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**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court  
**FEB 18 2004**

John A. Clarke, Executive Officer/Clerk  
By \_\_\_\_\_, Deputy  
**D. GILES**

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

9 JOHN GARAMENDI, Insurance  
10 Commissioner of the State of California,  
11 Applicant,  
12 vs.  
13 MISSION INSURANCE COMPANY, a  
California corporation,  
14 Respondent.  
15

) Case No. C 572 724  
)  
)  
) Honorable J. Stephen Czuleger  
)  
) NOTICE OF MOTION AND MOTION TO  
) AUTHORIZE CLOSING PROCEDURE FOR  
) ENTERPRISE INSURANCE COMPANY  
) TRUST; MEMORANDUM OF POINTS AND  
) AUTHORITIES  
)  
) April 16, 2004 at 8:30 a.m.  
)  
) Department: 50  
)  
) Filed: October 31, 1985  
)

16 Consolidated with Case Numbers  
17 C 576 324; C 576 416;  
18 C 576 323; C 576 325; C 629709  
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1 PLEASE TAKE NOTICE THAT ON THE 16<sup>th</sup> day of April, 2004, at the hour of  
2 8:30 a.m., or as soon thereafter as the matter may be heard, John Garamendi, Insurance  
3 Commissioner of the State of California, in his capacity as Trustee of the Enterprise Insurance  
4 Company Trust, will appear before Department 50 of the Superior Court of Los Angeles County,  
5 California, and present a Motion to Authorize a Closing Procedure for the Enterprise Insurance  
6 Company Trust, and would show:

7 1. Enterprise Insurance Company was placed into liquidation on February 24, 1987.  
8 The assets of Enterprise Insurance Company have been marshaled, and the creditor claims of that  
9 insurance company have been valued. The assets of Enterprise Insurance Company have been  
10 placed into the Enterprise Insurance Company Trust by previous court order.

11 2. This Court has previously approved interim distributions to approved creditors of  
12 Enterprise Insurance Company in the amount of 49.4%. The Insurance Commissioner now moves  
13 this Court to authorize a closing procedure to close the Enterprise Insurance Company Trust estate.

14 3. The Insurance Commissioner proposes that the closing of Enterprise Insurance Company  
15 Trust shall take place in two phases. The first phase shall be a distribution of most of the assets of  
16 the Enterprise Insurance Company Trust. The Insurance Commissioner has calculated that claimants  
17 who are Class Five under California Insurance Code Section 1033 (as it existed in 1987), i.e., the  
18 policyholder class, should receive an immediate distribution to bring each claimant's  
19 distribution percentage up to fifty eight percent. Because the final distribution to policyholder class  
20 claimants shall not reach one hundred percent, the Insurance Commissioner requests an order which  
21 determines that general creditors and other claimants below priority class Five shall receive no cash  
22 distributions, other than Danielson shares as will be discussed below.

23 4. The Insurance Commissioner requests that this Court set a final hearing at which this  
24 Court shall do each of the following:

- 25 a. settle the final accounts of the Insurance Commissioner and discharge the Insurance  
26 Commissioner as Trustee and as Liquidator;  
27 b. settle and approve the final accounting of the Insurance Commissioner;

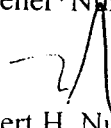
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- 1 c. affirm the distribution of Danielson shares pro rata to all policyholders and creditors;  
2 d. authorize the closing of the Enterprise Insurance Company estate, subject to this Court's  
3 continuing jurisdiction should further unanticipated collections be received after the date of closing,  
4 which will necessitate a further distribution;  
5 e. authorizes the Mission Insurance Company Trust and Mission National Insurance Company to  
6 make any future distributions on general creditor proof of claims to be made directly to the  
7 Enterprise Insurance Company Trust claimants.  
8 f. sets the deadline for any oppositions to be filed forty days prior to the final hearing date, and any  
9 replies by the Insurance Commissioner to be filed fourteen days prior to the final hearing date; and  
10 g. authorizes the Insurance Commissioner to take such steps as are necessary and appropriate to  
11 close the proceedings by the final date set by the Court;  
12 h. discharges the Liquidator and Trustee;  
13 i. authorizes the Trustee to maintain the records of Enterprise Insurance Company Trust for three  
14 years, after which such records may be destroyed in the Trustee's discretion;  
15 j. enter an order that the Trustee and Liquidator shall have no liability of any kind or nature arising  
16 from the activities prior to or during the liquidation of Enterprise Insurance Company and the  
17 Enterprise Insurance Company Trust.

18 This motion is based upon California Insurance Code Sections 1011-1057, and the  
19 attached points and authorities. A Declaration of Mohsen Sultan filed with this motion provides  
20 evidence in support of this motion.

21 Respectfully submitted,

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23 Wisener\*Nunnally\*Gold, LLP

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25 Robert H. Nunnally, Jr.  
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### Memorandum of Points and Authorities

The Insurance Commissioner's case plan resulted in concrete effort to expedite the closing of these insurance insolvency trusts. This motion seeks the closing of the Enterprise Insurance Company Trust. Enterprise Insurance Company was placed into liquidation along with other Mission affiliates on February 24, 1987. The proof of claims deadline pursuant to California Insurance Code Section 1024 ran on September 12, 1987.

The proofs of claims have all been processed, and approved or rejected. No order to show cause matters remain pending arising from such claims. The Court has previously approved interim distributions of 49.4% in this estate to policyholder class creditors. Now the time has come to begin the process of final wind-up of this aspect of this consolidated case.

The Declaration of Mohsen Sultan provides that enough assets exist to increase the policyholder distribution to fifty eight (58%). The first order of business is to permit the Insurance Commissioner to make this distribution to policyholder class creditors under California Insurance Code Section 1033..

Additional policyholder class distributions will be made by final closing. The Insurance Commissioner estimates that the final distribution will be in the range of sixty percent, but this figure may vary depending on wind-up collections.

Insufficient assets will remain for general creditors, and the Insurance Commissioner seeks an order which permits those creditors to be notified that their recovery, if any, will be limited to Danielson shares. Normally, general creditors receive no distribution unless all policyholders are paid, because of the operation of California Insurance Code Section 1033. However, in this case, Danielson Holding Corporation did a transaction with the Liquidator which required that all creditors, including general creditors, receive shares in return for their debt. The Mission Companies' assets were transferred, after Court approval of the Final Order of Rehabilitation on April 20, 1990, into separate liquidation trusts as part of a rehabilitation plan in which Danielson Holding Corporation participated in a reorganization plan for the various Mission Insurance Group affiliates. The Mission Companies' Trusts received substantial benefits from this transaction.

1 including stock in Danielson Holding Corporation. The ultimate distribution of this stock to  
2 creditors will be made depending on the amount of the approved claims. At the same time, Mr.  
3 Sultan's declaration establishes that no cash payments will be made to Enterprise general creditors,  
4 and the Insurance Commissioner seeks permission to so notify each approved Enterprise general  
5 creditor.

6 The Insurance Commissioner has broad powers under California Insurance Code Section  
7 1037, whose exercise this Court reviews only for abuse of discretion. *In re Executive Life Ins. Co.*,  
8 (1995) 32 Cal. App. 4<sup>th</sup> 344. The Insurance Commissioner's ultimate duty is to collect the assets and  
9 distribute them ratably among creditors. *W. J. Jones & Sons v. Independence*, (1942) 52 Cal. App.  
10 2d 374.

11 The following steps remain for completion:

- 12 a. distribution of the final assets;
- 13 b. Danielson shares distribution;
- 14 c. Steps to ensure tax and other regulatory compliance;
- 15 d. a final closing motion authorizing final distribution; and
- 16 e. miscellaneous closing activities.

17 Thus, the Insurance Commissioner has proposed a phased closing plan, with  
18 notice of the final closing hearing to creditors and policyholders with approved claims.  
19 This will ensure that this insolvency estate closes in good order this year. The Insurance  
20 Commissioner will also request at this final hearing each of the following forms of relief, in the form  
21 of an order which will::

- 22 a. settle the final accounts of the Insurance Commissioner and discharge the Insurance  
23 Commissioner as Trustee and as Liquidator;
- 24 b. settle and approve the final accounting of the Insurance Commissioner;
- 25 c. affirm the distribution of Danielson shares pro rata to all policyholders and creditors;
- 26 d. authorize the closing of the Enterprise Insurance Company estate, subject to this Court's  
27 continuing jurisdiction should further unanticipated collections be received after the date of closing.

- 1 which will necessitate a further distribution;
- 2 e. authorizes the Mission Insurance Company Trust and Mission National Insurance Company to
- 3 make any future distributions on general creditor proof of claims to be made directly to the
- 4 Enterprise Insurance Company Trust claimants.
- 5 f. sets the deadline for any oppositions to be filed forty days prior to the final hearing date, and any
- 6 replies by the Insurance Commissioner to be filed fourteen days prior to the final hearing date; and
- 7 g. authorizes the Insurance Commissioner to take such steps as are necessary and appropriate to
- 8 close the proceedings by the final date set by the Court;
- 9 h. discharges the Liquidator and Trustee;
- 10 i. authorizes the Trustee to maintain the records of Enterprise Insurance Company Trust for three
- 11 years, after which such records may be destroyed in the Trustee's discretion;
- 12 j. enter an order that the Trustee and Liquidator shall have no liability of any kind or nature arising
- 13 from the activities prior to or during the liquidation of Enterprise Insurance Company and the
- 14 Enterprise Insurance Company Trust.

15 **Conclusion**

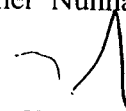
16 The time has come to implement a closing process for Enterprise Insurance Company Trust.

17 This Court is requested to grant this motion to begin the end of this phase of the case.

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20 Wisener\*Nunnally\*Gold, LLP

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22 Robert H. Nunnally, Jr.

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

STATE OF TEXAS, COUNTY OF DALLAS.

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

On this date, I served the foregoing document described Notice of Motion And Motion To Authorize Closing Procedure For Enterprise Insurance Company Trust; Memorandum Of Points And Authorities by placing a copy thereof enclosed in sealed envelopes addressed as follows:

Sent via Federal Express to:

Michele Vass  
Conservation & Liquidation Office  
P.O. Box 26894  
San Francisco, CA. 94126-0894

Sent via U.S. mail to the following:

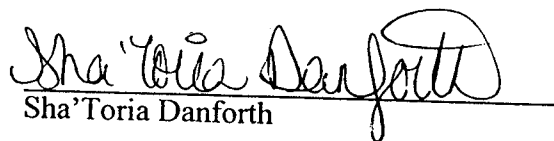
See Attached Exhibit "A"

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

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

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

Executed on February 17, 2004 at Garland, Texas

  
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