

FILED
Superior Court of California
County of Los Angeles

JUN 22 2017

Sherril R. Carter, Executive Officer/Clerk
By Sally Fletcher Deputy

Superior Court of California

County of Los Angeles

Department 50

DAVE JONES, Insurance Commissioner of the
State of California,

Applicant,

vs.

MISSION INSURANCE COMPANY, a
California corporation, et al.,

Defendants.

Case No.: C572724

Hearing Date: June 22, 2017

Hearing Time: 8:30 a.m.

[TENTATIVE] ORDER RE:

**MOTION TO APPROVE AGREEMENTS
WITH THE UNITED STATES**

Background

The United States asserts that it has claims against Mission Insurance Company Trust (“Mission”) and Mission National Insurance Company Trust (“Mission National”) (jointly, the “Trusts”), which claims the United States also contends are entitled to priority under the Federal Priority Statute, 31 U.S.C. 3713. The Trusts have already paid the principal amount of all claims which are policyholder priority under California Insurance Code Section 1033. Now, the Insurance Commissioner of the State of California (the “Commissioner”) as Trustee has negotiated with the United States regarding hundreds of potential claims against the Trusts by the United States, and is proceeding with four matters in particular to settle. The parties entered into three settlement agreements of which they now seek Court approval and authority to consummate the agreements.

The first agreement, referred to by the Court as Agreement A, is an agreement with the Environmental Protection Agency (the “EPA”), in which the EPA releases the Trusts from any claims by the EPA. The second and third agreements are with the United States Department of

1 Justice ("DOJ") in which the DOJ releases the Trusts from federal priority liability and, with
2 Court approval, the Trusts make certain cash payments to the EPA. The proposed payment made
3 by Mission is \$23,750,000.00 and the proposed payment by Mission National is \$4,850,000.00.

4 There is no opposition to the motion.

5 **Discussion**

6 California Insurance Code Section 1037, which governs this action, states:

7 Upon taking possession of the property and business of any person in any
8 proceeding under this article, the commissioner, exclusively and except as
9 otherwise expressly provided by this article, either as conservator or liquidator:

10 (a) Shall have authority to collect all moneys due that person, and to do such
11 other acts as are necessary or expedient to collect, conserve, or protect its
12 assets, property, and business, and to carry on and conduct the business and
13 affairs of that person or so much thereof as to him or her may seem
14 appropriate.

15 "[W]hen the Insurance Commissioner is appointed as receiver or liquidator of an
16 insolvent insurance company, he or she becomes a trustee for the benefit of all creditors." (*In re*
17 *Title U.S.A. Ins. Corp.* (1995) 36 Cal.App. 4th 363, 372.) Furthermore, "the Commissioner's first
18 duty was to the grave and important [public] interest in not depriving the [insurer's]
19 policyholders of the protection of their policies." (*In re Exec. Life Ins. Co.* (1995) 32 Cal. App.
20 4th 344, 365 (Internal quotations omitted).) In discharging that duty, "the Commissioner is
21 vested with broad discretion, . . . subject to statutory limitations." (*Id.* at 356.) Those statutory
22 limitations are found at Cal. Ins. C. §§ 1025, 1033, and 1057, as discussed in *Commercial Nat.*
23 *Bank v. Superior Court* (1993) 14 Cal.App. 4th 393, 409:

24 Sections 1025, 1033 and 1057, read together, manifest the principle that the
25 insolvency trustee has a fiduciary duty to effect a pro rata distribution to all allowed
26 policyholder claimants. Section 1025 controls the allowance of unliquidated
27 claims, but requires that such claims, once proved and allowed, "... shall share
28 ratably with other claims of the same class in all subsequent distributions." Section
1033 controls liquidation preferences of allowed claims. Its subdivision (a)(5) gives
the same claim priority to "all claims of policyholders of an insolvent insurer that
are not covered claims." Section 1057 provides that in insurance insolvency

1 proceedings the Commissioner is deemed to be the trustee for the benefit of all
creditors and other persons interested in the estate.

2 The principle embodied in sections 1023, 1033 and 1057 precludes the
3 Commissioner from disregarding insurance contracts or the policyholders who filed
4 claims based on those contracts. It also precludes him from reducing the value of
5 those contracts in order to achieve objectives extraneous to the entitlements of the
policy owners.

6 Here, the Trusts have already previously paid the principal amount of all claims
7 which are policyholder priority under California Insurance Code Section 1033. Only now
8 that there are substantial assets remaining, has the United States and Commissioner entered
9 into the three agreements resolving four particular claims by the EPA against the Trusts.

10 The Court finds that the Commissioner, in entering into the three agreements with
11 the EPA and the DOJ, has not violated his broad discretion in meeting his duty to the "grave
12 and important public interest" in not depriving the Trusts' policyholders the protection of
13 their policies. The EPA, DOJ, and the Commissioner have undergone extensive analysis
14 and negotiations spanning the past five years of all the various claims the agencies have
15 against the Trusts. They have, in order to save for all involved the expense and time of
16 protracted and complicated litigation, narrowed the claims down to four especially valuable
17 ones, thus yielding a "tangible benefit to the estate from the near-global nature of the
18 settlements...." (*In re Executive Life Ins. Co.* 32 Cal.App. 4th at 379.) The settlement
19 amounts agreed upon are not a gross devaluation of the initial estimation provided by the
20 DOJ. Accordingly, the Court approves the agreements.
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Conclusion

Based on the foregoing, the Commissioner's motion to approve agreements with the United States is granted.

Commissioner to provide notice of this ruling.

DATED: June 22, 2017



Hon. Teresa A. Beaudet
Judge, Los Angeles Superior Court

06/30/2017