \$62,319, its  
3 participation in the current early access distribution would result in payment of its claims in  
4 excess of the gross cumulative distribution percentage of 71.3704 percent.

5 No distribution will be made to the Missouri Insurance Guaranty Association, which  
6 has paid \$730 in losses on behalf of HIH America, because the State of Missouri still has  
7 \$121,759 remaining on its special deposit of \$122,280.

8 No distribution will be made to the Oregon Insurance Guaranty Association, which has  
9 paid \$7,517 in losses on behalf of HIH America, because the State of Oregon still has a balance  
10 of \$960,244 remaining in its special deposit of \$965,609.

11 No distribution will be made to the Texas Property and Casualty Guaranty Insurance  
12 Association, which has paid \$115,082 in losses on behalf of HIH America, because its statutory  
13 deposit credit of \$105,000 currently exceeds the cumulative distribution percentage of 71.3704  
14 percent of losses. (See attached Exhibit B ("HIH Insurance 3rd quarter 2005 Early Access  
15 Distribution Detail of individual IGA distribution amounts.").)

16 In accordance with Insurance Code section 1035.5, subdivision (b)(1), the  
17 Commissioner has reserved certain amounts of the estate's assets for the payment of expenses of  
18 administration and the payment of claims of secured creditors and claims falling within the  
19 priorities established in Insurance Code section 1033, subdivisions (a)(1) and (a)(2). Subtracting  
20 the total proposed distribution of \$85,000,001 from available net assets of \$169,818,453 leaves  
21 remaining net assets in the amount of \$84,818,453 for the payment of expenses of  
22 administration, and all other unrecorded liabilities and contingencies. The Commissioner will  
23 seek approval of an additional early access distribution when such liabilities and contingencies  
24 become known and are quantified.

25 In accordance with Insurance Code section 1035.5, subdivision (b)(4), the  
26 Commissioner will secure from the 12 guaranty funds receiving a distribution an agreement to  
27 return the distributed assets, as required, to pay claims of secured creditors and claims falling  
28

1 within the priorities established in Insurance Code section 1033, subdivisions (a)(1) and (a)(2).

2 (A true and correct copy of the draft agreement is attached as Exhibit D.)

3 As detailed above, the Commissioner has complied with the requirements of Insurance  
4 Code section 1035.5 for disbursement of assets to insurance guaranty associations and,  
5 accordingly, this Court should approve the instant application.

6 WHEREFORE, the Commissioner respectfully requests, based on this Application,  
7 that this Court issue an Order:

8 1. Approving the Commissioner's proposal to disburse a total of \$85,000,001 of the  
9 net assets of the estate of HIH America to the 12 state guaranty associations and funds set forth  
10 above and in the amounts set forth above, made subject to the execution of an agreement with  
11 each guaranty association or fund to return the distributed assets, as required, to pay claims of  
12 secured creditors and claims falling within the priorities established in Insurance Code section  
13 1033, subdivisions (a)(1) and (a)(2).

14 2. Authorizing the Commissioner to transfer a total of \$85,000,001 of the net assets of  
15 the estate of HIH America to the 12 state guaranty associations and funds set forth above and in  
16 the amounts set forth above, made subject to the execution of an agreement with each guaranty  
17 association or fund to return the distributed assets, as required, to pay claims of secured creditors  
18 and claims falling within the priorities established in Insurance Code section 1033, subdivisions  
19 (a)(1) and (a)(2).

20 3. Authorizing the Commissioner to take any and all action necessary to accomplish  
21 the purposes of the Order requested herein.

22 Dated:

23 BILL LOCKYER  
24 Attorney General

25   
26 DAVID LEW

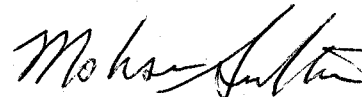
27 Attorneys for Applicant Insurance Commissioner  
28 of the State of California

**VERIFICATION**

I, Mohsen Sultan, state that I am an Estate Trust Officer for the California Insurance Commissioner's Conservation & Liquidation Office and have been managing the affairs of HIH America Compensation & Liability Insurance Company since April 2005. I have read the VERIFIED APPLICATION FOR ORDER AUTHORIZING SECOND DISTRIBUTION OF 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 Nov 22<sup>nd</sup>, 2005 in San Francisco, California.



Mohsen Sultan  
Estate Trust Officer

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Insurance Code section 1035.5 provides as follows:

3 Notwithstanding the provisions of Article 14 (commencing with Section  
4 1010), with regard only to those insurers subject to this article:

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

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

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

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

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

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

27 (5) A full report to be made by the association to the commissioner  
28 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 \$84,818,453 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 12 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 (a) and (b) provide, in pertinent part, as follows:

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

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

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

24           In this case, the Commissioner’s proposal falls within the ambit of his broad  
25 statutory discretion under section 1037. (See *Carpenter, supra*, 10 Cal.2d 307 [seizure of  
26 insurance company by Commissioner may lawfully be made without court order and trial court  
27 had power to ratify and confirm Commissioner’s actions]; *Garris v. Carpenter* (1939) 33  
28 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 12 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 12 state insurance guaranty funds be granted.

Dated: November 22, 2005

Respectfully submitted,

BILL LOCKYER  
Attorney General of the State of California

RANDALL P. BORCHERDING  
Supervising Deputy Attorney General

ANNE MICHELLE BURR  
Deputy Attorney General

*David Lew*

DAVID LEW  
Deputy Attorney General

Attorneys for Applicant Insurance  
Commissioner of the State of California

# EXHIBIT A

**HIH Insurance**  
**3rd quarter 2005 Early Access Distribution**  
**Analysis of available assets (detail) as of: 09/30/2005**

Ref	Source	Item	Amount
A	Sept 05 balance sheet	Pooled investments	171,829,405
B	Sept 05 balance sheet	Negative cash balance: possible escheat obligation	-
	Sept 05 balance sheet	Secured liab	-
	Sept 05 balance sheet	Class 1 A/P	-
C	Sept 05 balance sheet	Class 1 accrued exp	(10,952)
	Sept 05 balance sheet	Class 1 interco payable	-
	Sept 05 balance sheet	Class 1 taxes payable	-
D	Calculation	Class 1 budget estimate (2 years) (Based on 2005 budget)	(2,000,000)
	Estimate of future liab	Other class 2 payables (insignificant per consultation with Claims)	-
	Net available assets		<u>169,818,453</u>
CFO/ETO		Proposed payout percentage	50%
		Proposed distribution amount	<u>84,909,227</u>
		Rounded	<u><u>85,000,000</u></u>

# HIH Insurance

## 3rd quarter 2005 Early Access Distribution

### Analysis of assets available for distribution

Assets and constraints evaluated as of: September 30, 2005

#### Liquid assets:

Cash balances and pooled investments	171,829,405
--------------------------------------	-------------

#### Priority claims, restrictions, and constraints:

Secured liabilities	
Class 1 liabilities - current	10,952
Class 1 budget - 2 years	2,000,000
Provision for other class 2 liabilities	
Total constraints	(2,010,952)
Net available assets	169,818,453

Proposed percentage distribution of available assets	50%
--	-----

Proposed current distribution amount (rounded)	<u>\$ 85,000,000</u>
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# **EXHIBIT B**

# **HIH Insurance** **3rd quarter 2005 Early Access Distribution** **Detail of individual IGA distribution amounts**

Based on a gross cumulative distribution of 71.3704%  
(See separate detail of losses and credits)

IGA Full Name	Total losses	Gross cumulative distribution (71.3704%)	Total credits	Balance	Current distribution
Alabama Insurance Guaranty Association	-	-	-	-	-
Alaska Insurance Guaranty Association	-	-	-	-	-
Special Fund of the Industrial Commission of Arizona	656,542	468,576	1,997,854	(1,529,278)	-
Arizona Property/Casualty Insurance Guaranty Fund	-	-	-	-	-
Arkansas Property & Casualty Guaranty Fund	-	-	-	-	-
California Insurance Guaranty Association	290,158,072	207,086,992	127,387,413	79,699,579	79,699,579
Colorado Insurance Guaranty Association	1,074,494	766,871	722,866	44,005	44,005
Connecticut Insurance Guaranty Association	-	-	-	-	-
Delaware Insurance Guaranty Association	-	-	-	-	-
District of Columbia Insurance Guaranty Association	-	-	-	-	-
Florida Insurance Guaranty Association	-	-	-	-	-
Florida Workers' Compensation Insurance Guaranty Association	195,599	139,600	115,604	23,996	23,996
Georgia Insurers Insolvency Pool	-	-	-	-	-
Hawaii Insurance Guaranty Association	1,905,090	1,359,671	1,150,329	209,342	209,342
Idaho Insurance Guaranty Association	-	-	-	-	-
Illinois Insurance Guaranty Fund	16,266,620	11,609,553	8,605,012	3,004,541	3,004,541
Indiana Insurance Guaranty Association	452,029	322,615	225,197	97,418	97,418
Iowa Insurance Guaranty Association	7,301	5,211	4,869	342	342
Kansas Insurance Guaranty Fund	-	-	-	-	-
Kentucky Insurance Guaranty Association	69,151	49,353	62,319	(12,966)	-
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	4,757,262	3,395,277	2,066,852	1,328,425	1,328,425
Minnesota Insurance Guaranty Association	-	-	-	-	-
Mississippi Insurance Guaranty Association	-	-	-	-	-
Missouri Insurance Guaranty Association	730	521	122,280	(121,759)	-
Montana Insurance Guaranty Association	-	-	-	-	-
Nebraska Property & Liability Insurance Guaranty Association	114,815	81,944	36,496	43,448	43,448
Nevada Insurance Guaranty Association	902,073	643,813	452,820	190,993	190,993
New Hampshire Insurance Guaranty Association	-	-	-	-	-
New Jersey Stock Workers' Compensation Security Fund	-	-	-	-	-
New Jersey Property-Liability Insurance Guaranty Association	-	-	-	-	-
New Mexico Property & Casualty Insurance Guaranty Association	-	-	325,164	(325,164)	-
New York Insurance Department - Liquidation Bureau	-	-	-	-	-

# **HIH Insurance** **3rd quarter 2005 Early Access Distribution** **Detail of individual IGA distribution amounts**

Based on a gross cumulative distribution of 71.3704%  
(See separate detail of losses and credits)

IGA Full Name	Total losses *	Gross cumulative distribution (71.3704%)	Total credits	Balance	Current distribution
North Carolina Insurance Guaranty Association	-	-	-	-	-
North Dakota Insurance Guaranty Association	-	-	-	-	-
Ohio Insurance Guaranty Association	-	-	-	-	-
Oklahoma Property & Casualty Insurance Guaranty Association	-	-	-	-	-
Oregon Insurance Guaranty Association	7,517	5,365	965,609	(960,244)	-
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 Property & Casualty Insurance Association	115,082	82,135	105,000	(22,865)	-
Utah Property & Casualty Insurance Guaranty Association	40,227	28,710	19,174	9,536	9,536
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	1,833,381	1,308,491	960,115	348,376	348,376
Wyoming Insurance Guaranty Association	-	-	-	-	-
<b>TOTALS</b>	<b>318,555,983</b>	<b>227,354,698</b>	<b>145,326,972</b>	<b>82,027,726</b>	<b>85,000,001</b>

\* Loss information is the lower of reported UDS/FTQ data

# EXHIBIT C

# HIH Insurance

## 3rd quarter 2005 Early Access Distribution

### Detail of prior distributions, stat deposit offsets, and other credits

Credits evaluated as of: September 30, 2005

IGA ID	IGA ShortName	Stat deposit	Funds Held by IGA	Early access distribution	Stat deposit release	Total credits
01	Alabama					-
02	Alaska					-
03	ArizonaWC				1,997,854	1,997,854
04	Arizona PC					-
05	Arkansas					-
06	California			112,364,381	15,023,032	127,387,413
07	Colorado			722,866		722,866
08	Connecticut					-
09	Delaware					-
10	District Of Columbia					-
11	FloridaIGA					-
12	FloridaWCIGA			115,604		115,604
13	Georgia					-
14	Hawaii			1,150,329		1,150,329
15	Idaho					-
16	Illinois			2,881,408	5,723,604	8,605,012
17	Indiana			157,642	67,555	225,197
18	Iowa			4,869		4,869
19	Kansas					-
20	Kentucky			62,319		62,319
21	Louisiana					-
22	Maine					-
23	Maryland					-
24	MassachusettsWC					-
25	MassachusettsPC					-
26	Michigan			2,040,991	25,861	2,066,852
27	Minnesota					-
28	Mississippi					-
29	Missouri	122,280				122,280
30	Montana					-
31	Nebraska			38,496		38,496
32	Nevada	200,000		252,820		452,820
33	New Hampshire					-
34	New JerseyWC					-
35	New JerseyPC					-
36	New Mexico	325,164				325,164
37	New York					-
38	North Carolina IGA					-
39	North Dakota IGA					-
40	Ohio					-
41	Oklahoma					-
42	Oregon		965,609			965,609
43	PennsylvaniaWC					-
44	PennsylvaniaPC					-
45	Rhode Island					-
46	South Carolina					-
47	South Dakota					-
48	Tennessee					-
49	Texas	105,000				105,000
50	Utah			19,174		19,174
51	Vermont					-
52	Virginia					-
53	Washington					-
54	West Virginia					-
55	Wisconsin			960,115		960,115
56	Wyoming					-
TOTALS		752,444	965,609	120,771,014	22,837,906	145,326,972

# EXHIBIT D

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

This Agreement is entered into on \_\_\_\_\_ between the California Insurance Guaranty Association 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 Commissioner made an initial early access distribution of HIH assets in July of 2004, 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 make a second distribution of available assets of HIH on an equitable allocation to the California Insurance Guaranty Association, and may make additional distributions of assets as such assets become available and upon approval of the Liquidation Court. Such equitable distribution, pursuant to California Insurance Code, section 1035.5(d), will be offset by the amount of any statutory deposit and/or special deposits available to the California Insurance Guaranty Association for payment of claims. As consideration for the agreement by the

Liquidator of HIH to make a distribution to the California Insurance Guaranty Association, and any future distributions as may be approved by the Liquidation Court, the California Insurance Guaranty Association agrees pursuant to California Insurance Code, section 1035.5:

1. To return to the Liquidator of HIH such assets disbursed by the Commissioner to the California Insurance Guaranty Association, as may be required to pay claims of secured creditors and claims falling within the priorities established in subparagraphs (1) and (2) 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 California Insurance Guaranty Association, all disbursements made therefrom, any interest earned by the California Insurance Guaranty Association on such assets, and any other matter as the court may direct.

3. If any legal action is necessary to enforce this agreement, the California Insurance Guaranty Association 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 California Insurance Guaranty Association agrees for this purpose only to subject itself to the

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////

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: \_\_\_\_\_, 2005

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

By: \_\_\_\_\_  
David E. Wilson  
Special Deputy Insurance Commissioner

Dated: \_\_\_\_\_, 2005

California Insurance Guaranty Association

By: \_\_\_\_\_

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2 RANDALL P. BORCHERDING  
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3 ANNE MICHELLE BURR (State Bar No. 158302)  
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6 Telephone: (510) 622-2225  
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8 Attorneys for Applicant Insurance Commissioner of the State of California  
9  
10

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

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.  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No.: 320049

**PROOF OF SERVICE**

**DECLARATION OF SERVICE**

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

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

I am employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within entitled cause; my business address is 1515 Clay Street, Oakland, California 94612-1413.

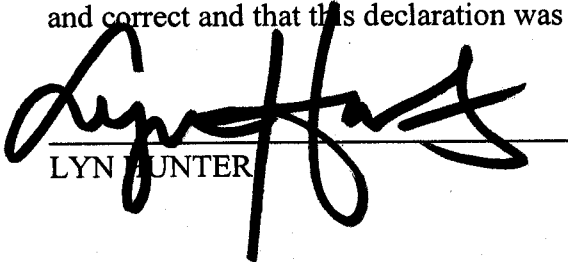
On **November 23, 2005**, the following document(s):

1. **Verified Application for Order Authorizing Proposal for Second Distribution of Assets to State Insurance Guaranty Associations or Funds; Memorandum of Points and Authorities in Support Thereof**
2. **[Proposed] Order Granting Verified Application for Order Authorizing Proposal for Second Distribution of Assets to State Insurance Guaranty Associations or Funds**

were placed for service in a sealed envelope to be delivered by mail with the United States Postal Service with prepaid postage addressed as follows:

**PLEASE SEE ATTACHED PROOF OF SERVICE LIST**

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 **November 23, 2005** at Oakland, California.

  
\_\_\_\_\_  
LYN HUNTER

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