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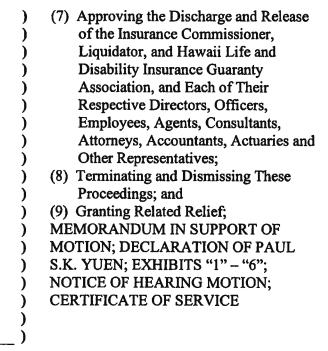
#### IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

#### STATE OF HAWAI'I

COLIN M. HAYASHIDA, Insurance S.P. NO. 94-0337 (DEO) Commissioner of the State of Hawai'i, (Special Proceeding) Petitioner, LIQUIDATOR'S MOTION FOR ORDER: (1) Approving the Form of Notice; (2) Approving the Hawaii Life and VS. **Disability Insurance Guaranty INVESTORS EQUITY LIFE** Association Proof of Claim; INSURANCE COMPANY OF HAWAI'I, (3) Approving the Liquidator's Final LTD., a Hawai'i Corporation, Report on the Status of Assets, Final Plan of Distribution and Discharge of Respondent Claims: (4) Approving Closing Process; (5) Approving Document Destruction Plan; (6) Dissolving Investors Equity Life Insurance Company of Hawaii, Ltd., a Hawaii Corporation; [Caption Continued on Next Page] **HEARING:** Date : April 30, 2021 Time: 8:30 a.m. Judge: The Honorable Dean E. Ochiai

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LIQUIDATOR'S MOTION FOR ORDER (1) APPROVING THE FORM OF NOTICE;
(2) APPROVING THE HAWAII LIFE AND DISABILITY INSURANCE GUARANTY
ASSOCIATION PROOF OF CLAIM; (3) APPROVING THE LIQUIDATOR'S FINAL
REPORT ON THE STATUS OF ASSETS, FINAL PLAN OF DISTRIBUTION AND
DISCHARGE OF CLAIMS; (4) APPROVING THE CLOSING PROCESS; (5) APPROVING
THE DOCUMENT DESTRUCTION PLAN; (6) DISSOLVING INVESTORS EQUITY
LIFE INSURANCE COMPANY OF HAWAII, LTD., A HAWAII CORPORATION; (7)
APPROVING THE DISCHARGE AND RELEASE OF THE INSURANCE COMMISSIONER,
LIQUIDATOR, AND HAWAII LIFE AND DISABILITY INSURANCE GUARANTY
ASSOCIATION AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS,
EMPLOYEES, AGENTS, CONSULTANTS, ATTORNEYS, ACCOUNTANTS,
ACTUARIES AND OTHER REPRESENTATIVES; (8) TERMINATING AND
DISMISSING THESE PROCEEDINGS; AND (9) GRANTING RELATED RELIEF

COMES NOW, Hawaii Insurance Commissioner Colin M. Hayashida (the "Commissioner"), in his capacity as successor to former Insurance Commissioner Gordon Ito, and as the Liquidator (the "Liquidator") of Investors Equity Life Insurance Company of Hawaii, Ltd., a Hawaii corporation ("Investors Equity" or "Investors Equity Estate"), and hereby moves the Court for the entry of an Order: (1) approving the form of notice of this motion; (2) approving the Hawaii Life and Disability Insurance Guaranty Association ("Hawaii Guaranty Association" or "Association") Proof of Claim; (3) approving the Liquidator's Final Report on the Status of Assets, Final Plan of Distribution and discharge of claims; (4) approving the closing

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process; (5) approving the document destruction plan; (6) dissolving Investors Equity Life Insurance Company of Hawaii, Ltd., a Hawaii corporation; (7) discharging the Commissioner, the Liquidator and the Hawaii Guaranty Association and each of their respective directors, officers, employees, agents, consultants, attorneys, accountants, actuaries and other representatives; (8) terminating and dismissing these proceedings; and (9) granting related relief ("Motion").

ALL PERSONS AND ENTITIES INTERESTED IN THE LIQUIDATION OF INVESTORS EQUITY, INCLUDING WITHOUT LIMITATION ALL PERSONS REQUESTING AND/OR RECEIVING NOTICE, SHOULD TAKE PARTICULAR NOTICE THAT THE LIQUIDATOR'S MOTION, IF GRANTED, WILL RESULT IN, AMONG OTHER THINGS, THE FINAL DISTRIBUTION OF ALL OF INVESTORS **EQUITY'S REMAINING ASSETS, THE DISSOLUTION OF INVESTORS EQUITY,** THE TERMINATION AND DISMISSAL OF THESE PROCEEDINGS, AND THE DISCHARGE OF THE COMMISSIONER, THE LIQUIDATOR, THE HAWAII GUARANTY ASSOCIATION, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONSULTANTS, ATTORNEYS, ACCOUNTANTS, ACTUARIES AND OTHER REPRESENTATIVES. NO FURTHER NOTICE OTHER THAN AS DESCRIBED IN THIS MOTION SHALL BE GIVEN AND THE HEARING ON THIS MOTION SHALL CONSTITUTE THE FINAL OPPORTUNITY OF ANY INTERESTED PARTY TO RAISE ANY ISSUES WITH RESPECT TO THESE PROCEEDINGS OR THEIR SUBJECT MATTER, THE FINAL DISTRIBUTION OF ALL OF INVESTORS EQUITY'S REMAINING ASSETS OR THE GRANTING OF THE REQUESTED RELIEF.

This Motion is made pursuant to the authority granted to the Liquidator in and under the Hawaii Insurers Supervision, Rehabilitation and Liquidation Act H.R.S. § 431:15-101 et seq, ("Liquidation Act"), including, but not limited to, H.R.S. § 431:15-336, Termination of Proceedings, and is based upon the Liquidator's determination that this Motion, and the relief sought herein, are necessary, reasonable, and appropriate, and are in the best interests of the Investors Equity Estate and its contract holders, policyholders, beneficiaries, and creditors.

This Motion is further made pursuant to the Court's Order (filed December 29, 1994) granting Commissioner's Petition for Liquidation of Investors Equity Life Insurance Company

of Hawaii, Ltd. ("Liquidation Order"), which Order was affirmed on appeal by the Hawaii Supreme Court. Metcalf v. Investors Equity Life Ins., Co., 80 Hawaii 339, 910 P.2d 110 (1996); the Court's Order (filed August 14, 1995) granting Hawaii Life and Disability Insurance Guaranty Association's Motion to Approve First Amended and Restated Assumption Reinsurance Agreement ("Assumption Agreement"); the Court's Order (filed August 23, 1995) granting Liquidator's Motion for Approval of Preliminary Proposal to Disburse Assets pursuant to H.R.S. § 431:15-324 ("Liquidation Plan"); the Court's Order (filed December 30, 1996) Granting Liquidator's Motion to Approve Amendments to Settlement Agreement; the Court's Order (filed June 10, 1997) granting Petitioner's and Hawaii Life and Disability Insurance Guaranty Association's Joint Motion to Approve Settlement Agreement and Releases; the Court's Order (filed October 26, 1998) granting Liquidator's Motion to Approve Distribution of Special Fund; the Court's Findings of Fact, Conclusions of Law and Order (filed October 6, 2010) granting Liquidator's Motion for an Order Confirming the Liquidator's Determination of a Disputed Claim pursuant to H.R.S. § 431:15-329(B) (the "denial of IELHC's claim") affirmed on appeal to the Hawai'i Supreme Court in Ito v. Inv'rs Equity Life Holding Co., 135 Haw. 49, 346 P.3d 118 (2015); and all other Orders entered herein; and the pleadings, records, and files in this action.

This Motion is made pursuant to Rule 7 of the Rules of the Circuit Courts and Rule 7(b) of the Hawaii Rules of Civil Procedure, and is supported by the Memorandum in Support of Motion, the Declaration of Paul S.K. Yuen, the exhibits attached thereto, all other pleadings and documents filed in support of the Motion and previously filed by the Liquidator and the Hawaii Guaranty Association in these proceedings, and all arguments and evidence presented at any hearing on this Motion.

DATED: Honolulu, Hawaii, February 19, 2021.

/s/ John Y. Yamano
WILLIAM. C. McCORRISTON
JOHN Y. YAMANO

Attorneys for Petitioner, as Liquidator of Investors Equity Life Insurance Company of Hawaii, Ltd.

#### IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

#### STATE OF HAWAI'I

COLIN M. HAYASHIDA, Insurance	) S.P. NO. 94-0337
Commissioner of the State of Hawai'i,	) (Special Proceeding)
Petitioner,	) MEMORANDUM IN SUPPORT OF ) MOTION
VS.	)
	)
INVESTORS EQUITY LIFE	)
INSURANCE COMPANY OF HAWAI'I,	)
LTD., a Hawai'i Corporation,	)
•	)
Respondent	)
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#### MEMORANDUM IN SUPPORT OF MOTION

Hawaii Insurance Commissioner Colin M. Hayashida (the "Commissioner"), in his capacity as successor to former Insurance Commissioner Gordon Ito, and as the Liquidator (the "Liquidator") of Investors Equity Life Insurance Company of Hawaii, Ltd., a Hawaii corporation ("Investors Equity" or "Investors Equity Estate") files this Memorandum in Support of his Motion for Order: (1) approving the form of notice of this motion; (2) approving the Hawaii Life and Disability Insurance Guaranty Association ("Hawaii Guaranty Association" or "Association") Proof of Claim; (3) approving the Liquidator's Final Report on the Status of Assets, Final Plan of Distribution and discharge of claims; (4) approving the closing process; (5) approving the document destruction plan; (6) dissolving Investors Equity Life Insurance Company of Hawaii, Ltd; (7) discharging the Commissioner, Liquidator and Hawaii Guaranty Association and each of their respective directors, officers employees, agents, consultants, attorneys, accountants, actuaries and other representatives; (8) terminating and dismissing these proceedings; and (9) granting related relief ("Motion"), and respectfully states as follows:

#### I. <u>INTRODUCTION</u>

This Motion is the final stage of this liquidation proceeding that began with the filing, on August 5, 1994, of a Petition for Liquidation of Investors Equity. On December 29, 1994, the Court granted the Commissioner's petition and placed Investors Equity into liquidation. This Motion seeks Court approval for the Liquidator to close the Investors Equity Estate because he has marshalled the assets of Investors Equity, paid or otherwise made provision for all of its liabilities, carried out the other responsibilities found in the Liquidation Act and, pursuant to the Order requested by this Motion, will complete all tasks required to liquidate Investors Equity.

As a result of the Liquidation Plan and Assumption Agreement and related subsequent actions approved by the Court and authorized by law, including the Hawaii Liquidation Act H.R.S. § 431:15-101 et seq., continuing insurance coverage has been provided to Investors Equity's policy and contract holders, so all claims by policyholders have been satisfied, the assets of Investors Equity have been liquidated, and periodic distributions of those assets have been made to satisfy all Investors Equity liabilities, except the obligations noted herein, including the obligations of Investors Equity owed to the Hawaii Guaranty Association which have, to date, only been partially satisfied. The actions necessary to close the Investors Equity Estate are identified in this Motion, which, upon approval by the Court and implementation by

the Liquidator, will result in the termination of this proceeding and the dissolution of Investors Equity.

In addition to making approved final distributions of remaining assets, the Liquidator will devote time to finalizing the accounting and audit reports, preparing and filing tax reports and returns, carrying out records destruction and causing a final dissolution and Liquidation of Investors Equity. The Commissioner, the Liquidator, the Hawaii Guaranty Association, and their respective directors, officers, employees, agents, consultants, attorneys, accountants, actuaries, and other representatives will be discharged and released from claims and potential liabilities, and these proceedings will be terminated and dismissed.

The foregoing plan and activities are in accordance with applicable provisions of the Hawaii Insurance Code and the customary process utilized by the Commissioner for liquidating an insolvent insurer. Accordingly, for the reasons set forth below, the Liquidator respectfully requests that this Motion be granted; the remaining assets of the Investors Equity Estate be distributed as set forth herein; the Commissioner, the Liquidator, the Hawaii Guaranty Association and their respective directors, officers, employees, agents, consultants, attorneys, accountants, actuaries, and other representatives be discharged and released, and these proceedings brought to a close.

Notice of this motion has been provided to counsel of record. In addition, notice in the form attached as Exhibit "1" to the Declaration of Paul S.K. Yuen ("Yuen Declaration") will be sent to the last known address of all parties who have filed a proof of claim in accordance with the Liquidation Order. That notice includes information of alternative methods to obtain copies of all filings relating to this motion. Lastly, notice in the form attached as Exhibit "2" to Yuen Declaration will be published in a newspaper of general circulation. Yuen Declaration ¶¶ 2 and 3.

#### II. <u>INVESTORS EQUITY WAS INSOLVENT</u>

At all relevant times, Investors Equity was a Hawaii domiciled life insurance company licensed to do business only in Hawaii. As a result of poor investment decisions and activities which violated the Hawaii Insurance Code and other applicable laws, Investors Equity had a substantial deficiency in the assets available to meet its liabilities to policyholders.

In particular, on June 24, 1994, the Court entered a Stipulated Rehabilitation Order pursuant to the Liquidation Act. On August 5, 1994, the Commissioner filed a Petition for

Liquidation Order and requested a finding of insolvency with respect to Investors Equity.

December 29, 1994 Findings of Fact, Conclusions of Law and Order ("Liquidation Order"), p. 1.

At the time, Investors Equity was 100% owned by Investors Equity Life Holding Company ("IELHC") which was, in turn, 100% owned by an individual, Gary Vose. IELHC intervened in the receivership matter. Liquidation Order, p. 4 ¶ 3.

The Petition for Liquidation asserted that Investors Equity was insolvent; further transaction of business by it would be financially hazardous to its policyholders, creditors, or the public; Investors Equity failed to timely file its Annual Report and other financial reports required by law and, after written demand by the Commissioner, had failed to adequately explain why such reports were not timely filed, and further attempts to rehabilitate Investors Equity were futile. IELHC filed an alternative Rehabilitation Plan for Investors Equity and attempted to challenge the Liquidator's Petition for Liquidation. Liquidation Order, p. 1.

Significant briefing, argument, and hearings took place concerning the Petition for Liquidation, with all parties, including IELHC, participating. Liquidation Order, p. 3. The Petition for Liquidation was granted on December 29, 1994. Liquidation Order. Among other things, the Court found that in accordance with a study conducted by Coopers and Lybrand, Investors Equity had a net deficit of at least \$90 million. Liquidation Order, p. 6, ¶ 10 (emphasis added).

- 11. The Court finds that IEL is insolvent as that term is defined in H.R.S. § 431:15-103(a)(10)(B), and is in such condition that the further transaction of business would be hazardous, financially, to its policyholders, creditors, and the public. Although the full extent of IEL's insolvency has been questioned and may not be known with certainty for some time, the fact that IEL is insolvent, with a deficiency probably in excess of \$90 million, is not disputed.
- 12. The Court finds further that Respondent IEL failed to file its annual report or other financial report required by statute within the time allowed by law, and, after written demand by the Commissioner, failed to give an adequate explanation for such failure immediately.
- 13. The Court finds further that the interests of policyholders, creditors or the public may be endangered by delay and that attempts to rehabilitate the insurer would be futile and/or would serve no useful purpose.

#### Liquidation Order, p. 6.

IELHC appealed the Liquidation Order to the Hawaii Supreme Court. *Metcalf v. Investors Equity Life Ins, Co.*, 80 Hawaii 339, 910 P.2d 110 (1996). On January 11, 1996, the

Hawaii Supreme Court dismissed the former shareholder's appeal, holding that IELHC did not have standing to oppose the Petition to Liquidate Investors Equity because the Hawaii Liquidation Act, H.R.S. § 431:15, did not recognize the interests of shareholders of an insolvent insurance company such as IELHC. *Metcalf v. Investors Equity Life Ins, Co.*, 80 Hawaii 339, 910 P.2d at 111 (1996). The finding of insolvency became a final, non-appealable order.

## III. KEY COMPONENTS OF THE LIQUIDATION PROCEEDING THAT FACILITATED THE CONTINUING COVERAGE AND FUNDING OF POLICYHOLDER OBLIGATIONS

#### A. The Hawaii Life and Disability Insurance Guaranty Association

The enormity of the Investors Equity insolvency relative to available funding sources presented a bleak future for the thousands of Investors Equity policyholders, most of whom were elderly Hawaii residents. The Hawaii Guaranty Association had a crucial role in providing continuing coverage and funding those policyholder obligations.

The Hawaii Guaranty Association was created by statute in order to provide continuing life, disability, and annuity coverage and benefits for policyholders of an insurance company licensed in Hawaii to write life insurance, disability insurance, and/or annuity contracts which becomes financially insolvent. The coverage provided by the Hawaii Guaranty Association is unique in that the Hawaii Guaranty Association is not only required to pay claims when they arise, but also to continue the existence of life, disability, and annuity policies for the benefit of policyholders. See H.R.S. § 431:16-208. Otherwise, policyholders who may become uninsurable because of advanced age, medical conditions, or other changes would not be able to acquire similar coverage at a similar price. The benefits for which the Hawaii Guaranty Association was authorized to provide coverage in the Investors Equity insolvency were limited, with respect to any one life, to the following amounts: \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance; \$100,000 in disability insurance benefits, including any net cash surrender and net cash withdrawal values; \$100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values. See H.R.S. § 431:16-203 as in effect in 1994.

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<sup>&</sup>lt;sup>1</sup> As discussed more fully below at page 12, the Hawaii Guaranty Association became the sole shareholder of Investors Equity in 1996.

This protection was funded through assessments on each of its members who are comprised of all life and disability insurance companies licensed in the state of Hawaii. See H.R.S. § 431:16-205. The amount of assessments which can be raised on an annual basis is limited to 2% of the annual premiums written by its member insurers averaged over a three-year period of time prior to the insolvency in question. H.R.S. § 431:16-209.

The Hawaii Guaranty Association was activated to protect the policyholders of Investors Equity. It did this by paying and committing to pay Hartford Life Insurance Company ("Hartford") to assume the policyholder liabilities of Investors Equity, thereby continuing policyholder coverage. This transaction was completed through an Assumption Agreement negotiated by the Hawaii Guaranty Association and Liquidator with Hartford, which was a critical component of the Liquidator's Motion for Approval of Preliminary Proposal to Disburse Assets Pursuant to H.R.S. § 431:15-324 ("Liquidation Plan") which was granted on August 23, 1995.

At the time of the Liquidation Order, Investors Equity had policy and contract obligations to its policyholders totaling approximately \$150 million in present value. Hawaii Guaranty Association Memorandum in Support of Motion to Approve First Amended and Restated Assumption Reinsurance Agreement, p. 2. However, at that same time, Investors Equity had assets of only approximately \$50 to \$60 million, leaving a deficiency (i.e. shortfall of assets in relation to liabilities) of approximately \$90 to \$100 million. *Id.* Many of these Estate assets were not liquid. *Id.* 

Since it was able to assess only approximately \$5.29 million for annuities, \$6.64 million for life insurance policies, and \$2.82 million for disability policies annually, the Investors Equity insolvency raised numerous financial challenges for the Hawaii Guaranty Association. Hawaii Guaranty Association Memorandum in Support of Motion to Approve First Amended and Restated Assumption Reinsurance Agreement, p. 2. Given the \$90 to \$100 million deficiency, the Hawaii Guaranty Association, through full assessments, would only be able to fully fund the Investors Equity policies over a lengthy period of time, seven to ten years. This was particularly challenging since the average age of the Investors Equity annuitants was approximately 72 years of age.

Investors Equity issued life policies, annuity contracts, and a very small amount of disability policies. The vast majority of Investors Equity contracts were annuities. The Hawaii

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Guaranty Association had sufficient annual assessment capacity to immediately fully assess and fund its life insurance and disability insurance obligations and did so in 1994 and 1995. However, it did not have sufficient capacity to immediately fund Investors Equity annuity obligations. Therefore, the Hawaii Guaranty Association needed to use all of its statutory powers to fund the annuities and protect Hawaii residents. The Hawaii Guaranty Association raised the necessary funds to cover the annuity obligations of Investor Equity by (a) maximizing assessments on the annuity members; (b) maximizing assessments of all life insurance and disability insurance members and then loaning those funds to the annuity assessment account for use in funding the Investors Equity annuities; (c) borrowing funds from another insolvency account opened for a different insolvent company; (d) using Investors Equity Estate funds as they became available, including recoveries resulting from litigation pursued by the Liquidator; (e) applying recoveries resulting from litigation pursued by the Hawaii Guaranty Association as subrogee of policyholders (see discussion below); and (f) negotiating payment of fees and credits directly to policyholder accounts from Hartford, the company that purchased the Investors Equity block of annuities from the Hawaii Guaranty Association. By implementing all of these methods of raising funds, the entire block of Investors Equity annuities was funded by 1997.

#### B. The Hartford Assumption Agreement

In its effort to shorten the amount of time necessary to raise funds to provide greater benefits to policyholders sooner, the Hawaii Guaranty Association and Liquidator carried out an extensive bid process whereby healthy insurance companies were requested to submit offers pursuant to which they would agree to accept financial responsibility for Investors Equity's insurance policies and annuities in exchange for funds from the Hawaii Guaranty Association and assets remaining in the Investors Equity Estate. Hawaii Guaranty Association Memorandum in Support of Motion to Approve First Amended and Restated Assumption Reinsurance Agreement (filed May 31, 1995), pp. 3-4. Several insurance companies responded to the request for bids. *Id.* at p. 4.

After a detailed review and analysis of the bids and extensive discussions and negotiations with the top bidders, the Hawaii Guaranty Association and the Liquidator identified Hartford as the bidder offering the greatest benefits to policyholders, the Investors Equity Estate, and creditors. *Id.* As a result, on March 22, 1995, the Hawaii Guaranty Association, the Liquidator, and Hartford executed an extensive Assumption Agreement whereby policyholder

liabilities would be transferred to Hartford to the extent that funding was available to support those liabilities. Hartford agreed to continue to accept funding from the Hawaii Guaranty Association and the Liquidator over time in an attempt to fully fund each policy. *Id.* At the time, it was estimated that the Hawaii Guaranty Association covered policyholder obligations of all but about 100 of the approximate 13,000 policyholders, nearly all of whom resided in Hawaii, and covered all but \$5 to \$6 million of Investors Equity's \$150 million of liabilities to policyholders. *Id.* This Court approved the Hawaii Guaranty Association's Motion to Approve First Amended and Restated Assumption Reinsurance Agreement with Hartford on August 14, 1995.

In addition to the fact that the Hartford bid was financially the most advantageous, Hartford had extensive experience in assuming blocks of business from insolvent insurance companies like Investors Equity and was one of the largest, most financially secure, and highly-rated insurance companies in the country. *Id.* at p. 5. Upon closing, Hartford immediately took responsibility for the administration of the policies, saving the Hawaii Guaranty Association (and thereby Investors Equity Estate) an amount in excess of \$750,000 per year. *Id.* Hartford also agreed to credit each policy with "an enhancement", an amount of money contributed by Hartford directly to policyholder accounts. *Id.* at p. 7. Ultimately, Hartford contributed enhancements to policyholders in the amount of \$10,434,763.00.

#### C. The Honolulu Federal Savings and Loan ("Honfed") Litigation

The Hawaii Guaranty Association and the Liquidator filed a lawsuit to pursue the claims of *individual policyholders* against Bank of America, FSB, individually and as successor by merger with Honolulu Federal Savings and Loan ("Honfed"). The claims were based on misrepresentations by Honfed with respect to transferring individual policyholder's savings accounts and other federally-insured accounts to annuities with Investors Equity. Memorandum in Support of Liquidator's and Hawaii Guaranty Association's Joint Motion to Approve Settlement Agreement and Releases (filed April 15, 1997), p. 4. At the time of Honfed's improper actions, Honfed realized significant earnings by virtue of commissions paid by elderly annuity holders in transferring their accounts from safe, federally-insured, savings accounts to Investors Equity annuities. *Id.* of the approximately \$128 million of Investor Equity annuity obligations, it was estimated that approximately \$95 million of such annuities held by approximately 3,750 Hawaii residents, originated through Honfed programs out of which the

claims arose. The Hawaii Guaranty Association and Liquidator estimated that of the \$95 million of such annuities, the Hawaii Guaranty Association provided coverage for at least \$89 million of annuity values.

Pursuant to Hawaii law, the vast majority of the policyholders' Honfed claims were assigned and subrogated to the Hawaii Guaranty Association by operation of H.R.S. § 431:16-208(m). As a result, the Hawaii Guaranty Association was legally authorized to pursue such claims to recover damages from Honfed. The Liquidator pursued the remaining claims on behalf of policyholders not fully covered by the Hawaii Guaranty Association.

After extensive litigation, the Hawaii Guaranty Association, the Liquidator, and Bank of America, as successor to Honfed, entered into a settlement agreement whereby Bank of America agreed to pay \$39 million to resolve the litigation. *Id.* at p. 6. \$32.5 million of that amount was paid to the Hawaii Guaranty Association and was used to pay unfunded account values of annuities that had been assumed by Hartford. *Id.* \$4 million of the amount was paid to the Liquidator for the benefit of the Investors Equity annuity holders whose account values were not fully covered by the Hawaii Guaranty Association because they were outside the statutory coverage limits. *Id.* In addition, the settlement with Bank of America allowed the creation of a contingent "Special Fund" of up to \$20 million for the benefit of the individual Investors Equity Policyholders. The Special Fund, which was contingent on several conditions, was fully funded and distributed to the policyholders. *See* Order Granting Liquidator's Motion to Approve Distribution of Special Fund Filed on September 1, 1998, filed on October 26, 1998.

### D. <u>Liquidator Lawsuit Against the Owner of IEL And Others For Fraudulent</u> Activities

On November 17, 1994, the Liquidator filed suit against IELHC, Gary Vose, and over 20 other defendants in the First Circuit Court in Hawaii ("Hawaii Action") asserting the following 13 Claims for Relief:

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- 1. Engaging in Racketeer Influenced Corrupt Organizations violations;
- 2. Piercing Corporate Veil;
- 3. Breach of Fiduciary Duty and Obligations;
- 4. Negligent Breach of Fiduciary Duty;
- 5. Fraud/Intentional Misrepresentation;
- 6. Insurance Code Violations;
- 7. Unfair and Deceptive Trade Practices;
- 8. Negligence;
- 9. Conspiracy;

- 10. Constructive Trust;
- 11. Fraudulent transfers;
- 12. Distribution Recovery Pursuant to the Hawaii Insurance Code, and
- 13. Punitive Damages.

The damages asserted included a loss of \$90 million to Investors Equity, treble damages, attorneys' fees and costs. *See* Memorandum in Support of Liquidator's Motion to Approve Settlement Agreement (filed October 2, 1996), Exhibit B.

The Hawaii Action was based upon a series of convoluted financial transactions among a complex web of interrelated companies owned and controlled by defendants that were designed to improperly deprive Investors Equity of its assets in order to benefit IELHC and related parties. *Id.* at p. 3. The scheme included fraudulently inflating and reporting Investor Equity's net income in order to improperly declare and collect dividends to IELHC and its principals, causing and authorizing generous and exorbitant fees from investment opportunities paid to or otherwise received by the defendants, and causing Investors Equity to invest its assets in highly speculative and risky real estate ventures for the sole purpose of improving defendants' personal investments. *Id.* at Exhibit B.

The Hawaii Action alleged that defendants willfully, and with reckless disregard for their obligations to Investors Equity and its policyholders, created and implemented a scheme by which they deceived, cheated, and deprived Investors Equity and its policyholders of the company's assets in connection with a reckless and imprudent investment strategy. *Id.* By virtue of that reckless investment strategy, the defendants used and leveraged \$70 million of Investors Equity's assets to purchase US Treasuries. *Id.* However, the purchase was based on a hedged scheme whereby the defendants controlled nearly \$1 billion of US Treasuries. *Id.* The Complaint asserted that this was an interest bet, i.e., if interest rates decreased, the defendants would reap significant financial benefit for the shareholder, IELHC, from controlling \$1 billion in US Treasuries. *Id.* However, if interest rates increased, significant losses would be incurred by Investors Equity and its policyholders. *Id.* In a very short period of time, a matter of months, the defendants lost in excess of \$60 million of Investor Equity's assets on this investment gamble. *Id.* 

In another scheme, defendants used \$23.33 million of Investor Equity's assets to purchase bonds and real estate in Colorado. *Id.* However, once the purchase was consummated using Investor's Equity funds, Investor Equity was not the named owner, but various defendants

became owners. *Id.* Investors Equity lost over \$23 million of its assets in return for approximately \$100,000 cash plus worthless promissory notes. *Id.* Numerous other schemes were alleged. *Id.* 

In 1996, the Liquidator and all defendants entered into a comprehensive settlement agreement, which, with exhibits, comprises hundreds of pages. *Id.* In addition to transferring nearly all of defendants' known assets to Investors Equity and the Liquidator, IELHC transferred 100% of the shares of Investor Equity to the Liquidator. The Liquidator thereafter cancelled the shares and issued 49,500 new shares in favor of the Hawaii Guaranty Association in return for a reduction of its claim against the Investor Equity Estate, with the Hawaii Guaranty Association thereby becoming the sole shareholder of Investors Equity. All of these actions were approved by this Court and not challenged by appeal. *See* Order Granting Liquidator's Motion to Approve Amendments to Settlement Agreement filed on December 30, 1996.

# IV. THE HAWAII SUPREME COURT HAS DECIDED THAT IELHC IS NO LONGER THE SHAREHOLDER OF INVESTORS EQUITY SINCE THOSE SHARES WERE CANCELLED PURSUANT TO THIS COURT'S FINAL ORDER AND REISSUED TO THE HAWAII GUARANTY ASSOCIATION

More than 11 years after surrendering its shares in Investor Equity to settle the litigation described above, IELHC made a claim to the Liquidator that it continued to be a legal and equitable owner of all of Investor Equity's stock and further demanded that the Liquidator deliver to IELHC all shares and assets remaining in Investor Equity Estate. This claim was litigated in this Court, which specifically held, in an extensive decision, that IELHC was neither the legal nor equitable owner of the Investor Equity stock and that the Hawaii Guaranty Association and a Grantor Trust created by the Hawaii Guaranty Association were the legal and equitable owners of the Investor Equity stock. See Findings of Fact, Conclusions of Law and Order: (1) Granting Liquidator's Motion for an Order Confirming the Liquidator's Determination of a Disputed Claim pursuant to H.R.S. § 431:15-329(B) Filed 5/11/10; (2) Granting Hawaii Life & Disability Insurance Guaranty Association's Joinder in Liquidator's Motion; and (3) Denying Investor Equity Life Holding Company's Motion to Dismiss "Liquidator's Motion for an Order Confirming the Liquidator's Determination of a Disputed Claim Pursuant to H.R.S. § 431:15-329(B)," Filed June 1, 2010, filed on October 6, 2010.

IELHC appealed this decision to the Intermediate Court of Appeals and applied for transfer to the Hawai'i Supreme Court. The Hawai'i Supreme Court accepted IELHC's

application for transfer and issued an Opinion on February 27, 2015. The Hawai'i Supreme Court affirmed this Court's decision that the Hawaii Guaranty Association is the sole shareholder of Investors Equity. *Ito v. Inv'rs Equity Life Holding Co.*, 135 Hawaii 49, 346 P.3d 118 at 144-145 (2015).

#### V. SPECIFIC RELIEF REQUESTED

#### A. Approval of Form of Notice

Notice of this motion has been provided to counsel of record. In addition, notice in the form attached as Exhibit "1" to the Yuen Declaration will be sent to the last known address of all parties who have filed a proof of claim in accordance with the Liquidation Order. Yuen Declaration ¶2. That notice include information of alternative methods to obtain copies of all filings relating to this motion. Lastly, notice in the form attached as Exhibit "2" to the Yuen Declaration will be published in a newspaper of general circulation. Yuen Declaration ¶3. The Liquidator respectfully requests that this Court approve the sufficiency of the form of notice of this motion as thus provided.

#### B. Approval of Hawaii Guaranty Association Proof of Claim

As a result of its significant efforts in continuing coverage to Investors Equity policyholders and the funding required for such coverage, the Hawaii Guaranty Association was entitled to file a proof of claim against the Investors Equity Estate pursuant to the Liquidation Act. A copy of the Association's proof of claim, most recently updated to November 30, 2020 ("Proof of Claim") is attached as Exhibit 3 to the Yuen Declaration. The Proof of Claim, which has been reviewed, investigated as necessary and approved by the Liquidator and which the Liquidator recommends to the Court for approval pursuant to H.R.S. § 431:15-333(b) (Yuen Declaration ¶5), entitles the Hawaii Guaranty Association to the following amounts as set forth in the Proof of Claim:

Hawaii Guaranty Association Proof of Claim. On September 23, 2002, the Hawaii Guaranty Association filed a Proof of Claim with the Investors Equity Estate itemizing the amounts incurred by the Hawaii Guaranty Association for administrative expenses and policyholder level obligations relative to the Investors Equity insolvency. In addition, pursuant to H.R.S. § 431:16-214(e)(2), the Hawaii Guaranty Association, asserted a claim against the

Investors Equity Estate for interest on all funds expended by the Hawaii Guaranty Association in carrying out its powers and duties concerning Investors Equity.

The Hawaii Guaranty Association updated the calculation of its Proof of Claim as of June 30, 2020 and submitted its claim to the Liquidator on August 11, 2020. This Proof of Claim was approved by the Liquidator. See Yuen Declaration, ¶4. At the request of the Liquidator, the Hawaii Guaranty Association further updated its Proof of Claim as of November 30, 2020 and submitted its updated claim to the Liquidator on December 8, 2020. This updated Proof of Claim has been approved by the Liquidator. Yuen Declaration, ¶5.

The updated Proof of Claim shows that, from the inception of the insolvency through November 30, 2020, the Hawaii Guaranty Association incurred Administrative Level expenses in the amount of \$6,590,772. Of this amount, the Hawaii Guaranty Association has been partially reimbursed in the amount of \$3,381.132, leaving an unreimbursed Administration Expense Level 2 claim of \$3,209,640.

The Proof of Claim also shows that the Hawaii Guaranty Association has a Policyholder/Association Level priority claim in the amount of \$152,712,512. These claims arise by the Hawaii Guaranty Association's subrogation rights arising from payments made by the Hawaii Guaranty Association to satisfy policyholder claims and for the cost of continuing coverage for policyholders. Through November 30, 2020, the Hawaii Guaranty Association has received reimbursements of portions of this claim from various sources in the total amount of \$137,524,082, leaving an unpaid balance of the Hawaii Guaranty Association's Policyholder/Association priority level claim of \$15,188,430. By agreement between the Liquidator and the Hawaii Guaranty Association, all amounts previously distributed from the Investor's Equity Estate to the Hawaii Guaranty Association on account of this claim were distributed as final distributions, not subject to early access repayment requirements, except for \$34,000,000.

The Hawaii Guaranty Association also has a claim for interest payable to the Association pursuant to H.R.S. § 431:16-214(e)(2). The calculated amount of such interest was \$18,867,811 when calculated in 2002 as of December 31, 2001. The Hawaii Guaranty Association did not update the amount of its interest claim beyond December 31, 2001 in the updated Proof of Claim since the amount of assets remaining in the Investors Equity Estate, after payment of the Hawaii Guaranty Association's unpaid Administrative Level claim and its unpaid

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Policyholder/Association Level claim, will only be sufficient to pay a small portion of the \$18,867,811 interest that had accrued as of December 31, 2001.

The Hawaii Guaranty Association is also the sole shareholder of Investors Equity by virtue of its agreement with the Liquidator which was approved by this Court in connection with the Liquidator's settlement of claims against IELHC. See Order Granting Liquidator's Motion to Approve Amendments to Settlement Agreement filed on December 30, 1996. Thus, the Hawaii Guaranty Association has also filed a claim as shareholder with respect to any residual assets which may be available in the Investors Equity Estate, but there are no such residual assets since the remaining assets of Investors Equity are insufficient to satisfy the Hawaii Guaranty Association's creditor claims.

In summary, as of November 30, 2020, \$34.0 million of the previous distributions from the Investors Estate to the Hawaii Guaranty Association remained subject to early access repayment requirements. At that date, the remaining balance of the Hawaii Guaranty Association's creditor claims against the Investors Estate is as follows:

Administrative Expense Priority Level		
Gross Administrative Expenses	\$	6,590,772
Less: Recoveries	_	3,381,132
Balance Due from Estate	\$	3,209,640
Policyholder Priority Level Claim		
Gross Liability	\$	152,712,512
Less: Recoveries – All Sources		137,524,082
Balance Due from Estate	\$	15,188,430
Interest Claim		
Statutory Interest Claim (as of 12/31/01)	\$	18,867,811
Balance Due from Estate	\$	18,867,811
Grand Total Due from Investors Equity Estate	\$	37,265,881

Pursuant to H.R.S. § 431:15-334, the Liquidator requests the Court (a) to approve the Hawaii Guaranty Association's updated Proof of Claim, (b) to distribute to the Hawaii Guaranty Association, in partial satisfaction of its remaining claims against the Investors Equity Estate, the amount provided for in the Liquidator's Final Plan of Distribution, being all of the assets remaining in the Investors Equity Estate after distribution of the other amounts to be distributed in accordance with the Liquidator's Final Plan of Distribution, and (c) to order that all

distributions to the Hawaii Guaranty Association, including all previous distributions and all future distributions, constitute final distributions of Investors Equity assets and are no longer subject to repayment by the Hawaii Guaranty Association to the Investors Equity Estate as early access distributions under H.R.S. § 431:15-334(b).

#### C. <u>Approval of the Liquidator's Final Report of the Status of Assets,</u> <u>Liquidator's Final Plan of Distribution, and Discharge of Claims</u>

Pursuant to the Liquidation Act, the Liquidator has filed with the Court periodic Interim Reports on the Status of Assets showing the status of, and changes to, the assets and liabilities of Investors Equity, reflecting the Liquidator's efforts to marshal assets and distribute them pursuant to law approximately every six months since December 22, 1995 (the "Interim Reports"). Contemporaneously with the filing of this Motion, the Liquidator filed its Final Report on the Status of Assets as November 30, 2020 (the "Final Report"). The Final Report is current through November 30, 2020, and the "Statement of Net Assets in Liquidation" as of November 30, 2020 included as part of the report and attached to the Yuen Declaration as Exhibit "4" reflects the culmination of the results of all transactions of the Investors Equity Estate reflected in the Final Report and the Interim Reports previously filed with the Court. The Final Report states that, as of November 30, 2020, the amount of the remaining assets of the Investors Equity Estate, virtually all of which have been liquidated to cash, was \$21,240,390.00. Yuen Declaration, ¶6. The Liquidator requests that this Court approve the Final Report.

Aside from the Liquidator's and Association's administrative expenses ongoing after November 30, 2020, all claims against the Investors Equity Estate have been paid or otherwise discharged or have been accrued on the financial statements of Investors Equity Estate as of November 30, 2020 as follows: (1) the Class 1 claims of the Liquidator for its statutory administrative level claim of \$917,279; (2) the Class 2 level claims of the Hawaii Guaranty Association for its statutory administrative level claims of \$3,209,640; (3) the Class 4 level "Policyholders liabilities" of \$25,985; (4) the Class 4 level "Special fund liability" of \$62,397; (5) the Class 4 level Hawaii Guaranty Association's policyholder level claims and interest claims of \$34,056,241; (6) the Class 5 level "Payable to dissenting shareholder" of \$7,755<sup>2</sup>; (7) the Class 5 level "Miscellaneous liabilities" of \$89,400; and (8) the Class 9 level claims of the

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<sup>&</sup>lt;sup>2</sup> The amount "Payable to dissenting shareholder" represents the sum of the proof of claims filed by some of the shareholders who dissented from the acquisition of Investors Equity by IELHC.

Hawaii Guaranty Association for residual assets (if any) as the sole shareholder of Investors Equity.<sup>3</sup>

The Class 1 Payable to Liquidator, in the amount of \$917,279, represents administrative expenses incurred by the Liquidator over the course of these proceedings through November 30, 2020 that have not previously been paid. The Liquidator's Final Plan of Distribution includes the payment of these expenses.

The Class 2 portion of the Hawaii Guaranty Association claim represents administrative expenses incurred by the Hawaii Guaranty Association over the course of these proceedings through November 30, 2020 that have not previously been paid, in the amount of \$3,209,640. The Liquidator's Final Plan of Distribution includes the payment of these expenses.

The Class 4 level Policyholders liabilities represent returned or uncashed policyholder payments in the amount of \$25,985 made during the course of the Special Proceeding. The Liquidator's Final Plan of Distribution includes the deposit of this amount with the State of Hawaii Director of Finance in accordance with H.R.S. § 431:15-335(a).

The Class 4 level Special fund liability represents returned or uncashed policyholder payments in the amount of \$62,397 made in accordance with the Special Fund established pursuant to the June 10, 1997 Order Granting Petitioner's and Hawaii Life and Disability Insurance Guaranty Association's Joint Motion to Approve Settlement Agreement and Releases Filed on April 15, 1997. The Liquidator's Final Plan of Distribution includes the deposit of this amount with the State of Hawaii Director of Finance in accordance with H.R.S. § 431:15-335(a).

The Class 4 level Hawaii Guaranty Association's policyholder level claims and interest claims of \$34,056,241 are described more fully in Section E.2. above. This Liquidator's Final Plan of Distribution includes the payment of these Hawaii Guaranty Association Class 4 level claims to the fullest extent possible out of the assets of the Investor's Equity Estate remaining after: (a) the foregoing Class 1, Class 2 and non-Hawaii Guaranty Association Class 4 claims are

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<sup>&</sup>lt;sup>3</sup> The priority of distribution of claims from the estate is set forth in H.R.S. § 431:15-332. This section was amended in 1996, Act 121. Act 121, Section 3 states: "The provisions of the Act do not affect rights, duties, or actions that are based upon events or acts which have taken place prior to the effective date of this Act [June 12, 1996], or the effective date of any provision of this Act, nor to penalties that were incurred or proceedings begun before the effective date of this Act." This liquidation pre-dates Act 121. Therefore, citations are to the section effective July 1, 1988.

paid; (b) the administrative expenses of the Liquidator and the Association accrued after November 30, 2020 and up to the time of the final distribution are paid; and (c) payment is made to the Liquidator as provided in the Closing Process discussed below to cover administrative expenses that may be incurred after the final distribution of assets.

The assets in the Investors Equity Estate, amounting to \$21,240,390 as of November 30, 2020, will be insufficient to fully pay the Hawaii Guaranty Association's Class 4 level claims in full. Therefore, all Class 5 and lower level claims cannot be funded. The Liquidator requests that those Class 5 and lower level claims be discharged as a part of the Final Plan of Distribution.

Attached to the Yuen Declaration as Exhibit "5" is the Liquidator's Final Plan of Distribution, which is submitted to the Court for approval. Yuen Declaration, ¶7.

#### D. Approval of Closing Process

The Liquidator's Closing Process, includes continued payment from the Estate of Investors Equity Life Insurance Company of Hawaii, Ltd. in the ordinary course of business of reasonable closing-related expenses for the Liquidator and its financial and legal consultants, and for anticipated out of pocket costs for document retention, storage and destruction, tax filings, processing the dissolution of Investors Equity, and other expenses which will be incurred in closing the Investors Equity Estate and terminating these proceedings. Payment of such expenses shall continue in the ordinary course of closing the estate, up to the date of final distribution of assets authorized by the Order granting this Motion, and such final distribution may include an amount, not to exceed \$250,000.00, payable to the Liquidator as part of such final distribution to cover the Liquidator's reasonable amount of expenses it will incur in winding up the estate after such final distribution. Promptly after such final distributions, the Liquidator shall file a report with the Court indicating that final distribution of assets has occurred and all other tasks required to close and terminate the estate have been or will be accomplished. Any residual balance of the funds distributed to the Liquidator to cover the Liquidator's post-distribution expenses that have not been expended for these purposes within two years after their distribution to the Liquidator shall be disbursed to the Hawaii Guaranty Association as a partial satisfaction of its Class 4 claim against the Investors Equity Estate. The Liquidator requests that the Court approve this Closing Process.

#### E. Approval of Document Destruction Plan

The Investors Equity Estate has been open for twenty-six years and a significant number of documents have been generated and maintained during that time. Significant storage expenses have been and continue to be incurred. Yuen Declaration, ¶8. Pursuant to H.R.S. § 431:15-338, the Liquidator requests approval from the Court to permit the Liquidator to destroy all records of Investors Equity two years from the date that assets are distributed pursuant to the Liquidator's Final Plan of Distribution, except that financial records necessary for tax, audit or other legal purposes will be retained for the period required by law and then may be destroyed thereafter.

#### F. <u>Dissolution of Investors Equity</u>

The Liquidator requests that the Court order that the corporate existence of Investors Equity Life Insurance Company of Hawaii, Ltd., a Hawaii corporation, be dissolved upon the final distribution of assets detailed in Section 4 above, either by a judicial decree of dissolution filed by the Clerk of this Court at this Court's direction pursuant to H.R.S. § 414-414, or by the written consent of the Hawaii Guaranty Association, as the sole shareholder of Investors Equity, by the filing of Articles of Dissolution, pursuant to H.R.S. § 414-383. The Liquidator requests that the order specify that the Director of Commerce and Consumer Affairs shall accept for filing the Judicial Decree of Dissolution or the Articles of Dissolution, as applicable, by written consent of the shareholder to effectuate the dissolution of Investors Equity without further forms, charges, or clearances being requested or provided.

#### G. Discharge and Release of Commissioner, Liquidator and Others

The Liquidator requests that the Court issue an order, to be effective upon distribution of the assets of Investors Equity Estate pursuant to Section 2 and Section 3 above, discharging and releasing the Commissioner, the Liquidator, the Hawaii Guaranty Association, their respective directors, officers, employees, agents, consultants, attorneys, accountants, actuaries and other representatives from any and all liability for any claims, acts, or omissions related to their participation in these proceedings and their work and activities concerning the Investors Equity Estate pursuant to H.R.S. § 431:15-336 and applicable law.

#### H. Termination and Dismissal of Proceedings

The Liquidator requests the Court to authorize the Liquidator to take all other steps necessary or desirable to terminate this statutory proceeding pursuant to H.R.S. § 431:15-336.

The Liquidator further requests an order that the Commissioner or other interested party may petition the Court to reopen this proceeding upon the circumstances specified in H.R.S. § 431:15-337.

#### I. Granting of Other Relief

The Liquidator respectfully requests this Court to order such other relief as it deems necessary or desirable to conclude or otherwise in connection with these proceedings.

#### J. Proposed Form of Order

A draft proposed form of the Order requested by this Motion is attached as Exhibit "6" to the Yuen Declaration.

DATED: Honolulu, Hawaii, February 19, 2021

/s/ John Y. Yamano
WILLIAM C. McCORRISTON
JOHN Y. YAMANO

Attorneys for Petitioner, as Liquidator of Investors Equity Life Insurance Company of Hawaii, Ltd.

#### IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

#### STATE OF HAWAII

COLIN M. HAYASHIDA, Insurance Commissioner of the State of Hawai'i,	) (Special Proceeding)
Petitioner,	) DECLARATION OF PAUL S.K. YUEN
vs.	ý
INVESTORS EQUITY LIFE INSURANCE COMPANY OF HAWAII, LTD., a Hawai'i corporation,	) ) )
Respondent.	) ) )

#### **DECLARATION OF PAUL S.K. YUEN**

#### I, PAUL S.K. YUEN, DECLARE:

- 1. I am the Special Deputy Liquidator for Investors Equity Life Insurance Company of Hawaii, Ltd. This Declaration is made in support of the Liquidator's Motion for Order: (1) approving the form of notice of this motion; (2) approving the Hawaii Life and Disability Insurance Guaranty Association ("Hawaii Guaranty Association" or "Association") Proof of Claim; (3) approving the Liquidator's Final Report on the Status of Assets, Final Plan of Distribution and discharge of claims; (4) approving the closing process; (5) approving the document destruction plan; (6) dissolving Investors Equity Life Insurance Company of Hawaii, Ltd; (7) discharging the Commissioner, Liquidator and Hawaii Guaranty Association and each of their respective directors, officers employees, agents, consultants, attorneys, accountants, actuaries and other representatives; (8) terminating and dismissing these proceedings; and (9) granting related relief ("Motion")
- 2. Attached as Exhibit "1" is a true and correct copy of the form of notice of motion that will be sent to all parties who filed a timely Proof of Claim in this action.
- 3. Attached as Exhibit "2" is a true and correct copy of the form of notice of motion that will be published in a newspaper of general circulation in the City and County of Honolulu, State of Hawaii.

- 4. The Association submitted a Proof of Claim as of June 30, 2020, on August 11, 2020. This Proof of Claim was reviewed and approved by the Liquidator.
- 5. Attached as Exhibit "3" is a true and correct copy of the updated Proof of Claim, updated at the request of the Liquidator as of November 30, 2020, and submitted by the Hawaii Life and Disability Insurance Guaranty Association to the Liquidator on December 8, 2020. This Proof of Claim has been reviewed and approved by the Liquidator and the Liquidator recommends that it be approved by the Court in these proceedings.
- 6. Contemporaneously with the filing of the present motion, the Liquidator filed its Final Report on the Status of Assets as of November 30, 2020 (the "Final Report"). I have carefully reviewed the Final Report and have determined that the Final Report accurately reflects the cash receipts and disbursements and accruals through November 30, 2020, and that the expenses incurred and paid or accrued by Investors Equity through November 30, 2020 were reasonable and necessary to assist in the liquidation of Investors Equity. As shown in the Statement of Net Assets in Liquidation of Investors Equity as of November 30, 2020 that is included in the Final Report and is attached hereto as Exhibit "4", the amount of the remaining assets of the Investors Equity Estate was \$21,240,390.00.
- 7. Attached as Exhibit "5" is a true and correct copy of the Liquidator's Final Plan of Distribution.
- 8. The Investors Equity Estate has been open for twenty-six years and a significant number of documents have been generated and maintained during that time. Significant storage expenses have been and continue to be incurred.
- 9. Attached as Exhibit "6" is a true and correct copy of the Liquidator's Proposed Findings of Fact, Conclusions of Law and Order Approving Liquidator's Motion.

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

Executed this day of 18 day of 2021 at Honolulu, Hawaii.

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#### NOTICE

PLEASE TAKE NOTICE that in the matter entitled COLIN M. HAYASHIDA, Insurance Commissioner of the State of Hawai'i vs. Investors Equity Life Insurance Company Hawaii, Ltd., a Hawai'i corporation, in the Circuit Court of the First Circuit, State of Hawai'i, S.P. No. 94-0337, Hawaii Insurance Commissioner Colin M. Hayashida, in his capacity as the Liquidator ("Liquidator") of Investors Equity Life Insurance Company of Hawaii, Ltd., a Hawaii corporation ("Investors Equity Life"), has filed a motion (the "Motion") requesting the entry of a proposed Order: (1) Approving the form of Notice; (2) Approving the Hawaii Life and Disability Insurance Guaranty Association Proof of Claim; (3) Approving the Liquidator's Final Report on the Status of Assets, Final Plan of Distribution and Discharge of Claims; (4) Approving the Closing Process; (5) Approving the Document Destruction Plan; (6) Dissolving Investors Equity; (7) Approving the Discharge and Release of the Insurance Commissioner, Liquidator, and Hawaii Life and Disability Insurance Guaranty Association and each of their respective directors, officers, employees, agents, consultants, attorneys, accountants, actuaries and other representatives; (8) Terminating and dismissing these proceedings; and (9) Granting related relief (the "Order").

THE MOTION IS SUBJECT TO REVIEW AND APPROVAL BY THE COURT. IF GRANTED BY THE COURT, THE MOTION WILL AFFECT THE RIGHTS AND BENEFITS AFFORDED TO INVESTORS EQUITY LIFE'S POLICYHOLDERS, CREDITORS AND OTHERS. ALL PERSONS WHO MAY BE INTERESTED IN THE LIQUIDATION OF INVESTORS EQUITY LIFE SHOULD READ THE MOTION AND PROPOSED ORDER CAREFULLY AND CONSULT WITH THEIR LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS ABOUT THE MOTION AND PROPOSED ORDER.

Copies of the Motion and the proposed	Order are available for	viewing, downloading	and/or
printing at https://	•		

Any person receiving this Notice who does not have access to a computer or is otherwise unable to view, download or print the Motion and proposed Order, may request copies of the Motion and the proposed Order by mailing a written request for copies to the following address:

McCorriston Miller Mukai MacKinnon LLP Five Waterfront Plaza, 4<sup>th</sup> Floor 500 Ala Moana Boulevard Honolulu, Hawaii 96813

Attn: Investors Equity Life Mail Service List Coordinator

#### **NOTICE**

PLEASE TAKE NOTICE that in the matter entitled COLIN M. HAYASHIDA, Insurance Commissioner of the State of Hawai`i vs. Investors Equity Life Insurance Company Hawaii, Ltd., a Hawai i corporation, in the Circuit Court of the First Circuit, State of Hawai i, S.P. No. 94-0337, Hawaii Insurance Commissioner Colin M. Hayashida, in his capacity as the Liquidator ("Liquidator") of Investors Equity Life Insurance Company of Hawaii, Ltd., a Hawaii corporation ("Investors Equity Life"), has filed a motion (the "Motion") requesting the entry of a proposed Order: (1) Approving the form of Notice; (2) Approving the Hawaii Life and Disability Insurance Guaranty Association Proof of Claim; (3) Approving the Liquidator's Final Report on the Status of Assets, Final Plan of Distribution and Discharge of Claims; (4) Approving the Closing Process; (5) Approving the Document Destruction Plan; (6) Dissolving Investors Equity; (7) Approving the Discharge and Release of the Insurance Commissioner, Liquidator, and Hawaii Life and Disability Insurance Guaranty Association and each of their respective directors, officers, employees, agents, consultants, attorneys, accountants, actuaries and other representatives; (8) Terminating and dismissing these proceedings; and (9) Granting related relief (the "Order").

THE MOTION IS SUBJECT TO REVIEW AND APPROVAL BY THE COURT. IF GRANTED BY THE COURT, THE MOTION WILL AFFECT THE RIGHTS AND BENEFITS AFFORDED TO INVESTORS EQUITY LIFE'S POLICYHOLDERS, CREDITORS AND OTHERS. ALL PERSONS WHO MAY BE INTERESTED IN THE LIQUIDATION OF INVESTORS EQUITY LIFE SHOULD READ THE MOTION AND PROPOSED ORDER CAREFULLY AND CONSULT WITH THEIR LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS ABOUT THE MOTION AND PROPOSED ORDER.

Copies of the Motion and the proposed Order are available for viewing, downloading and/or printing at https://\_\_\_\_\_\_.

Any person receiving this Notice who does not have access to a computer or is otherwise unable to view, download or print the Motion and proposed Order, may request copies of the Motion and the proposed Order by mailing a written request for copies to the following address:

McCorriston Miller Mukai MacKinnon LLP Five Waterfront Plaza, 4th Floor 500 Ala Moana Boulevard Honolulu, Hawaii 96813 Attn: Investors Equity Life Mall Service List Coordinator

(SA1316027 3/1, 3/3, 3/5, 3/7/21)

#### HAWAII LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION

1003 Bishop Street, Suite 2030 Honolulu, Hawaii 96813 Telephone: (808) 440-8763

December 8, 2020

The Honorable Colin M. Hayashida, Insurance Commissioner in the Capacity of Liquidator of Investors Equity Life Insurance Company of Hawaii, Ltd. Paul S. K. Yuen, Special Deputy Liquidator Insurance Division
Department of Commerce and Consumer Affairs

c/o John Y. Yamano, Counsel McCorriston Miller Mukai MacKinnon LLP 500 Ala Moana Blvd., Building 5, 4<sup>th</sup> Floor Honolulu, Hawaii 96813

RE: Hawaii Life and Disability Insurance Guaranty Association ("Association") Updated Proof of Claim Dear Commissioner Hayashida:

Pursuant to applicable statutory provisions, the Association hereby submits its updated Proof of Claim to you in your capacity as Liquidator of the investors Equity Life Insurance Company of Hawaii, Ltd. ("IEL"). This updated Proof of Claim updates, amends and restates in its entirety the Association's original Proof of Claim filed with the Liquidator on December 1, 1995, the Association's First Updated Proof of Claim dated November 12, 1997, the Association's Second Updated Proof of Claim dated November 21, 2000, the Association's Fourth Updated Proof of Claim dated September 21, 2000, the Association's Fourth Updated Proof of Claim dated September 23, 2002, and the Association's Fifth Updated Proof of Claim dated August 11, 2020. Since the time of the last of these filings, additional administrative expenses have been incurred by the Association and there have been developments that have affected the Association's statutory claims.

Please consider this correspondence as the Association's Proof of Claim updated and restated through November 30, 2020, which also includes a Schedule of Administrative Expenses incurred by the Association, marked as Exhibit A, and a Summary of Guaranty Association Claims, marked as Exhibit B, both Exhibits as of November 30, 2020 and both incorporated herein by this reference. The Association is submitting this letter and the enclosures as a periodic update of its Proof of Claim pursuant to H.R.S. §

The Honorable Colin M. Hayashida December 8, 2020 Page 2

431:15-325(e). The Association reserves the right to file additional periodic updates of its Proof of Claim.

The Association has previously submitted claims at multiple priority levels pursuant to the Insurers Supervision, Rehabilitation and Liquidation Act, as amended ("Liquidation Act"). The Association has claims at the Administrative Level and at the Policyholder/Association Level. The Association has also submitted its claim for interest on the amounts owing to it, to which it is entitled before any amounts could be distributed to the level of the stockholder of IEL (which in any event is the Association) pursuant to H.R.S. § 431:16-214(e)(2), as described below.

The Association has incurred expenses at the Administrative Level in the amount of \$6,590,772 from the inception of the IEL insolvency through November 30, 2020. Through November 30, 2020, the Association has been partially reimbursed for such administrative expenses in the amount of \$3,381,132, leaving an unreimbursed Administrative Level claim by the Association in the amount of \$3,209,640. These expenses and reimbursements are summarized in Exhibits A and B.

Additional administrative expenses have been and will be incurred by the Association in the future until the IEL Estate has been closed. Adjustments to the Proof of Claim may be submitted in the future to reflect these amounts and any other amounts incurred with respect to the IEL insolvency, but such update of the Association's proof of claim may not be undertaken since the Association's existing claims far exceed the assets remaining in the IEL Estate.

The Association also has a Policyholder/Association priority level claim in the amount of \$152,712,512. To date, the Association has received reimbursements or has otherwise partially satisfied the amount of its claim at this level in the total amount of \$137,524,082—through early access distributions from the IEL Estate, by reduction of its liability through the Hartford enhancements (in connection with the transaction whereby Hartford assumed all covered policyholder claims), by its subrogation recovery in a lawsuit against the Bank of America, and by partially satisfying its claims in exchange for the IEL common stock. This leaves an unpaid balance of its Policyholder/Association level claim as of November 30, 2020 of \$15,188,430. A more detailed summary of the Association claims and deductions therefrom from the inception of the insolvency through November 30, 2020 is found in Exhibit B. The Association also claims interest on these amounts as described below.

Pursuant to agreement with the Liquidator, all distributions previously made from the IEL Estate to the Association referenced within this Proof of Claim have been made as payments in partial final satisfaction of the Association's claims against the IEL Estate no longer subject to repayment under the applicable provisions of the Liquidation Act, with the exception of an aggregate amount of \$34,000,000 of early access distributions (which have not yet been made final distributions).

In summary, with respect to the Association's Administrative Claims and its
Policyholder/Association's claims, the Association requests that the Liquidator (a) approve these claims as set forth in Exhibits A and B, approve the distribution to the Association of the full amount of these

<sup>&</sup>lt;sup>1</sup>H.R.S. § 431:15-325(e) provides that, "Claims by guaranty funds or associations, or foreign guaranty funds or associations shall be filed periodically by the funds or associations pursuant to rules adopted by the commissioner. These claims shall share in all subsequently declared distributions as if they were not late."

The Honorable Colin M. Hayashida December 8, 2020 Page 3

claims that remain unpaid of \$18,398,070 (i.e., \$3,209,640 plus \$15,188,430), plus interest in the amount of \$18,867,811.00 as described below, as partial final satisfaction of the Association's claims against the IEL Estate, and also confirm that the \$34,000,000 of previous early access distributions referred to in the prior paragraph are final distributions.

Pursuant to the Hawali Life and Disability Insurance Guaranty Association Act, H.R.S. § 431:16-214(e) (2), the Association is entitled to and hereby asserts a claim against the IEL Estate for Interest on all funds expended by the Association in carrying out its powers and duties under H.R.S. § 431:16-208 concerning IEL. Among other things, the Association Act requires that the Association be paid interest on all funds expended in carrying out its powers and duties with respect to IEL before any distribution is made to stockholders as follows:

No distribution to stockholders if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the Association with interest thereon for funds expended in carrying out its powers and duties under Section 431:16-208 with respect to such insurer have been fully recovered by the Association. H.R.S. § 431:16-214(e)(2).

With respect to the Association's interest claim, H.R.S. § 431:16-214(e)(2) does not specify the applicable rate of interest to be paid. Therefore, the rate of interest is controlled by H.R.S. § 478-2 which provides as follows:

When there is no express written contract forcing a different rate of interest, interest shall be allowed at the rate of 10% a year, except that, with respect to obligations to the State, interest shall be allowed at the prime rate for each calendar quarter but in no event shall exceed 10% a year, as follows:

- (1) For money due on any bond, bill, promissory note, or other instrument of writing, or for money lent, after it becomes due;
- (2) For money due on the settlement of accounts, from the day on which the balance is ascertained;
  - (3) For money received to the use of another, from the date of a demand made; and
- (4) For money upon an open account, after sixty days from the date of the last item or transaction.

As used in this section, 'prime rate' means the prime rate as posted in <u>The Wall Street</u> Journal on the first business day of the month preceding the calendar quarter.

The Association has calculated interest at such rate of 10% a year on a simple interest basis for all funds expended to pay claims and administrative expenses in the IEL insolvency, but only through December 31, 2001. In making this calculation of interest, the Association reviewed a monthly accounting of funds expended by the Association to pay claims and administrative expenses in the IEL insolvency and reviewed the distributions from the Estate to the Association and the amounts recovered from litigation by the Association by month received. The statutory interest rate, 10% per year, was then applied on each category, funds expended and amounts recovered, through December 31, 2001, and the resulting balances netted. This calculation results in an interest claim by the Association against

The Honorable Colin M. Hayashida December 8, 2020 Page 4

the IEL Estate in the amount of \$18,867,811.00 as of December 31, 2001, as stated in previous claims filed by the Association. Since it does not appear that there are sufficient estate assets to pay more than a small portion of the interest accrued through December 31, 2001, the Association has not incurred the expense of having its accountants calculate the additional interest that has accrued for the period from January 1, 2002 to date, but the Association reserves the right to do so.

Finally, the Association hereby asserts its rights against the IEL Estate as sole stockholder of IEL and claims entitlement to all assets in the IEL Estate, if any, after payment of classes 1 through 8 specified within H.R.S. § 431:15-332 (the "Priority Statute"). By virtue of the substantial amount of interest that has accrued, as described above, the Association recognizes that it is highly improbable that any amounts will be available to distribute to it in its capacity as the sole stockholder of IEL.

We look forward to your review and approval of this updated Proof of Claim and the attachments and are available to provide any additional information you may require and to discuss any questions or comments you may have.

Sincerely,

HAWAII LIFE AND DISABILITY
INSURANCE GUARANTY ASSOCIATION

BY:

Peter Inoue

ITS: Executive Director

**Enclosures** 

cc:

David J. Reber, Esq. Jonathan Bolton, Esq. Franklin D. O'Loughlin, Esq. Cindy Oliver, Esq.

#### **EXHIBIT A**

#### HAWAII LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION

Investors Equity Life Administrative Expenses Class B Sub-Account Expenses (Accrual Basis) From June 24, 1994 through November 30, 2020

#### General Notes:

#### 1. Basis of Preparation

The attached schedule includes expenses disbursed directly from the Hawaii Life and Disability Insurance Guaranty Association ("the Hawaii Association"), including indirect fees and expenses allocated to Investors Equity Life. The schedule does not include expenses disbursed pursuant to the Service Agreement.

#### **Specific Notes:**

#### 1. Other Professional Fees

Fees paid to Arnold & Truitt for press releases for Investors Equity Life.

Mediation fees paid to Anthony Piazza for the Bank of America Litigation.

#### 2. Executive Director of the Hawaii Association

Fees allocated to Investors Equity Life based on time spent by the Executive Director.

#### 3. Accounting Fees

Fees and costs paid to Peter P. Virdone & Company and TRUSTA A.A.C. for accounting services rendered, database management, assessments, tax filings, and other matters allocated to Investors Equity Life.

Fees and costs paid to KMH LLP, Coopers & Lybrand LLP, Price Waterhouse Coopers for audited financial statements allocable to Investors Equity Life.

Fees and costs paid to KPMG Peat Marwick LLP for services rendered regarding tax matters on the liquidation of Investors Equity Life.

#### 4. NOLHGA Dues and Expenses Reimbursed

Payments to NOLHGA for assessment data survey and quarterly members participation council assessment and travel expenses as allocated by NOLHGA to Investors Equity Life.

### 5. Investment and Bank Fees

Management fees paid to First Hawaiian Bank for investment services for the Hawaii Association's Investors Equity Life insolvency account.

### 6. Office Supplies, Office Services and Miscellaneous

Includes payments such as fax charges, publication costs, courier service, secretarial support and office supplies and other miscellaneous expenses allocable to Investors Equity Life.

### 7. Postage and Telephone

Includes payments for postage and long-distance charges allocable to Investors Equity Life.

### HAWAII LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION

IEL Expenses From June 24, 1994 through November 30, 2020

### Schedule of Class B Sub Account Expenses (Accrual Basis)

		Total
Legal Fees	4	1 010 061 06
Goodsill Anderson Quinn & Stifel	\$	1,219,951.05
Lewis Roca Rothgerber Christie LLP (fka Rothgerber Johnson & Lyons LLP)		2,555,810.80
Kobayashi Sugita & Goda		272,270.67
Reed Smith LLP		178,232.40
Scribner Hall & Thompson		4,381.46
Indirect expenses		41,272.95
Project Management and Actuarial Fees		
Buck & Associates		731,845.69
Other Professional Fees		
Arnold & Truitt		9,187.50
Anthony Piazza		1,250.00
Executive Director		492,519.78
Accounting Cost		
Peter P. Virdone & Company		205,324.46
TRUSTAAAC		134,439.72
KMHLLP		51,613.92
Coopers & Lybrand		26,901.47
Price Waterhouse Coopers		19,958.37
KPMG Peat Marwick LLP		5,208.00
Indirect expenses		4,017.00
Other Travel and Business Meetings		111,327.53
NOLHGA Dues and Expenses Reimbursed		133,245.78
Investment and Bank Fees		155,931.17
Office Supplies, Office Services and Miscellaneous		209,898.55
Postage and Telephone		26,184.40
Total	\$	6,590,772.67

**EXHIBIT A - Page 3** 

### **EXHIBITB**

## SUMMARY OF GUARANTY ASSOCIATION CLAIM

### I. GUARANTY ASSOCIATION CLAIMS

# A. Guaranty Association Administrative Expenses

1. Administrative Level Expenses Through November 30, 2020	\$ 6,590,772.00
Subtotal - Administrative Expenses 1	\$ 6,590,772.00

### B. Policyholder Level Claims

1.	Guaranty Association liability transferred to Hartford as of Closing Date - 2/5/96	\$141,567,657.00
2.	Add amounts paid in claims and expenses under Service Agreement with Liquidator	
	1994	\$49,029.00
	1995	\$4,560,728.00
	1996	\$ 542,416.00
3.	Add interest on conversion liabilities through February 5, 1998	\$ 793,399.00
4.	Death Benefits Paid by Association	
	- Through Hartford Death Benefit Fund	
	- September 1996	\$ 188,572.00
	- February 1997	\$353,151.00
	- August 1997	\$216,518.00
	- Paid Direct by Association	
	- March 1996 - March 1997	\$ 313,503.00
5.	IEL 401-K Plan Claim Paid by Association - November 1996	\$ 107,569.00
6.	Add interest charges on loan from Executive Lifeinsolvency account through April 30, 1998	\$ 590,795.00
7.	Add interest charges on loan from life account member insurers through October 15, 1998	\$ 1,708,471.00
8.	Add interest charges on loan from health account member insurers through October 15, 1998	\$ 1,720,704.00

<sup>&</sup>lt;sup>1</sup> This amount does not include administrative expenses paid after November 30, 2020, which are ongoing. The Association will file an amended Proof of Claim in the future for payment of such expenses.

	Policyholder Level Claims	\$152,712,512.00
C.	Interest Claim <sup>2</sup>	
carryi	ng out the Association's powers and duties pursuant to	\$ 18,867,811.00
D.	Shareholder Level Claim	
Share	holder claim	All remaining funds in the IEL Estate after Classes 1-8 have been paid pursuant to H.R.S § 431:15-332, if any, and after payment of interest due to the Association under H.R.S. Section 431:16 214(e)(2).
E.	Total - Guaranty Association Claims	
	· · · · · · · · · · · · · · · · · · ·	\$178,171,095.00plus residual in Estate
PAR'	TIAL SATISFACTION OF GUARANTY ASSOCIA  Payments Received - Administrative Level	TION CLAIMS
Reimb	oursement of expenses at Administrative Level	\$ 3,381,132.00
В.	Payments Received - Policyholder Level	
		\$49,029.00
Claim	s and expenses under Service Agreement for the year	\$4,560,728.00
	E.  PAR A.  Reimb B.  Claim	E. Total - Guaranty Association Claims  al - Administrative, Policyholder Level, Interest and reholder Claims  PARTIAL SATISFACTION OF GUARANTY ASSOCIA  A. Payments Received - Administrative Level  Reimbursement of expenses at Administrative Level

<sup>&</sup>lt;sup>2</sup> This includes only interest calculated on a simple interest basis through December 31, 2001. The Association reserves the right to update this claim to calculate interest on a compound-interest basis using month-end balances of principal and interest and to add additional interest for the period after December 31, 2001.

3.	Claims and expenses under Service Agreement for the year 1996	\$ 542,416.00
4.	Payment from Receiver for Hartford closing- 2/5/96	\$18,000,000.00
5.	Hartford ceding fee - 2/5/96	\$5,551,891.00
6.	Honfed/Bank of America Subrogation Recovery	\$32,500,000.00
7.	Payments in 1997 - Distribution from Estate in connection with Honfed Settlement	\$ 4,000,000.00
	- Proceeds from Estate asset sale	\$50,000,000.00
8.	Hartford ceding fee - 1997 - February	\$2,000,000.00
9.	Hartford ceding fee - 1997 - August	\$ 2,882,872.00
10	. Amount of Reduction of Claim in Consideration of Purchase by the Association of IEL Common Stock	\$ 249,975.00
11.	Payment from Receiver - December 1, 1998	\$16,000,000.00
12.	Hartford refund of Death Benefit Fund February 2, 2002	\$1,187,171.00
	ral deductions from policyholder level aim³	\$137,524,082.00

### III. CURRENT BALANCES

BALANCE OF UNPAID CLAIM AGAINST ESTATE- ADMINISTRATIVE LEVEL AS OF NOVEMBER 30, 2020	\$ 3,209,640.00
BALANCE OF UNPAID CLAIM AGAINST ESTATE- POLICYHOLDER LEVEL	\$ 15,188,430.00
BALANCE OF UNPAID CLAIM AGAINST ESTATE- STATUTORY INTEREST CLAIM AS OF DECEMBER 31, 2001	\$ 18,867,811.00
BALANCE OF UNPAID CLAIM AGAINST ESTATE- SHAREHOLDER LEVEL	Residual in Estate
GRAND TOTAL DUE TO GUARANTY ASSOCIATION FROM ESTATE FOR ADMINISTRATIVE AND POLICYHOLDER LEVEL AS OF NOVEMBER 30, 2020 PLUS STATUTORY INTEREST CLAIMS AS OF DECEMBER 31, 2001 AND SHAREHOLDER LEVEL CLAIM	\$ 37,265,881.00 plus residual amount in Estate

<sup>&</sup>lt;sup>3</sup> All distributions from the IEL Estate referenced in this Section 11B have been made as payments in partial final satisfaction of the Association's claims against the IEL Estate no longer subject to repayment under the applicable provisions of the Insurers, Supervision, Rehabilitation and Liquidation Act,§ 431:15-101 et seq., with the exception of an aggregate amount of \$34,000,000.

# INVESTORS EQUITY LIFE INSURANCE COMPANY OF HAWAII, LTD. IN LIQUIDATION

# Statement of Net Assets in Liquidation

November 30, 2020

### **ASSETS**

Cash			
Cash in checking		\$	21,235,481
Cash in money market funds			2
Total cash			21,235,483
•			
Investments, at market			
Investments, available for sale			202
Other asset			
Prepaid federal income tax		_	4,705
Total assets		\$	21,240,390
1		•	
LIABILITIES AND STOCKHOLD	DEDIC DEDICITE		
LIABILITIES AND STOCKHOLL	DER'S DEFICII		
Liabilities			
Accounts payable		\$	917,279
Payable to dissenting shareholder			7,755
Miscellaneous liabilities			89,400
Policyholder liabilities			25,985
Special fund liability			62,397
Payable to guaranty fund			37,265,881
Total liabilities			38,368,697
Stockholder's deficit			
Common stock	\$ 1,051,813		
Paid-in-capital	17,473,118		
Accumulated unrealized holding gain	199		
Accumulated deficit	(35,653,437)		(17,128,307)
	<del></del>	•	
Total liabilities and stockholder's deficit		\$	21,240,390

See accountants' compilation report and accompanying selected information.

# Estate of Investors Equity Life Insurance Company of Hawaii, Ltd., in Liquidation Liquidator's Final Plan of Distribution

As of November 30, 2020, the assets remaining in the Estate of Investors Equity Life Insurance Company of Hawaii, Ltd., in Liquidation ("Investors Equity Estate"), totaled \$21,240,390. These assets are to be distributed as follows:

- 1. Payment of ongoing administrative expenses of the Liquidator and the Hawaii Life and Disability Guaranty Association (the "Association") that are incurred from and after December 1, 2020 and approved by the Liquidator prior to the date the final distributions set forth below are made.
- 2. Payment to the Liquidator of \$917,279 for the Liquidator's administrative expenses accrued and unpaid as of November 30, 2020.
- 3. Payment to the Association of \$3,209,640 for the Association's administrative expenses accrued and unpaid as of November 30, 2020.
- 4. Payment to the State of Hawaii Director of Finance of \$25,985 on account of checks paid to Investors Equity policyholders that have not been cashed or were returned.
- 5. Payment to the State of Hawaii Director of Finance of \$62,397 on account of Special Fund checks paid to Investors Equity policyholders that have not been cashed or were returned.
- 6. Payment to the Liquidator of an amount, not to exceed \$250,000, representing the Liquidator's reasonable estimate of the additional expenses to be incurred by the Liquidator in finally winding up and dissolving Investors Equity, with any portion of the amount withheld that has not been expended within two years after their distribution to the Liquidator to be paid to the Association.
- 7. Payment to the Association of all assets of the Investors Equity Estate remaining after the foregoing distributions, in partial satisfaction of the Association's claims, which will be in the amount of \$17,025,089 less the amounts paid pursuant to paragraphs 1 and 6 above. All prior distributions to the Association and all distributions to the Association pursuant to this Final Plan of Distribution shall constitute final distributions of the assets of the Investors Equity Estate and shall not be subject to repayment by the Association to the Investors Equity Estate as early access distributions.
- 8. The assets in the Investors Equity Estate are insufficient to fully pay the Hawaii Guaranty Association's Class 4 level claims in full. Therefore, all Class 5 and lower level claims cannot be funded and are discharged.

Payment of the amounts set forth above shall be made by the Investors Equity Estate not later than thirty (30) days after the Order approving this Final Plan of Distribution has become final and either the period for taking any appeals therefrom have expired without any appeal have been taken or any appeals taken therefrom have been finally resolved. The Liquidator shall file with the Court a final report of the distributions made pursuant to this Plan within thirty (30) days after all such payments have been made.

### McCORRISTON MILLER MUKAI MacKINNON LLP

WILLIAM. C. McCORRISTON #995-0 JOHN Y. YAMANO #3888-0 Five Waterfront Plaza, 4<sup>th</sup> Floor 500 Ala Moana Boulevard Honolulu, Hawaii 96813 Telephone: (808) 529-7300 Facsimile: (808) 524-8293

Attorneys for Petitioner, as Liquidator of Investors Equity Life Insurance Company of Hawaii, Ltd.

### IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

### STATE OF HAWAI'I

COLIN M. HAYASHIDA, Insurance	) S.P. NO. 94-0337
Commissioner of the State of Hawai'i,	) (Special Proceeding)
Petitioner, vs. INVESTORS EQUITY LIFE	<ul> <li>(PROPOSED] FINDINGS OF FACT,</li> <li>(CONCLUSIONS OF LAW AND ORDER)</li> <li>(APPROVING LIQUIDATOR'S MOTION)</li> <li>(FOR ORDER:</li> <li>(1) Approving the Form of Notice;</li> </ul>
INSURANCE COMPANY OF HAWAI'I, LTD., a Hawai'i Corporation,	<ul> <li>(2) Approving the Hawaii Life and</li> <li>Disability Insurance Guaranty</li> <li>Association Proof of Claim;</li> </ul>
Respondent.	<ul> <li>(3) Approving the Liquidator's Final Report on the Status of Assets, Final Plan of Distribution and Discharge of Claims;</li> <li>(4) Approving Closing Process;</li> <li>(5) Approving Document Destruction Plan;</li> <li>(6) Dissolving Investors Equity Life Insurance Company of Hawaii, Ltd., a Hawaii Corpoation;</li> <li>(7) Approving the Discharge and Release of the Insurance Commissioner, Liquidator and Hawaii Life and Disability Insurance Guaranty Association, and Each of Their Respective Directors, Officers, Employees, Agents, Consultants, Attorneys, Accountants, Actuaries and Other Representatives;</li> </ul>

) (8) Terminating and Dismissing These
) Proceedings; and
) (9) Granting Related Relief;
) EXHIBIT "A"
)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER APPROVING APPROVING LIQUIDATOR'S MOTION FOR ORDER (1) APPROVING THE FORM OF NOTICE; (2) APPROVING THE HAWAII LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION PROOF OF CLAIM; (3) APPROVING THE LIQUIDATOR'S FINAL REPORT ON THE STATUS OF ASSETS, FINAL PLAN OF DISTRIBUTION AND DISCHARGE OF CLAIMS; (4) APPROVING THE CLOSING PROCESS; (5) APPROVING THE DOCUMENT DESTRUCTION PLAN; (6) DISSOLVING INVESTORS EQUITY LIFE INSURANCE COMPANY OF HAWAII, LTD., A HAWAII CORPORATION; (7) APPROVING THE DISCHARGE AND RELEASE OF THE INSURANCE COMMISSIONER, LIQUIDATOR, AND HAWAII LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONSULTANTS, ATTORNEYS, ACCOUNTANTS, ACTUARIES AND OTHER REPRESENTATIVES; (8) TERMINATING AND DISMISSING THESE PROCEEDINGS; AND (9) GRANTING RELATED RELIEF, FILED , 2021

The Liquidator's Motion for an Order (1) Approving the Form of Notice; (2) Approving the Hawaii Life and Disability Insurance Guaranty Association Proof of Claim; (3) Approving the Liquidator's Final Report on the Status of Assets, Final Plan of Distribution and Discharge of Claims; (4) Approving the Closing Process; (5) Approving the Document Destruction Plan; (6) Dissolving Investors Equity Insurance Company of Hawaii, Ltd., a Hawaii corporation; (7) Approving the Discharge and Release of the Insurance Commissioner, Liquidator, and Hawaii Life and Disability Insurance Guaranty Association and each of their respective directors, officers, employees, agents, consultants, attorneys, accountants, actuaries and other representatives; (8) Terminating and Dismissing These Proceedings; and (9) Granting Related Relief, filed \_\_\_\_\_\_\_, 2021 (the "Motion"), having come on for hearing on \_\_\_\_\_\_, 2021 before the Honorable Dean E. Ochiai. John Y. Yamano appeared for Petitioner. David J. Reber, Johnathan C. Bolton and Franklin D. O'Loughlin appeared for the Hawaii Life and Disability Insurance Guaranty Association.

The Court, after having considered the Motion, the Memorandum in Support of Motion, the Declaration of Paul Yuen, the exhibits attached thereto, pertinent parts of the record in these proceedings, the arguments of counsel, and having considered the objections, questions and comments of the parties and other interested persons, and good cause appearing therefor,

The Court hereby makes and enters the following Findings of Fact, Conclusions of Law and Order:

### **FINDINGS OF FACT**

If any of these findings are deemed conclusions of law they shall be construed as such.

- 1. This liquidation proceeding began with the filing, on August 5, 1994, of a Petition for Liquidation of Investors Equity. On December 29, 1994, the Court granted the Commissioner's petition and placed Investors Equity into liquidation. The Liquidator has marshalled all assets and has brought this motion to close the Investors Equity Estate.
- 2. There were several components of the liquidation proceeding that facilitated the continuing coverage and funding of policyholder obligations, including the Hawaii Life and Disability Insurance Guaranty Association ("Hawaii Guaranty Association").
- 3. On September 23, 2002, the Hawaii Guaranty Association filed a Proof of Claim with the Investors Equity Estate itemizing the amounts incurred by the Hawaii Guaranty Association for administrative expenses and policyholder level obligations relative to the Investors Equity insolvency. In addition, pursuant to H.R.S. § 431:16-214(e)(2), the Hawaii Guaranty Association, asserted a claim against the Investors Equity Estate for interest on all funds expended by the Hawaii Guaranty Association in carrying out its powers and duties concerning Investors Equity.
- 4. The Hawaii Guaranty Association updated the calculation of its Proof of Claim as of June 30, 2020 and submitted its claim to the Liquidator on August 11, 2020. This Proof of Claim was approved by the Liquidator.
- 5. At the request of the Liquidator, the Hawaii Guaranty Association further updated its Proof of Claim as of November 30, 2020 and submitted its updated claim to the Liquidator on December 8, 2020. This updated Proof of Claim has been approved by the Liquidator.
- 6. The Liquidator has filed with the Court periodic Interim Reports on the Status of Assets showing the status of, and changes to, the assets and liabilities of Investors Equity, reflecting the Liquidator's efforts to marshal assets and distribute them pursuant to law approximately every six months since December 22, 1995 (the "Interim Reports"). Contemporaneously with the filing of this Motion, the Liquidator filed its Final Report on the Status of Assets as November 30, 2020 (the "Final Report").

- 7. The Final Report is current through November 30, 2020, and the "Statement of Net Assets in Liquidation" as of November 30, 2020 included as part of the report reflects the culmination of the results of all transactions of the Investors Equity Estate reflected in the Final Report and the Interim Reports previously filed with the Court. The Final Report states that, as of November 30, 2020, the amount of the remaining assets of the Investors Equity Estate, virtually all of which have been liquidated to cash, was \$21,240,390.00.
- 8. The Liquidator's Final Plan of Distribution sets forth the distribution of the remaining assets of the Investors Equity Estate. The assets in the Investors Equity Estate are insufficient to fully pay the Hawaii Guaranty Association's Class 4 level claims in full. Therefore, all Class 5 and lower level claims cannot be funded and the Liquidator requests the discharge of those claims. A copy of the Final Plan of Distribution is attached as Exhibit "A".
- 9. The Court finds that due, fair, and adequate notice of these proceedings, the Motion and all related matters has been given to all parties and interested persons whom Colin M. Hayashida, successor to former Insurance Commissioner Gordon Ito, and as Insurance Commissioner of the State of Hawaii ("Commissioner"), in his capacity as Liquidator of Investors Equity Life Insurance Company of Hawaii, Ltd., ("Liquidator"), reasonably deemed to be entitled to such notice as required by Hawaii law, including to counsel of record, all persons who have filed proofs of claim and all other persons having or purporting to have an interest in Investors Equity Life Insurance Company of Hawaii, Ltd. ("Investors Equity").
- 10. The Court finds that the notice provided in connection with these proceedings has sufficiently informed all interested parties, including creditors of Investors Equity and the Hawaii Life and Disability Insurance Guaranty Association, of the purpose and pendency of these proceedings.
- 11. The Court finds that such notice comports with the requirements of due process and the provisions of the Hawaii Insurance Code.
- 12. The Court finds that all interested persons were given full and fair opportunity to present objections, evidence, and arguments before this Court on the Motion at a hearing on \_\_\_\_\_\_\_, 2021 which considered the fairness and legality of the relief requested in the Motion.

### **CONCLUSIONS OF LAW**

If any of these conclusions of law are deemed findings of fact they shall be construed as such:

- A. The Court has reviewed the Motion and determines that all of the requirements for completion of the administration of the liquidation of Investors Equity Life Insurance Company of Hawaii, Ltd. have been met.
- B. The Court has reviewed and APPROVES the form of Notice of this motion provided by the Liquidator.
- C. The Court has reviewed and APPROVES the Hawaii Life and Disability Insurance Guaranty Association Proof of Claim.
- D. The Court has reviewed and APPROVES the Liquidator's Final Report on the Status of Assets heretofore filed herein, and all transactions reported or reflected therein, the Liquidator's Final Plan of Distribution (a copy of which is attached to this Order as Exhibit "A" and incorporated by reference as if set forth in full in this Order) and the Liquidator's request for discharge of all Class 5 and lower level claims.
  - E. The Court has reviewed and APPROVES the Liquidator's Closing Process.
- F. The Court has reviewed and APPROVES the Liquidator's Document Destruction Plan.
- G. The Court has reviewed and APPROVES the Dissolution of Investors Equity Insurance Company of Hawaii, Ltd., a Hawaii corporation.
- H. The Court has reviewed and APPROVES the Discharge and Release of the Insurance Commissioner, Liquidator, and Hawaii Life and Disability Insurance Guaranty Association and each of their respective directors, officers, employees, agents, consultants, attorneys, accountants, actuaries and other representatives.
- I. The Court has reviewed and APPROVES the Termination and Dismissal of these Proceedings.

### **ORDER**

Based upon the foregoing, it is therefore ORDERED, ADJUDGED, and DECREED that:

1. The Motion is GRANTED for the reasons set forth therein.

- 2. Any and all objections to the Motion, and any and all claims not heretofore paid or provided for or allowed by the Liquidator in the Final Distribution Plan, are hereby DENIED, DISCHARGED and OVERRULED.
- 3. The Court hereby approves all relief requested in the Motion and the transactions, plans and terms contemplated by the Motion. The Court specifically approves:
  - (a) the form of notice of this motion provided by the Liquidator;
- (b) the Hawaii Life and Disability Insurance Guaranty Association Proof of Claim pursuant to H.R.S. § 431:15-133 dated December 8, 2020. The Liquidator's Final Plan of Distribution sets forth the amount to be distributed to the Hawaii Life and Disability Insurance Guaranty Association, in partial satisfaction of its remaining claims against the estate of Investors Equity, and all distributions to the Hawaii Life and Disability Insurance Guaranty Association, including all previous distributions and the distribution authorized by this Order, constitute final distributions of Investors Equity assets and are no longer subject to repayment by the Hawaii Life and Disability Insurance Guaranty Association to the estate of Investors Equity as early access distributions pursuant to H.R.S. § 431:15-334(b). The assets in the Investors Equity Estate are insufficient to fully pay the Hawaii Guaranty Association's Class 4 level claims in full. The Hawaii Guaranty Association's claim to the residual assets, if any, as the shareholder of Investors Equity cannot be paid;
- (c) Liquidator's Final Report on the Status of Assets and all transactions reported or reflected therein, including without limitation Investors Equity's Statement of Net Assets in Liquidation as of November 30, 2020, which Statement reflects the culmination of the results of all transactions of Investors Equity in Liquidation shown in Reports on the Status of Assets filed by the Liquidator for all period through and including November 30, 2020.
- (d) the Liquidator's Final Plan of Distribution attached as Exhibit 1 to this Order and incorporated into this Order by reference.
- (e) the Liquidator's Document Destruction Plan, which includes the plan and process to destroy all records of Investors Equity after two years from the distribution of assets in accordance with the Liquidator's Final Plan of Distribution, except that financial records necessary for tax, audit, or other legal purposes will be retained for and the period required by law and may be destroyed thereafter;

- Company of Hawaii, Ltd., a Hawaii corporation, which shall be dissolved upon the final distribution of assets in accordance with the Liquidator's Final Plan of Distribution. The Clerk of this Court or the Liquidator is authorized to file a judicial decree of dissolution in such form as the Liquidator may request or, with the written consent of the Hawaii Life and Disability Insurance Guaranty Association as sole shareholder, Articles of Dissolution, with the Director of the Department of Commerce and Consumer Affairs of the State of Hawaii and to take all other steps reasonable and necessary to terminate the corporate existence of Investors Equity Insurance Company of Hawaii, Ltd., a Hawaii corporation; and
- (g) all actions necessary or desirable to terminate and dismiss with prejudice this above-captioned statutory proceeding pursuant to H.R.S. § 431:15-336; provided, however, that the Liquidator or any other interested party may petition this Court to reopen this proceeding upon the circumstances specified in H.R.S. § 431:15-337.
- 4. Immediately upon the distribution of the assets of the estate of Investors Equity pursuant to this Order, the Insurance Commissioner of the State of Hawaii, the Liquidator, the Hawaii Life and Disability Insurance Guaranty Association, and each of their respective directors, officers, employees, agents, consultants, attorneys, accountants, actuaries, and other representatives, are fully and forever discharged and released from any and all liability for any claims, acts, or omissions related to their work and activities concerning the Investors Equity Estate to the fullest extent permissible under H.R.S. § 431:15-336 and applicable law.
- 5. Within a reasonable time after the final distribution of assets pursuant to the Liquidator's Final Plan of Distribution, the Liquidator shall file its final report of the distribution of assets of the estate of Investors Equity from and after December 1, 2020 up to and including the date that all assets have been finally distributed.
- 6. This Order shall be served on all parties who have requested service herein and on such other persons as the Liquidator deems appropriate.

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7. This order is entered as a Fin-	al Order. The Clerk shall enter a separate Judgment
on this Order terminating this proceeding.	
DATED: Honolulu, Hawaii,	•
	JUDGE OF THE ABOVE-ENTITLED COURT
APPROVED AS TO FORM:	
JOHN Y. YAMANO Attorneys for Petitioner	-
	_
DAVID J. REBER, ESQ. JOHNATHAN C. BOLTON, ESQ. Attorneys for the Hawaii Life and Disability	
Insurance Guaranty Association	

Colin M. Hayashida, Insurance Commissioner of the State of Hawaii v. Investors Equity Life Insurance Company of Hawaii, Ltd., a Hawaii Corporation, S.P. No. 94-0337 (Special Proceeding); FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING LIQUIDATOR'S MOTION FOR ORDER (1) APPROVING THE FORM OF NOTICE; (2) APPROVING THE HAWAII LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION PROOF OF CLAIM; (3) APPROVING THE LIQUIDATOR'S FINAL REPORT ON THE STATUS OF ASSETS, FINAL PLAN OF DISTRIBUTION AND DISCHARGE OF CLAIMS; (4) APPROVING CLOSING PROCESS; (5) APPROVING DOCUMENT DESTRUCTION PLAN; (6) DISSOLVING INVESTORS EQUITY LIFE INSURANCE COMPANY OF HAWAII, LTD., A HAWAII CORPORATION; (7) APPROVING DISCHARGE AND RELEASE OF THE INSURANCE COMMISSIONER, LIQUIDATOR, AND HAWAII LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONSULTANTS, ATTORNEYS, ACCOUNTANTS, ACTUARIES AND OTHER REPRESENTATIVES; (8) TERMINATING AND DISMISSING THESE PROCEEDINGS; AND (9) GRANTING RELATED RELIEF

### IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

### STATE OF HAWAII

COLIN M. HAYASHIDA, Insurance	) S. P. NO. 94-0337
Commissioner of the State of Hawai'i,	) (Special Proceeding)
Petitioner,	) NOTICE OF HEARING MOTION )
vs.	)
INVESTORS EQUITY LIFE INSURANCE COMPANY OF HAWAII, LTD., a Hawai'i corporation,	) ) ) )
Respondent.	) ==
	)
	)
	_)

### **NOTICE OF HEARING MOTION**

TO: JAMES J. BICKERTON, ESQ.
Bickerton Dang
Topa Financial Center, Fort St. Tower
745 Fort Street, Suite 801
Honolulu, Hawai'i 96813

Attorneys for Intervenor INVESTORS EQUITY LIFE HOLDING COMPANY

DAVID J. REBER, ESQ.
JOHNATHAN C. BOLTON, ESQ.
Goodsill Anderson Quinn & Stifel
First Hawaiian Center, Suite 1600
999 Bishop Street
Honolulu, Hawai'i 96813

Attorneys for HAWAII LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION

NOTICE IS HEREBY GIVEN that the above Motion shall come on for hearing before the Honorable Dean E. Ochiai, Judge of the above-entitled Court, in his courtroom at

Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i 96813, on April 30, 2021 at 8:30 a.m., or as soon thereafter as counsel may be heard.

DATED: Honolulu, Hawaii, February 19, 2021

/s/ John Y. Yamano WILLIAM C. McCORRISTON JOHN Y. YAMANO

Attorneys for Petitioner, as Liquidator of Investors Equity Life Insurance Company of Hawaii, Ltd.

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### IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

### STATE OF HAWAII

COLIN M. HAYASHIDA, Insurance Commissioner of the State of Hawai'i,	) S. P. NO. 94-0337 ) (Special Proceeding)
Petitioner,	) CERTIFICATE OF SERVICE
vs.	)
INVESTORS EQUITY LIFE INSURANCE COMPANY OF HAWAII, LTD., a Hawai'i corporation,	) ) )
Respondent.	)
	) ) _)

### **CERTIFICATE OF SERVICE**

THE UNDERSIGNED HEREBY CERTIFIES that on this date, a true and correct copy of the foregoing document is being duly served upon the following individuals via the Judiciary Electronic Filing System (JEFS):

JAMES J. BICKERTON, ESQ. bickerton@dsds.com Bickerton Dang Topa Financial Center, Fort St. Tower 745 Fort Street, Suite 801 Honolulu, Hawai'i 96813

Attorneys for Intervenor INVESTORS EQUITY LIFE HOLDING COMPANY

THE UNDERSIGNED HEREBY FURTHER CERTIFIES that on this date, a true and correct copy of the foregoing document will be duly served upon the following individuals via hand-delivery, addressed as follows:

DAVID J. REBER, ESQ. JOHNATHAN C. BOLTON, ESQ. Goodsill Anderson Quinn & Stifel First Hawaiian Center, Suite 1600 999 Bishop Street Honolulu, Hawai'i 96813

Attorneys for HAWAII LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION

DATED: Honolulu, Hawaii, February 19, 2021

/s/ John Y. Yamano WILLIAM C. McCORRISTON JOHN Y. YAMANO

Attorneys for Petitioner, as Liquidator of Investors Equity Life Insurance Company of Hawaii, Ltd

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# NOTICE OF ELECTRONIC FILING

**Electronically Filed FIRST CIRCUIT** 1SP940000337 19-FEB-2021 10:16 AM

**DKt. 395 NEF** 

An electronic filing was submitted in Case Number 1SP940000337. You may review the filing through the Judiciary Electronic Filing System. Please monitor your email for future notifications.

Case ID: 1SP940000337

Title: COLIN M HAYASHIDA VS INVESTORS EQUITY LIFE ETC

Filing Date / Time: FRIDAY, FEBRUARY 19, 2021 10:16:08 AM

Filing Parties: John Yamano

Case Type: Special Proceeding

Lead Document(s):

Supporting Document(s): 394-Motion for

Document Name: 394-LIQUIDATOR'S MOTION FOR ORDER: (1) Approving the Form of Notice; (2) Approving the Hawaii Life and Disability Insurance Guaranty Association Proof of Claim; (3) Approving the Liquidator's Final Report on the Status of Assets, Final Plan of Distribution and Discharge of Claims; (4) Approving Closing Process; (5) Approving Document Destruction Plan; (6) Dissolving Investors Equity Life Insurance...

If the filing noted above includes a document, this Notice of Electronic Filing is service of the document under the Hawai'i Electronic Filing and Service Rules.

First Circuit Court 7th Division (7thdivision.1cc@courts.hawaii.gov) David A. Webber ( dawebber63@alumni.princeton.edu ) This notification is being electronically mailed to: James J. Bickerton (bickerton@bsds.com)

The following parties need to be conventionally served: John Y. Yamano ( yamano@m4law.com )

Converted Attorney