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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF LOS ANGELES**

17 STEVE POIZNER, Insurance Commissioner) CASE NO. C 572 724
18 of the State of California,)
19 Plaintiff,) DECLARATION OF STEFAN R.
20 vs.) BOSHKOV
21)
22) DATE: October 3, 2008
23 MISSION INSURANCE COMPANY, a) Time: 8:30 a.m.
24 California corporation,) Dept: 50
25 Respondent.) Filed: October 31, 1985
26)
27)
28)

29 Consolidated with Case Numbers:)
30)
31 C 576 324, C 576 416, C 576 323)
32 C 576 325, C 629709)
33)
34)

35 I, Stefan R. Boshkov, do hereby declare:

36 1. I am an attorney at law licensed to practice in the State of New York and am a
37 partner in the law firm of Nixon Peabody LLP (referred to herein as "Nixon Peabody", "we" or
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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

AUG 29 2008

John A. Clarke, Executive Officer/Clerk
By Jalon Taylor, Deputy
Jalon Taylor

COPY

1
DECLARATION OF STEFAN R. BOSHKOV

1 “our”), tax counsel for Covanta Holding Corporation (referred to herein as “Client” or
2 “Covanta”). I have personal knowledge of the facts stated herein, except as to those facts stated
3 herein upon information and belief and as to those, I believe them to be true. I make this
4 Declaration in support of the Joint Motion to Approve Final Valuation of Latent Deficiency
5 Claims And Interest Payable on Deficiency Claims Against Mission National Insurance
6 Company Trust and Allocation of Shares of Covanta Stock Pursuant to the Rehabilitation Plan
7 Implementation Agreement.

8 2. I received my undergraduate degree from Columbia University and my juris
9 doctor degree from Columbia University. I also have an LL.M (Taxation) from New York
10 University. I have broad tax practice experience including concentrations in corporate mergers,
11 reorganizations, acquisitions, leveraged buyouts and bankruptcy restructurings, corporation
12 distributions and redemptions, partnership taxation, individual taxation including non-ERISA
13 compensation planning, exempt organizations, consolidated group matters, and foreign inbound
14 and outbound transactions.

15 3. I was asked by Client to update and “bring down” to August 27, 2008, the opinion
16 we issued to Client on May 2, 2006 (the “May 2006 Opinion”) and previously updated on June
17 19, 2008 (the “June 2008 Opinion”) for the July 25, 2008 hearing before the Court regarding
18 certain tax issues involved in the winding down of the administration of the various grantor trusts
19 established in 1990 pursuant to various trust agreements which were part of the plan of
20 reorganization of Mission Insurance Group, Inc. (“MIG”), currently renamed Covanta Holding
21 Corporation. MIG’s consolidated group included the parent and various first and second tier
22 subsidiaries among them Mission Insurance Company (“MIC”), Mission National Insurance
23 Company (“MNIC”) and Enterprise Insurance Company (collectively, with MIC and MNIC, the
24 “Mission Insurance Subsidiaries”). Capitalized terms used herein but not otherwise defined shall
25 have the meaning ascribed to such terms in our May 2006 Opinion.

26 4. In rendering Nixon Peabody’s advice, we have examined, and have relied as to
27 matters of fact, originals or copies identified to our satisfaction of various documents related to
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1 the federal bankruptcy and state insolvency and rehabilitation proceedings relating to MIG and
2 the Mission Insurance Subsidiaries, including the MIG Amended Joint Disclosure Statement in
3 connection with a Joint Plan of Reorganization (the "Plan") confirmed by the United States
4 Bankruptcy Court for the Central District of California on May 9, 1990, and Exhibits thereto,
5 including an Agreement of Reorganization, Restructuring and Rehabilitation, dated as of
6 December 13, 1989 (the "3R Agreement") and several basically identical trust agreements,
7 alternatively named (depending on the court proceeding) Trust Declaration and Agreements or
8 Agreements of Trust, involving the Mission Insurance Subsidiaries. We also reviewed the
9 Agreement Regarding Closing, dated August 9, 1990, the bankruptcy court order issued May 9,
10 1990, confirming the Plan and approving the 3R Agreement and the state insolvency court final
11 order of rehabilitation dated April 20, 1990. The Plan, as adopted, involved the combined
12 recapitalizations of MIG and the Mission Insurance Subsidiaries, with the Mission Insurance
13 Subsidiary recapitalizations being effected through the exchange of stock for debt by creditors
14 holding Deficiency Claims (as defined in the 3R Agreement) against those corporations, all as
15 more fully set forth in the May 2006 Opinion. We also examined such other documents and
16 information as we deemed relevant and necessary for purposes of rendering of issuing our
17 opinion. The transactions to which the opinion relates are proposed and thus this advice states
18 and relies in material part on certain factual assumptions and final documentation resulting
19 therefrom between Covanta and the California Insurance Commissioner, and the court orders
20 which adopt and ratify such documentation. If these factual assumptions are invalid or
21 inconsistent with the facts as they ultimately evolve, then the conclusions reached herein may not
22 be accurate and in that event could not be relied upon. The minimal necessary factual
23 assumptions on which our opinion is based are numbered and set forth on pages 8-10 of the May
24 2006 Opinion and as further set forth herein as necessary.

25 5. In such examination, we have assumed the genuineness of all signatures, the legal
26 capacity of natural persons, the authority of all signatories, the authenticity of all documents
27 submitted to us as originals, the conformity to original documents of all documents submitted to
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1 us as duplicates or certified or conformed copies and the authenticity of the originals of such
2 latter documents.

3 6. For purposes of our opinion, we have reviewed and assumed that (1) the factual
4 assumptions set forth on pages 8-10 of the May 2006 Opinion and the factual assumptions in the
5 June 2008 Opinion continue to be true and correct as of the date hereof; (2) the claims
6 administration process conducted by Covanta under the terms of the Rehabilitation Plan
7 Implementation Agreement and the Latent Deficiency Claims Administration Procedures
8 Agreement, each between Covanta and the California Insurance Commissioner, dated as of
9 January 11, 2006 has properly identified holders of Latent Deficiency Claims individually, and
10 determined as a fixed amount each holder's Deficiency Claim with respect to the totality of
11 Deficiency Claims; (3) upon application to the Los Angeles Superior Court, the court with
12 jurisdiction over the proceedings (the "Court") in the Joint Motion to Approve Final Valuations
13 of Latent Deficiency Claims And Interest Payable on Deficiency Claims Against Mission
14 National Insurance Company Trust and Allocation of Shares of Covanta Holding Corporation
15 Pursuant to the Rehabilitation Plan Implementation Agreement of Covanta and the California
16 Insurance Commissioner (the "Joint Motion"), the Court by order will issue the Valuation Order
17 establishing the totality of Deficiency Claims against Mission National Insurance Company
18 Trust in the aggregate fixed amount of \$289,998,390, including Latent Deficiency Claims in the
19 aggregate amount of \$78,012,287 and interest expense payable on Deficiency Claims in the
20 amount of \$211,986,104; (4) upon application to the Court in the Joint Motion, the Court will
21 establish the Deficiency Claims, including, without limitation, additional Deficiency Claims
22 arising from the final and unconditional obligation to pay interest to holders of Deficiency
23 Claims from the date such claims became fixed, calculable and determined until paid, as thus
24 totalized in amount as debt (indebtedness) which is finally determined and ascertained in amount
25 under California law; (5) the Covanta Shares to be distributed to each holder of a Deficiency
26 Claim, including Latent Deficiency Claims, against the Mission National Insurance Company
27 Trust will be allocated in the amounts and in accordance with the calculations contained in
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1 Exhibit C to the Declaration of Richard McNamee as attached to the Joint Motion to the Court of
2 Covanta and the California Insurance Commissioner and as approved and authorized by the
3 Court; and (6) Covanta Shares will be physically distributed to each holder of a Deficiency
4 Claim, including Latent Deficiency Claims, so identified in accordance with the mathematical
5 ratio, as set forth in the Exhibit C to the Declaration of Richard McNamee as attached to the
6 Joint Motion, to allocate the Covanta Shares to be received by each holder of a Deficiency Claim
7 pursuant to a valid order of the Court. We have no knowledge that any of such factual
8 assumptions are materially inaccurate as of August 27, 2008.

9 7. As set forth in the May 2006 Opinion, former section 108(e)(8)(B) had two
10 principal requirements which refined the application of the stock-for-debt exception found in
11 former section 108(e)(8)(B): a “*de minimus*” standard (*i.e.*, the exception did not apply to the
12 issuance of a “nominal” or “token” distribution) and that each such distribution of Covanta
13 Shares to each holder of an Old Deficiency Claim (a “DC Claimant”) and each holder of a New
14 Deficiency Claim (an “LDC Claimant” and each individually herein a “Claimant”) will be such
15 that the ratio of the value of the Covanta Shares received by each Claimant to the Claimant’s
16 Deficiency Claim exchanged therefor (the “Stock to Debt Ratio”) will at least equal 50% of the
17 ratio of the total value of Covanta Shares received by all Claimants to the total of all Deficiency
18 Claims exchanged therefor (the “Total Stock to Debt Ratio”).

19 8. In rendering our opinion, we have reviewed (1) the Joint Motion and Valuation
20 Order establishing the totality of Deficiency Claims against Mission National Insurance
21 Company Trust, in the aggregate fixed amount of \$289,998,390, including interest payable on
22 unpaid Deficiency Claims in the amount of \$211,986,104; (2) the Declaration of C. Guerry
23 Collins setting forth the claims administration process conducted by Covanta under the terms of
24 the Rehabilitation Plan Implementation Agreement and the Latent Deficiency Claims
25 Administration Procedures Agreement, each between Covanta and the California Insurance
26 Commissioner, dated as of January 11, 2006; (3) the mathematical ratio, set forth in the Exhibit
27 C to the Declaration of Richard McNamee as attached to the Joint Motion, to allocate the
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1 Covanta Shares to be received by each holder of a Deficiency Claim consistent with former
2 section 108(e)(8)(B) of the Internal Revenue Code, insofar as it continues to apply to the
3 transactions contemplated hereunder; and (4) the determination of the number of Covanta Shares
4 to be distributed to holders of Deficiency Claims, including Latent Deficiency Claims, in
5 accordance with the mathematical ratio, as set forth in the Exhibit C to the Declaration of
6 Richard McNamee as attached to the Joint Motion, and setting forth the allocation of the Covanta
7 Shares to be received by each holder of a Deficiency Claim pursuant to a valid order of the
8 Court.

9 9. Based upon and subject to the foregoing, Nixon Peabody is of the opinion that the
10 provisions of the stock-for-debt exception provided in former sections 108(e)(10)(B) and
11 108(e)(8)(B) (as interpreted by the relevant IRS rulings discussed above) should apply
12 continuously both to the (1) distribution of Covanta Shares to the California Commissioner of
13 Insurance in 1990 pursuant to the 3R Plan as agent for and on behalf of holders of Deficiency
14 Claims and (2) from the Trusts (to which the California Insurance Commissioner in such
15 capacity had transferred the Covanta Shares) to holders of Deficiency Claims. Nixon Peabody is
16 thus also of the opinion that, upon payment of such Deficiency Claims with the Covanta Shares,
17 Covanta should neither recognize cancellation of indebtedness income nor sustain any tax
18 attribute reduction (including reduction of any available NOL) with respect to such Deficiency
19 Claims, pursuant to section 108 of the Code.

20 10. Our opinion is based upon provisions of the Code regulations promulgated
21 thereunder and on published and private administrative rulings and judicial decisions, all as
22 currently in effect, and also upon provisions of prior law as in effect on the date of confirmation
23 of the Plan and the effective date of the 3R Agreement and as currently applicable as stated
24 herein. In particular, substantial reliance has been placed on certain private letter rulings issued
25 by the IRS. As noted, such rulings are not considered authoritative legal precedent and are also
26 not internally binding on the IRS and thus have less persuasive or legal force than more
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1 authoritative sources of law. Nevertheless, we find them indicative of the IRS view of the law,
2 and they are uniformly consistent with the opinions expressed herein.

3 11. Nixon Peabody does not express any opinion regarding the outcome or analysis of
4 any other federal income tax issues that may arise under any other sections of the Code regarding
5 or in connection with the structure or operation of the Plan, 3R Agreement, the various
6 Declaration and Trust Agreements, or the Agreement Regarding Closing, or any amendments or
7 supplemental or superseding agreements pertaining thereto, and Nixon Peabody's advice is
8 limited to the effect of the issuance of Covanta Shares in payment and discharge of Deficiency
9 Claims of Covanta (as valid indebtedness in an amount as finally determined and ascertained by
10 a court under California law) pursuant to former sections 108(e)(8) and 108(e)(10), as in effect at
11 the effective date of the Plan and as currently applicable, we believe, with respect to the
12 distribution of the Covanta Shares.

13 12. Nixon Peabody's opinion is rendered to Client and solely for Client's benefit in
14 connection with the distribution of the Covanta Shares for the Trusts. Nixon Peabody does,
15 however, understand that our opinion is set forth in this Declaration and may also be furnished to
16 and relied upon by the California Insurance Commissioner. Except as herein stated, or as
17 required by law, our opinion may not be furnished to any other person or relied upon by Client or
18 any other person without our prior written consent.

19 13. **Nixon Peabody's opinion letter was written to support the promotion of the**
20 **matters addressed in the Nixon Peabody opinion letter dated August 27, 2008 and the**
21 **Nixon Peabody opinion letter issued on May 2, 2006 and was not intended or written to be**
22 **used, and cannot be used, for the purpose of avoiding tax-related penalties under federal,**
23 **state, or local tax law. Each taxpayer should seek advice based on the taxpayer's**
24 **particular circumstances from an independent tax advisor.**

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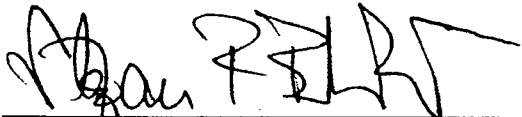
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 27th day of August, 2008 at New York, New York.



Stefan R. Boshkov