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Los Angeles Superior Court

OCT 13 2005

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES**

John A. Garino, Insurance Commissioner/Clerk
By V. Bailey Deputy

9 JOHN GARAMENDI, Insurance
10 Commissioner of the State of California,

11 Applicant,

12 vs.

13 MISSION INSURANCE COMPANY, a
14 California corporation,

15 Respondent.

16 Consolidated with Case Numbers

17 C 576 324; C 576 416;
18 C 576 323; C 576 325; C 629709

Case No. C 572 724

Honorable John Shepard Wiley Jr.

**THE INSURANCE COMMISSIONER'S
STATUS REPORT AND UPDATED
CASE CLOSING PLAN, including
Industrial Trucking OSC**

Action Filed: October 31, 1985
Department: 50

Date: October 17, 2005
Time: 8:30 a.m.
Department: 50

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27 John Garamendi, Insurance Commissioner of the State of California, as Trustee of the

1 Mission Insurance Company Trust and the Mission National Insurance Company Trust, submits this
2 Status Report for the Status Conference on October 17, 2005 and shows:

3 **Events which have take place since the last Status Conference:**

4 On September 30, 2005, as planned the Insurance Commissioner filed motions to close this
5 case as to the remaining two companies, Mission Insurance Company Trust and Mission National
6 Insurance Company Trust. The motion is set to occur in two phases. Phase one will approve the
7 notice and set up a final hearing date. Phase two will be the final hearing.

8 The motions will request a major distribution be approved to occur in January 2006.
9 In addition, the motions will seek to hold the trusts open for a period of time. The trusts
10 will reserve funds for contingencies, including taxes. In addition, the trusts continue to receive
11 recoveries. The requested closing orders will close the cases, subject to being re-opened to distribute
12 the trust assets subsequently collected (or reserved but not expended). This approach was followed in
13 2004 as to Enterprise Insurance Company Trust.

14 The Insurance Commissioner has resolved further policyholder and reinsured proofs of
15 claims since the last Status Conference. This Court has granted approvals of settlements submitted
16 for court approval. One application for order to show cause proceeding was filed by American
17 International Group, Inc. ("AIG"), but it withdrew its application

18 The Industrial Trucking Service Corporation case is before this Court again after remand
19 from the Court of Appeal. The parties submitted a joint status report in connection with the matter.
20 The parties are not yet settled, though substantial progress in bridging the gaps has been made.

21 Georgia Pacific Corporation filed a Petition for Review with the California Supreme Court.
22 The California Supreme Court denied that Petition for Review. The Insurance Commissioner
23 hopes the remaining matter can be resolved to permit the closing to occur. A distribution, and wind-
24 up of as much as can be wound up should be possible, reserving for this matter, even if it is not soon
25 resolved.

1 **Proofs of Claim:**

2 The claims department reports that all outstanding proofs of claim, other than the inter-
3 company claims, appear to have been adjudicated, other than Industrial Trucking, discussed above,
4 as to which litigation remains pending. The Insurance Commissioner's claims professionals did a
5 "closing review" of the claims approvals and rejections, to ensure everything has been reached. This
6 review was completed in September 2005, and resulted in one additional set of claims rejections.
7 Those rejections are not expected to result in order to show cause proceedings, although the
8 claimants have until November 11 to file such a proceeding.

9 The claims department is now doing a validation of all approved claims, to compile a final
10 "approved claimant" list for the closing motion.

11 **Financial Matters**

12 The Insurance Commissioner continues to work on the accounting issues for the estate
13 with a goal of year end closing. This has entailed substantial time and effort focused on the
14 accounting for 2004 and 2005 for the trusts, which is largely completed.

15 **Status of Progress on Steps to be Undertaken to Achieve Case Closing during 2005**

16 In an earlier status report, a number of milestones were recognized. This is the progress on
17 each of those milestones:

18 **Status Item:**

19 1. The remaining policyholder claims must be processed, and any resulting order to show
20 cause proceedings must be resolved. Based on current projections, it appears likely that one and
21 possibly two further order to show cause proceedings may arise on rejected or partially rejected
22 proofs of claims

23 **Progress:**

24 The Industrial Trucking matter may require further court proceedings, if the parties cannot
25 agree on a resolution, and one last set of rejections found during the claims review is not final until
26 November 11.

27 **Status Item:**

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1 2. The remaining general creditor proofs of claims need to be resolved.

2 **Progress:**

3 This appears to be accomplished, but a few settlement agreements remain unsigned. The
4 Insurance Commissioner is following up.

5 **Status Item:**

6 3. The remaining reinsurance must be collected. Two reinsurers with substantial balances
7 have not paid their sums when due, which may result in requests for relief in this Court. A motion to
8 enforce a settlement agreement has been drafted in the event a resolution cannot be reached as to the
9 larger matter. Over one billion dollars in reinsurance has already been collected, and thus the lion's
10 share of the work is done. But as the last claims approvals involve some claims with reinsurance
11 coverage, these last balances must be collected.

12 **Progress:**

13 The reinsurance department collected five hundred and sixty eight thousand dollars in
14 settlements from reinsurers, through payments and distributions from offset escrows.
15 The Insurance Commissioner anticipates filing a motion to enforce a settlement agreement as to
16 another reinsurer. Brokers continue to seek to collect from yet another reinsurer, but it is hoped that
17 this collection can be effected without litigation. A motion to approve a settlement with St. Paul Fire
18 and Marine is set for October 17.

20 **Status Item:**

21 4. Mission Insurance Company Trust and Mission National Insurance Company Trust were
22 themselves reinsured by thousands of companies. As set forth above, most of the reinsurance has been
23 collected. Yet a number of reinsurers have themselves entered insolvency proceedings. The Insurance
24 Commissioner's staff estimates that some eighteen million dollars may be received in liquidation
25 dividends from approved claims in insolvency proceedings. The Insurance Commissioner will collect
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1 such of those as may be collected prior to year end. It may be that some sums will still be paid after
2 year end. The closing the Insurance Commissioner will propose, as with the earlier Enterprise
3 Insurance Company Trust closing order, shall provide for the trust to remain in force, to be reopened
4 if such collections permit a further distribution.

5
6 **Progress:**

7 The continued collection of sums from insolvent reinsurers and other sources makes the plan
8 of a case closing with the right to re-open for further distributions appear the optimum solution.

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10 **Status Item:**

11 5. During 2004, the Insurance Commissioner accomplished claims resolutions of policyholder
12 and reinsured proof of claims in excess of one billion dollars in claimed amount.

13 The resulting approvals, hundreds of millions of dollars in quantity, must be recognized in the
14 Mission Insurance Company Trust and the Mission National Insurance Company Trust accounting
15 records. This process has required a substantial accounting effort. Once this effort is completed as to
16 year end 2004, then the outside accountants for the Mission Insurance Company Trust and the
17 Mission National Insurance Company Trust must complete appropriate tax accounting records.
18 This has proven a time-consuming project, as it is important that the work be done appropriately.
19 However, this process appears to be eligible for completion consistent with a year end closing.

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22 **Progress:**

23 Substantial efforts have been made to complete this project, which continues to pose issues,
24 but which is on track for completion consistent with a year-end case closing.

25 **Status Item:**
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1 6. The inter-relationship between Mission Insurance Company Trust and Danielson Holding
2 Corporation results in potential distributions to policyholders and general creditors. Danielson
3 Holding Corporation participated in a plan of rehabilitation, which resulted in a debt-for-equity swap
4 of shares in Danielson Holding Corporation to the creditors of the insolvent insurance companies.
5 Thus, each approved claimant with an unpaid claim should receive an appropriate portion of shares in
6 Danielson Holding Corporation from the following number of shares for each of the trusts:
7

8 A. Mission Insurance Company Trust:

9 B. Mission National Insurance Company Trust.
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11 The mechanics of this distribution are established, as the Insurance Commissioner has already
12 arranged for such a distribution as to Enterprise Insurance Company Trust policyholders.

13 Yet this distribution will need to be finalized prior to closing. The Insurance Commissioner has
14 contacted Danielson Holding Corporation representatives about the impending closing, and his staff
15 believes that this can be accomplished by year end 2005.
16

17 **Progress:**

18 Significant and substantial discussions with Danielson Holding Corporation, now called
19 Covanta Holding Corporation, have taken place about a number of key closing issues. They may
20 require further negotiations and effort by the Insurance Commissioner's staff. The Insurance
21 Commissioner may seek approval or instructions pertaining to potential agreements or resolutions as
22 to issues touching the Covanta matters, after negotiations either reach resolutions or fail to reach
23 resolutions.
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25 **Status Item:**
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1 7. The net results of the 2004 operations may have tax ramifications, as the Mission Insurance
2 Company Trust and the Mission National Insurance Company Trust file their income taxes on a
3 consolidated basis with the Danielson Holding Corporation. While substantial net operating losses
4 from prior Mission operations exist which reduce any potential tax liability, the completion of
5 accounting updates will also require attention to the tax results of the operations for 2004.

7 **Progress:**

8 The Insurance Commissioner's staff continues to focus on these issues, with an awareness and
9 effort to comply with a year-end closing goal.

11 **Status Item:**

12 8. The Mission computer system has a value, and the Insurance Commissioner anticipates
13 filing a motion to transfer the software for cash consideration in the near future.

14 **Progress:**

15 A motion should be filed soon to approve a proposal.

17 **Status Item:**

18 9. The Insurance Commissioner is winding up nine "offset escrows". These escrows were
19 created when reinsurers of Mission contended that they were also reinsured by Mission on other
20 books of reinsurance business, and thus had offsetting claims. The offset escrows were set up to
21 set aside monies that might otherwise be owing to Mission Insurance Company, Mission National
22 Insurance Company and Enterprise Insurance Company, pending determination of whether the
23 reinsurer had an offset. Now that the reinsurance team has substantially completed the valuation of
24 reinsurance proofs of claim, the amount of offsets, if any, has been established. The Insurance
25 Commissioner has written to affected reinsurers, asking them to agree to the distribution of the assets
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1 in accordance with this claims valuation process. If they do not agree, motions will result to enforce
2 the escrow agreements. This should be wrapped up by year end, barring an appeal.

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4 **Progress:**

5 All but three offset escrows should be wound up by agreement. Three may require motions to
6 enforce the settlement agreements, which will be completed and heard by year end.

7 **Status Item:**

8 10. The Insurance Commissioner plans to submit a motion authorizing the destruction of
9 outmoded computer records near year end.

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11 **Progress:**

12 The closing motion contemplates this.

13 **Status Item:**

14 11. Mission Insurance Company and Mission National Insurance Company wrote substantial
15 books of workers' compensation business and also general liability and automobile liability business.
16 In order to settle claims arising from this business, the companies entered into numerous structured
17 settlements and trust arrangements, providing that claimants got funds until the claimant passed away,
18 and the reversion went to the insurer. The Insurance Commissioner is in the process of collecting the
19 remaining sums due on the remaining such structures. A few structures will have the potential for
20 reversion at year end because the claimant has not yet passed away, but the closing order will permit
21 the relevant trust to collect such funds, with a motion to reopen being permitted should sufficient
22 funds exist for a new distribution.
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Progress:

Substantial success has been experienced in collecting sums to liquidate these payment streams into sums certain. The closing order will still need to provide a mechanism for later-received payments.

Status Item:

12. The insurance guaranty associations received early access distributions pursuant to California Insurance Code Section 1035.5. Pursuant to that statute, the insurance guaranty associations must return any sums received in excess of their ultimate dividend. To equalize the distributions, the Insurance Commissioner has requested each association to return funds in excess of the last interim distribution. The member associations, with the assistance of the National Conference of Insurance Guaranty Funds, are expected to comply.

Progress:

Most associations have complied. Some have failed to comply. Motions to enforce the early access statutes may yet be filed if compliance is not forthcoming. The Insurance Commissioner remains optimistic that guaranty associations will follow the law, but delay will not be permitted to derail closing.

Status Item:

13. A formal motion to close the trusts will be filed. The targeted filing date is September 2005. The mechanism used for Enterprise Insurance Company Trust will be followed here, with minor modifications. The motion to close shall provide for a "two step" closing.

1 The first step will give notice to the claimant universe of the final closing. The motion will seek
2 approval of the closing process at an initial hearing, and then a final hearing at which closing is
3 accomplished. This second step, the final closing hearing, will include a request to discharge the
4 Insurance Commissioner.
5

6 **Progress:**

7 This was filed in September 2005, with the initial hearing set for November 8.

8 **Status Item:**

9 14. The process of closing requires numerous steps to be undertaken:

- 10 a. a closing budget must be drawn and implemented;
11 b. the closing distribution must be calculated;
12 c. the assets must be readied for distribution by conversion from investment account assets into cash
13 or cash equivalent assets;
14 d. a distribution table of approved claimants must be prepared;
15 e. the shares distribution must be arranged;
16 f. unclaimed property must be sent to the state Unclaimed Property Fund;
17 g. the claims files must be stored, and, after passage of some years, ultimately destroyed;
18 h. a reserve budget for unexpected issues such as tax matters must be established, and a provision
19 made for distribution of those funds through re-opening should the funds remain unexpended; and
20 I. final distribution must be accomplished, and documented.
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24 **Progress:**

25 This remains on track.
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