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

9
10 JOHN GARAMENDI, Insurance
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 John Shepard Wiley Jr.
)
) **NOTICE OF MOTION AND MOTION**
) **TO APPROVE DISTRIBUTION AND**
) **ACCOUNTING AS TO MISSION**
) **INSURANCE COMPANY TRUST AND**
) **MISSION NATIONAL INSURANCE**
) **COMPANY TRUST**

16 Consolidated with Case Numbers
17 C 576 324; C 576 416;
C 576 323; C 576 325; C 629 709
18

) December 30, 2005 at 8:30 a.m.
) Department: 50
) Filed: October 31, 1985

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1 Please take notice that on the 30th day of December, 2005, at the hour of 8:30 a.m., or as
2 soon thereafter as the matter may be heard, John Garamendi, Insurance Commissioner of the State
3 of California, in his capacity as Trustee of the Mission Insurance Company Trust and the Mission
4 National Insurance Company Trust, shall appear in Department 50 of the Los Angeles Superior
5 Court, and present his Motion to Approve Distribution and Accounting.

6 The motion requests approval of the accounting of the Mission Insurance Company Trust
7 and the Mission National Insurance Company Trust, and an order which discharges the Insurance
8 Commissioner as to the matters to which the accounting relates.

9 The motion requests authorization to distribute to policyholder priority class creditors of
10 Mission Insurance Company Trust and Mission National Insurance Company Trust an amount
11 sufficient to bring each of these claimants up to one hundred percent of their principal claims.

12 The motion requests authorization to distribute to general creditors of Mission Insurance
13 Company Trust an amount equal to thirty percent (30%) of the principal amount of their claims.
14 This motion requests authorization to distribute to general creditors of Mission National Insurance
15 Company Trust an amount equal to one hundred percent (100%) of the principal amount of their
16 claims. General creditors are receiving distributions of principal pursuant to Section 1033 of the
17 Insurance Code as it applied as of the time of this liquidation.

18 This motion further requests an order which authorizes all remaining sums in the trusts to be
19 retained in the trust pending distribution at a future date. The purpose of this reserve is to allow for
20 the passage of time such that all unforeseen contingencies, including tax contingencies, shall be
21 reserved for, while ensuring that the unexpended assets will be distributed subsequently.

22 As of this writing, a single order to show cause proceeding remains pending, having been
23 filed by Industrial Indemnity. If the matter requires a full hearing, then the funds reserved should
24 suffice as a reserve to provide funds to deal with this matter.

25 The motion is supported by Declarations of Raymond Minehan, of John Battle, and of
26 Mohsen Sultan, filed with the Evidentiary Submission submitted herewith, as well as the pleadings
27 and papers on file in this action.

28 Wherefore, premises considered, this Court is requested to issue an order which:

- 1 a. approves the accounting, and discharges the Insurance Commissioner, individually and as
- 2 Insurance Commissioner and Trustee, as the funds referenced in the accounting and the funds to be
- 3 disbursed.
- 4 b. authorizes the distributions as set forth above.
- 5 c. authorizes the reserves as set forth above;
- 6 and all other just and equitable relief.

7 Respectfully submitted,

8 Wisener★Nunnally★Gold, LLP

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1 **Memorandum of Points and Authorities**

2 The Insurance Commissioner's case plan resulted in concrete effort to expedite the closing
3 of these insurance insolvency trusts. This motion seeks the closing of the Mission Insurance
4 Company Trust and the Mission National Insurance Company Trust. Mission Insurance Company
5 and Mission National Insurance Company were placed into liquidation along with other Mission
6 affiliates on February 24, 1987. The proof of claims deadline pursuant to California Insurance Code
7 Section 1024 ran on September 12, 1987. The deadline to amend timely proofs of claim was August
8 18, 1995.

9 The Declaration of Raymond Minehan establishes that enough assets exist to increase the
10 policyholder distribution to one hundred percent (100%). In addition, general creditor distributions
11 are recommended to be paid, as detailed in the motion. Mr. Minehan's declaration states that he
12 does not address in the financial presentation the issue of "deficiency claims" under any agreement
13 with Danielson Holding Corporation, now known as Covanta Holding Corporation. This matter, of
14 importance only to the distribution of shares pursuant to the rehabilitation plan, will ultimately be
15 addressed by separate motion.

16 A substantial reserve is set aside, to ensure that no unforeseen liabilities, including tax
17 liabilities, arise. This reserve is detailed in the declaration of Raymond Minehan. The declaration
18 of John Battle sets forth the claimants to whom distributions shall be made.

19 California Insurance Code Section 1037 provides that the Insurance Commissioner shall
20 have the right and duty to manage the liquidation of an insurance company as liquidator. Here, the
21 Court has previously authorized the creation of the Mission Insurance Company Trust and the
22 Mission National Insurance Company Trust. The Insurance Commissioner's discretion in the
23 handling of these matters is broad. *Low v. Golden Eagle Ins. Co.*, (2002) 104 Cal. App. 4th 306; 128
24 Cal. Rptr. 2d 423. Even a less deferential standard of review, however, would support
25 the relief requested here—to distribute the money and discharge the Insurance Commissioner based
26 on the accounting provided.

27 The time has come to pay one hundred percent distributions to policyholders, and to make a
28 substantial dividend to general creditors. The general creditor dividend is paid pursuant to California

1 Insurance Code Section 1033 (as it existed at the relevant date of liquidation), after payment of all
2 policyholder principal claims. This Court is requested to approve this relief.

3 In this connection, substantial sums will be reserved for the unforeseen, which will be
4 distributed later. The proposal is to distribute the recommended funds now, close the case subject to
5 this Court's continued jurisdiction so that it may be reopened later for further distributions.

6 This Court should retain jurisdiction over the remaining order to show cause, and over any
7 last asset collection matters, and the trust shall remain open. As the Declaration of Mohsen Sultan
8 establishes, the time for a court case for quarterly administration has finally passed, and this Court is
9 requested to approve this motion.

10 Respectfully submitted,

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

) Case No. C 572 724
) Honorable John Shepard Wiley Jr.
) THE INSURANCE COMMISSIONER'S
) EVIDENTIARY SUBMISSION IN
) SUPPORT OF MOTION TO APPROVE
) DISTRIBUTION AND ACCOUNTING AS
) TO MISSION INSURANCE COMPANY
) TRUST AND MISSION NATIONAL
) INSURANCE COMPANY TRUST

15
16 Consolidated with Case Numbers
17 C 576 324; C 576 416;
18 C 576 323; C 576 325; C 629 709

) **DECLARATION OF RAYMOND J.
MINEHAN**
) **DECLARATION OF MOHSEN
SULTAN**
) **DECLARATION OF JOHN BATTLE**

) Hon. John Shepard Wiley Jr.
) Department : 50
) Action filed: October 31, 1985
) Hearing date: December 30, 2005
) Hearing time: 8.30 a.m.

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23 The Insurance Commissioner attaches as Exhibit "A" the Declaration of Raymond J. Minehan, as
24 Exhibit "B" the Declaration of Mohsen Sultan, and as Exhibit "C" the Declaration of John Battle, as
25 evidence to support the Motion to approve distribution and accounting as to Mission Insurance
26 Company Trust and Mission National Insurance Company Trust now set on December 30, 2005.
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PROOF OF SERVICE: By Federal Express
(Code Civ. Proc., §§ 1013, 2015.5)

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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 documents described The Insurance Commisioner's Evidentiary Submission in Support of Motion to Approve Distribution and Accounting as to Mission Insurance Company Trust and Mission National Insurance Company Trust; Declaration of Raymond Minehan; Declaration of Mohsen Sultan; Declaration of John Battle by placing a copy thereof enclosed in sealed envelopes addressed as follows:

Sent via Federal Express to:

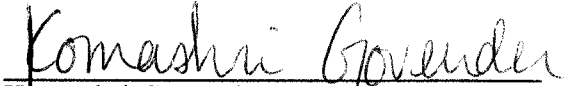
See Attached Exhibit "A".

I am readily familiar with my employer's practices of collection and processing correspondence for mailing with Federal Express and the above-referenced correspondence will be deposited with Federal Express on the same date as stated below, 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 November 30, 2005 at Garland, Texas


Komashri Govender

1 **PROOF OF SERVICE: By Federal Express**
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, Street, Garland, Texas
75041.

6 On this date, I serve the foregoing documents described NOTICE OF MOTION AND MOTION TO
7 APPROVE DISTRIBUTION AND ACCOUNTING AS TO MISSION INSURANCE COMPANY
8 TRUST AND MISSION NATIONAL INSURANCE COMPANY TRUST by placing a copy thereof
enclosed in sealed envelopes addressed as follows:

9 Sent via Federal Express to:

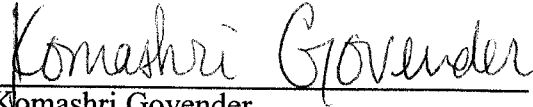
10 See Attached Exhibit "A".

11 I am readily familiar with my employer's practices of collection and processing correspondence for
12 mailing with Federal Express Service and the above-referenced correspondence will be deposited in a
Federal Express drop box on the same date as stated below, following ordinary course of business.

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

15 (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.

16 Executed on November 30, 2005 at Garland, Texas

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19 Komashri Govender

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