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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8

**FOR THE COUNTY OF LOS ANGELES**

9

10 STEVE POIZNER, Insurance Commissioner	) Case No. C 572 724
of the State of California,	)
11	)
Applicant,	) Honorable John Shepard Wiley Jr.
12	)
vs.	)
13	) <b>THE INSURANCE COMMISSIONER'S</b>
MISSION INSURANCE COMPANY, a	) <b>STATUS CONFERENCE REPORT</b>
14 California corporation,	) <b>AND UPDATED CLOSING PLAN</b>
15	)
Respondent.	) Date: September 25, 2009
16	) Time: 8:30 a.m.
_____	) Department 50
Consolidated with Case Numbers	)
17	)
C 576 324; C 576 416;	) Action Filed: October 31, 1985
18 C 576 323; C 576 325; C 629709	)
19 _____	)

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21 Steve Poizner, Insurance Commissioner of the State of California, in his capacity  
22 as Trustee of the Mission Insurance Company Trust, the Mission National Insurance  
23 Company Trust and the Enterprise Insurance Company Trust ("Insurance  
24 Commissioner"), hereby submits this Status Report and advises the Court as follows:

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1 Receivership proceedings in Missouri. Mission Insurance Company Trust has a substantial  
2 approved claim in the Missouri receivership proceeding. As described above, the next key event  
3 in this estate is this distribution. This is the most substantial remaining asset owed to the Mission  
4 Insurance Company Trust. A 2009 distribution of this asset would permit a further distribution to  
5 claimants.

### 6 7 **Reinsurance Debtors Owe Sums to Mission Insurance Company Trust**

8 The Mission Insurance Company Trust is owed money by insurers in rehabilitation or  
9 liquidation. One substantial proof of claim is approved in the Centaur Insurance Company estate,  
10 a rehabilitation in Illinois. The Conservation and Liquidation Office has been in touch with the  
11 Illinois Special Deputy's office to try to get a firm date for the likely distribution from Centaur,  
12 but no firm date has yet been forthcoming. Another reinsurer, Universal Ruckversicherungs, is a  
13 foreign insolvency in its final stages, is expected to make a further dividend in the near future.  
14 Future reinsurance collections could exceed ten million dollars. No further information as to the  
15 timing of these distributions has been received since the last status conference.

### 16 **B. The Timing Issues Posed by the Tax Concerns**

17 The Mission estates are currently grantor trusts of subsidiaries of Covanta Holding  
18 Corporation ("Covanta"). As a result, the income or loss allocable to the Mission estates is  
19 included in the consolidated federal income tax return filed by Covanta. Under the Tax Sharing  
20 Agreement between the Mission estates and Covanta, Covanta is liable to pay for all federal  
21 income taxes allocable to the estates for taxable years beginning in 2004.

22 Nevertheless, under 31 U.S.C. 3713(a)(1)(A), a claim of the United States Government  
23 shall be paid first when a taxpayer indebted to the government is insolvent and either (i) the  
24 debtor makes a voluntary assignment of property to some other party without retaining enough  
25 property to pay all debts or (ii) an act of bankruptcy is committed. Under 31 U.S.C. 3713(b), a  
26 representative of an insolvent taxpayer paying any part of a debt of a person or estate before  
27

1 paying a claim of the government is liable to the extent of the payment for unpaid claims of the  
2 Government. Courts have interpreted this provision as causing personal liability on behalf of the  
3 representative if the personal representative distributed assets of the estates which rendered the  
4 estate insolvent and the distribution took place after the personal representative had notice or  
5 knowledge of the unpaid claims of the U.S. *See Allen v. Commissioner*, T.C. Memo 1999-385  
6 (1999). The Insurance Commissioner lacks notice of such claims. The Insurance Commissioner  
7 believes that Covanta will be required to meet, and will meet, any unexpected contingencies  
8 associated with Covanta's primary obligation for taxes due. However, as a matter of  
9 conservatism, the Insurance Commissioner has reserved against the contingency. Consequently,  
10 the Mission Insurance Company Trust and Mission National Insurance Company Trust are  
11 currently retaining assets on account of the possibility that additional federal income taxes will  
12 be owed by the estates. In general, the statute of limitations on assessment closes three years  
13 after the tax return was filed (whether or not such return was filed on the date prescribed by  
14 law). Internal Revenue Code Section 6501. Corporate returns generally can be filed no later  
15 than September 15<sup>th</sup> for the previous taxable year for a corporate taxpayer maintaining its tax  
16 records on the basis of a calendar year (which is the case for the parties involved). In general,  
17 tax returns must be filed, despite the liquidation process, for all years ending with the taxable  
18 year in which the final distribution is made. Internal Revenue Code Section 6012.

19 The Insurance Commissioner continues to project that the most substantial portion of  
20 these assets will be released by the estates and distributed to creditors no later than year-end  
21 2011, and that most of the remaining amounts will be distributed in 2012 through 2014. As of  
22 year-end 2014, the statute of limitations on assessment for federal income taxes will remain open  
23 for 2011 and later taxable years. Some assets will still need to be available in the event there is  
24 additional tax liability until the statute of limitations for 2014 has expired, but the Insurance  
25 Commissioner believes he can develop a solution whereby the assets in question can be held, so  
26 as not to prevent the estates from being closed as of year-end 2014, and hopefully even earlier.

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1           Therefore, it is anticipated that the Mission and Mission National estates can be closed by  
2 year-end 2014, although as described above, it may be necessary to retain a minimal amount of  
3 assets in the unlikely event that there is additional federal income tax liability until all of the  
4 taxable years are closed for purposes of assessment by the Internal Revenue Service.

### 5                           **III. Insurance Commissioner's Time Line for Wind-up**

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7           Late 2009/early 2010) (revised from October in light of the Missouri distribution  
8 situation)—Approval will be sought to distribute all sums collected in 2009 above tax and  
9 closing reserves;

10           5. October 31, 2010: Approval will be sought to distribute all sums collected in 2009  
11 above tax and closing reserves;


12  
13           6. October 31, 2011: Approval of the Court to distribute the vast majority of the  
14 remaining assets of the trusts shall be sought, as the tax contingencies will in the main have  
15 expired.

16           7. Final reserve distribution: Assuming that no tax issues arise, a small sum will be  
17 required to be reserved for potential tax issues as to which the statute of limitations has not yet  
18 expired. This is projected to be a small fraction of the funds now being held, and current  
19 projections are that this small fraction will be distributed either to claimants or to a trust for the  
20 benefit of claimants by 2014.  
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### 22                           **IV. Financial Status of the Trusts**

23           Attached as Exhibit "A" is a statement of assets and liabilities for the Trusts.  
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1 Respectfully submitted,

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**CONSOLIDATED: Mission Ins Cos**  
**STATEMENT OF ASSETS AND LIABILITIES**  
As of June 30, 2009

	672	170	540	
	Mission	Mission National	Enterprise	TOTAL
<b>ASSETS</b>				
Cash and cash equivalents:				
Unrestricted	-	-	126,600	126,600
Restricted	580,500	-	-	580,500
Participation in pooled investments, at market	90,652,400	21,118,000	1,441,900	113,212,200
Accrued investment income	532,900	114,400	21,400	668,800
Recoverable from reinsurers	58,600,100	10,414,100	-	69,014,200
Receivable from affiliates	80,038,600	-	-	80,038,600
Other receivable	-	133,200	-	133,200
<b>Total Available Assets</b>	<b>230,404,500</b>	<b>31,779,700</b>	<b>1,589,900</b>	<b>263,774,100</b>
<b>LIABILITIES</b>				
Secured claims	1,852,000	1,886,800	641,900	4,380,700
Accrued administrative expenses	77,585,200	15,867,900	580,100	94,033,200
Claims against policies, including guaranty associations, before distributions	846,832,600	596,098,500	120,573,400	1,563,504,500
Early access and other Class 2 distributions	(846,629,600)	(499,606,700)	(120,573,400)	(1,466,809,700)
Payable to affiliates	78,724,300	36,075,900	35,556,300	150,356,500
All other claims	178,127,300	(19,237,800)	(4,775,400)	154,114,100
<b>Total Estimated Liabilities</b>	<b>336,491,800</b>	<b>131,084,600</b>	<b>32,002,900</b>	<b>499,579,300</b>
<b>NET ASSETS (DEFICIENCY)</b>	<b>(106,087,300)</b>	<b>(99,304,900)</b>	<b>(30,413,000)</b>	<b>(235,805,200)</b>

1 **PROOF OF SERVICE: By U.S. Mail**  
2 **(Code Civ. Proc., §§ 1013, 2015.5)**

3 STATE OF TEXAS, COUNTY OF DALLAS.

4 I am employed in the County of Dallas, State of Texas. I am over the age of 18 and not a party to the  
5 within action; my business address is 625 West Centerville Road, Suite 110, Garland, Texas 75041.

6 On this date, I served the foregoing documents described as **THE INSURANCE COMMISSIONER'S**  
7 **STATUS CONFERENCE REPORT AND UPDATED CLOSING PLAN** by placing a copy thereof  
8 enclosed in sealed envelopes addressed as follows:

9 Sent via U.S. Mail to:

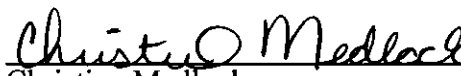
10 ATTACHED LIST

11 I am readily familiar with my employer's practices of collection and processing correspondence for  
12 mailing with the U.S. Postal Service and the above-referenced correspondence will be deposited with  
13 the U.S. Postal Service on the same date as stated below, following the ordinary course of business.

14  (State) I declare under penalty of perjury under the laws of the State of California that the above  
15 is true and correct.

16  (Federal) I declare that I am employed by the office of a member of the bar of this court at whose  
17 direction the service was made.

18 Executed on September 10, 2009 at Garland, Texas.

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Christine Medlock



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