

1 ROBERT H. NUNNALLY, JR.
State Bar Number 134151
2 WISENER★NUNNALLY★GOLD, LLP
625 West Centerville Road, Suite 110
3 Garland, Texas 75041
(972) 840-9080
4 Fax (972) 840-6575
5 Attorneys for Insurance Commissioner

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

9	JOHN GARAMENDI, Insurance)	Case No. C 572 724
10	Commissioner of the State of California,)	
11	Applicant,)	Honorable John Shepard Wiley, Jr.
12	vs.)	THE INSURANCE COMMISSIONER'S
13	MISSION INSURANCE COMPANY, a)	STATUS REPORT AND UPDATED
14	California corporation,)	CASE CLOSING PLAN
15	Respondent.)	Action Filed: October 31, 1985
16	Consolidated with Case Numbers)	Department: 50
17	C 576 324; C 576 416;)	Date: August 15, 2005
18	C 576 323; C 576 325; C 629709)	Time: 8:30 a.m.
)	Department: 50

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21 John Garamendi, Insurance Commissioner of the State of California, as Trustee of the
22 Mission Insurance Company Trust and the Mission National Insurance Company Trust, submits this
23 Status Report for the Status Conference on August 15, 2005 and shows:
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1 **Events which have take place since the last Status Conference:**

2 As of the prior Status Conference, two appeals in the Court of Appeals sought relief from
3 orders of Department 50 which affirmed proof of claim rejections or partial rejections, while three
4 appeals had been resolved during 2005. The two appeals have been resolved since the last status
5 report. The Court of Appeal affirmed this Court (through Judge Czuleger) as to Georgia Pacific
6 Corporation, while the Court of Appeal reversed Judge Czuleger's ruling as to the Industrial
7 Trucking Service Corporation matter, and remanded to this Court for further proceedings. Industrial
8 Trucking Service Corporation has sought reconsideration of aspects of that decision, which now
9 pends before the Court of Appeal. Industrial Trucking Service Corporation appealed this Court's
10 affirmance of a partial approval and partial rejection by the Insurance Commissioner. The issue on
11 remand will be whether the partial approval should be increased.

12 The Insurance Commissioner has resolved further policyholder and reinsured proofs of
13 claims since the last Status Conference. This Court has granted approvals of settlements submitted
14 for court approval. Additional settlements are in the process of documentation finalization, and will
15 be processed and submitted for approval in the coming days.

16 One application for order to show cause proceeding was filed by American International
17 Group, Inc. ("AIG"), as to which the parties shall stipulate a briefing schedule. The issues in this
18 application are relatively straightforward, such that the parties may be able to figure out the merits of
19 the claims without the need for Court intervention, but a briefing schedule will be put in place in any
20 event to keep things moving.

21 **Proofs of Claim:**

22 The claims department reports that all outstanding proofs of claim, other than the inter-
23 company claims, appear to have been adjudicated, other than Industrial Trucking, discussed above,
24 as to which litigation remains pending. One set of potential claims is being analyzed.. The Missouri
25 Receiver of Holland-America Insurance Company Trust pointed out that some proofs of claims
26 identified in the systems as Missouri claims may in fact be California company claims. This is being
27 investigated by claims review now, but as the claims are largely precautionary "zero amount" claims,
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1 it is not expected that these claims, if against Mission or Mission National, will impact closing. The
2 Insurance Commissioner's claims professionals are now doing a "closing review" of the claims
3 approvals and rejections, to ensure everything has been reached. This review is expected to be
4 complete by September 15, 2005.

5 **Interim Distribution**

6 The fifth interim distribution was completed since the last status conference. The distribution
7 to Mission Insurance Company Trust policyholders came to over one hundred twenty million dollars,
8 while the distribution to Mission National Insurance Company Trust policyholders exceeded forty
9 million dollars.

10 **Pending Motions**

11 On August 15, 2005, this Court has before it the following motions:

- 12 1. A motion to approve a commutation with Nationwide Mutual Insurance Company;
- 13 2. A motion to approve a commutation with Corrugated Insurers Association, Ltd.
- 14 3. A motion to approve a general creditor claims approval agreement with Employers of Wausau and
15 affiliated entities;
- 16 4. A motion to approve release of offset escrow as to FM Global; and
- 17 5. A motion to approve a revised fee agreement for the undersigned firm.

18 Further motions are anticipated to be set in the coming weeks to seek further approvals for
19 the numerous settlements and claims resolutions which continue to be finalized.

20 **Financial Matters**

21 The Insurance Commissioner continues to work on the accounting issues for the estate
22 with a goal of year end closing. This has entailed substantial time and effort focused on the
23 accounting for 2004 and 2005 for the trusts.

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

25 In the last status report, a number of milestones were recognized. This is the progress on each
26 of those milestones:

1 **Status Item from Last Report:**

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

6 **Progress:**

7 These policyholder-class orders to show cause appear less likely to arise, although it is
8 possible that one or two more may arise among the current set of rejections. The inter-company
9 policyholder claims have been valued, and a motion to seek Court approval on the valuation will be
10 filed during this month. The remaining policyholder proofs of claims have been valued or will be
11 valued this week, although a final audit to ensure that no "stragglers" exist is underway. The
12 Industrial Trucking matter may require further court proceedings, if the parties cannot agree upon a
13 resolution.

14 **Status Item from Last Report:**

15 2. The remaining general creditor proofs of claims must be resolved. Based upon current
16 progress, this should be complete no later than Summer 2005. The potential for an order to show
17 cause proceeding with one company, Odyssey Reinsurance, exists, but both counsel have agreed that
18 if the claim cannot be resolved, it will be submitted for prompt resolution by the Court.

19 **Progress:**

20 Four proof of claims on reinsurance have been processed, but the thirty day time period for
21 applications for order to show cause has not passed. Final checks to ensure that all proofs of claims
22 have been analyzed and processed are being completed, but this phase appears nearly over. AIG has
23 filed an order to show cause which may require briefing and hearing.

24 **Status Item from Last Report:**

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

4 **Progress:**

5 The Reinsurance Department collected nineteen million seven hundred thousand (\$19.7)
6 million from eight reinsurers; five million three hundred thousand (\$5.3 million) from
7 commutation settlements with three reinsurers and fourteen million four hundred thousand (\$14.4
8 million) in dividends from five insolvent reinsurers.

10 The Reinsurance Department's collection efforts are centered on five hundred thirty eight
11 (\$538 thousand) due from four reinsurers. Three hundred forty three (\$343 thousand) was recently
12 billed on outstanding overcap claim settlements to two reinsurers. Brokers are working on Mission's
13 behalf to collect the balances. Thus far, the two reinsurers involved have not responded nor objected
14 to our billings. The sum of one hundred forty five thousand dollars (\$145 thousand) is due from
15 General Star (Monarch).
16

17 This area has more work to do to achieve the year-end closing goal, but appears to be heading
18 towards "on track".

19
20 **Status Item from Last Report:**

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
26 such of those as may be collected prior to year end. It may be that some sums will still be paid after
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1 year end. The closing the Insurance Commissioner will propose, as with the earlier Enterprise
2 Insurance Company Trust closing order (See Exhibit "A"), shall provide for the trust to remain in
3 force, to be reopened if such collections permit a further distribution.
4

5 **Progress:**

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

9 **Status Item from Last Report:**

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

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

20 **Progress:**

21 Substantial efforts have been made to complete this project, which continues to pose issues,
22 but which also continues to appear eligible for completion consistent with a year-end case closing.
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24 **Status Item from Last Report:**

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

6 A. Mission Insurance Company Trust:

7 B. Mission National Insurance Company Trust.

8 The mechanics of this distribution are established, as the Insurance Commissioner has already
9 arranged for such a distribution as to Enterprise Insurance Company Trust policyholders.
10

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

14 **Progress:**

15 Significant and substantial discussions with Danielson Holding Corporation have taken place
16 about a number of key closing issues. These discussions appear unlikely to prevent year-end closing.
17 They may require further negotiations and effort by the Insurance Commissioner's staff.
18

19 **Status Item from Last Report:**

20 7. The net results of the 2004 operations may have tax ramifications, as the Mission Insurance
21 Company Trust and the Mission National Insurance Company Trust file their income taxes on a
22 consolidated basis with the Danielson Holding Corporation. While substantial net operating losses
23 from prior Mission operations exist which reduce any potential tax liability, the completion of
24 accounting updates will also require attention to the tax results of the operations for 2004.
25

26 **Progress:**

1 The Insurance Commissioner's staff is focusing on these issues, with an awareness and effort
2 to comply with a year-end closing goal.

3
4 **Status Item from Last Report:**

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

7 **Progress:**

8 Final negotiations should result in a proposed agreement being submitted for Court approval
9 in the coming weeks.

10
11 **Status Item from Last Report:**

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

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24 **Progress:**

25 A motion to approve the FM Global escrow distribution pends before the Court.
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1 Two other escrows will resolve upon approval of settlement agreements on the verge of being
2 submitted to the Court. At least one motion to approve a disbursement will be required.

3 As to the remaining five, negotiations are underway to try to reach agreed distributions, failing which
4 agreement, motions will be filed.

5
6 **Status Item from Last Report:**

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

9
10 **Progress:**

11 This remains the plan.

12 **Status Item from Last Report:**

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

2 Substantial success has been experienced in collecting sums to liquidate these payment
3 streams into sums certain. The closing order will still need to provide a mechanism for later-received
4 payments.
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6 **Status Item from Last Report:**

7 12. The insurance guaranty associations received early access distributions pursuant to
8 California Insurance Code Section 1035.5. Pursuant to that statute, the insurance guaranty
9 associations must return any sums received in excess of their ultimate dividend. To equalize the
10 distributions, the Insurance Commissioner has requested each association to return funds in excess of
11 the last interim distribution. The member associations, with the assistance of the National Conference
12 of Insurance Guaranty Funds, are expected to comply.
13

14 **Progress:**

15 Many associations have complied. Some have failed to comply. Motions to enforce
16 the early access statutes will be filed in September if compliance is not forthcoming. The Insurance
17 Commissioner remains optimistic that guaranty associations will follow the law, but delay will not be
18 permitted to derail closing.
19

20 **Status Item from Last Report:**

21 13. A formal motion to close the trusts will be filed. The targeted filing date is September
22 2005. The mechanism used for Enterprise Insurance Company Trust will be followed here,
23 with minor modifications. The motion to close shall provide for a "two step" closing.
24 The first step will give notice to the claimant universe of the final closing. The motion will seek
25 approval of the closing process at an initial hearing, and then a final hearing at which closing is
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1 accomplished. This second step, the final closing hearing, will include a request to discharge the
2 Insurance Commissioner.

3 **Progress:**

4 This remains on track for September filing.

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6 **Status Item from Last Report:**

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

8 a. a closing budget must be drawn and implemented;

9 b. the closing distribution must be calculated;

10 c. the assets must be readied for distribution by conversion from investment account assets into cash
11 or cash equivalent assets;

12 d. a distribution table of approved claimants must be prepared;

13 e. the shares distribution must be arranged;

14 f. unclaimed property must be sent to the state Unclaimed Property Fund;

15 g. the claims files must be stored, and, after passage of some years, ultimately destroyed;

16 h. a reserve budget for unexpected issues such as tax matters must be established, and a provision
17 made for distribution of those funds through re-opening should the funds remain unexpended; and

18 i. final distribution must be accomplished, and documented.

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21 **Progress:**

22 This remains on track..

23
24 The substantial accounting work underway to incorporate the dramatic progress of
25 the claims adjustment process during 2004 may require resolution of administration or tax-related
26 issues. The Insurance Commissioner will seek to minimize these risks, and will move the Court to
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1 permit funds to remain on reserve in the trusts, if need be, similar to the method used with the
2 Enterprise closing.

3 **Implementation of Closing Plan**

4 The Insurance Commissioner's closing goal remains to accomplish the "to do" list above by
5 year end 2005, and aim to close these cases by year end this year, or early next year. Although the
6 potential for reinsurance litigation if a reinsurer does not pay, or claims appeals on the last handful of
7 claims is possible, the Insurance Commissioner is strongly motivated to get these cases closed, and
8 to get the policyholders and creditors their distributions.
9

10 **Closing Issues**

11 The various tax and closing issues may require the Insurance Commissioner to seek Court
12 approval on further arrangements and agreements. These should be consistent with a year-end closing.
13

14 **Conclusion**

15 The plan remains to close at year-end, and make final distribution just after the year-end.
16 Many challenges remain, and the Insurance Commissioner does not seek to minimize those
17 challenges in addressing this Court. But the determination remains to try to move this case toward
18 completion, and the goal—a year end closing and a January major distribution—remains the same.
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20 Respectfully submitted,

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22 Wisener*Nunnally*Gold, LLP

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ROBERT H. NUNNALLY, JR.
State Bar Number 134151
WISENER★NUNNALLY★GOLD, LLP
625 West Centerville Road, Suite 110
Garland, Texas 75041
(972) 840-9080
Fax (972) 840-6575
Attorneys for Insurance Commissioner

New York Insurance Department
Liquidation Bureau, Attn: Mission
123 William Street
New York, New York 10038

John Horner
Conservation & Liquidation Office
P.O. Box 26894
San Francisco, CA 94126

Robb Canning, Vice President
Guy Carpenter
One State Street, Suite 1500
Hartford, CT 06103

John C. Craft, Esq.
Lathrop & Gage Law Offices
2345 Grand Blvd. Suite 2800
Kansas City, MO. 64108-2612

Pamela Webster, Esq.
Buchalter, Nemer, Fields & Younger
610 S. Figueroa, Suite 2400
Los Angeles, CA 90017

Jean L. Bertrand, Esq.
Morgenstein & Jubelirer
One Market Plaza, Spear St., 32d Fl
San Francisco, CA 94105

Kenneth Ganz, Esq.
GAF Corporation
1361 Alps Road
Wayne, NJ 07470

Eric Lipsitt, Esq.
Howard & Howard Attorneys, PC
39400 Woodward Ave Ste 101
Bloomfield Hills, MI 48304

Mohsen Sultan
Conservation & Liquidation Office
P.O. Box 26894
San Francisco, CA 94126

Dean Hansell, Esq.
LeBoeuf, Lamb, Green & MacRae
725 S. Figueroa, Suite 3100
Los Angeles, CA 90017-5404

C. Guerry Collins, Esq.
Lord, Bissell & Brook
300 South Grand Avenue, 8th Floor
Los Angeles, CA 90071

Lawrence Mulryan
California Insurance Guarantee
700 N. Brand Blvd. #12TH-FL
Glendale, CA 91203-1247

Mark Egerman, Esq.
9401 Wilshire Boulevard #500
Beverly Hills, CA 90212

Stephan Mills, Esq.
Zemanek & Mills
11845 W. Olympic Blvd, Suite 625
Los Angeles, CA 90064

Keith Wenzel
Missouri Department of Insurance
P.O. Box 690
Jefferson City, MO 65102

Phillip A. Chambers, Esq.
Foxley & Co.
P.O. Box 1843
Grand Junction, CO 81501

Jack Hom, Esq.
California Dept. of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105

Jennifer A. Brennan
Gilbert Heintz & Randolph LLP
1100 New York Ave., NW, Ste 700
Washington, DC 20005-3987

Bradley J. Bening
Willoughby, Stuart & Bening
50 West San Fernando, Suite 400
San Jose, CA 95113

Wendy L. Feng
Covington & Burling
One Front Street
San Francisco, CA 94111

Michael L. Cioffi
Blank Rome, LLP
PNC Center 201 East Fifth St., Ste. 1700
Cincinnati, OH 45202

Stephen A. Marshall
1221 Avenue of the Americas
24th Floor
New York, NY 10020-1089

Richard D. Milone
Gilbert Heintz & Randolph LLP
1100 New York Avenue, NW
Suite 700
Washington, DC 20005

Amy Fink, Esq.
Howrey, Simon, Arnold & White, L.L.P.
550 S. Hope St., 14th Floor
Los Angeles, CA 90071

Burton C. Allyn, IV, Esq.
JOHNS & ALLYN
1010 B Street, Suite 350
San Rafael, CA 94901

Christine Balthazar, Esq.
LAW OFFICES OF
CHRISTINE BALTHAZAR
40 Old Ranch Road
Novato, CA 94947

Vernon K. Jones
29518 Rd. 156
Visalia, CA 93295

Lawrence James Less
Less & Weaver Attorneys At Law
Sutter Plaza 1388 Sutter St., Suite 800
San Francisco, CA. 94109-5453

Jordan Stanzler, Esq.
Stanzler, Funderburk, & Castellon, L.L.P.
180 Montgomery St. Suite 1700
San Francisco, CA. 94104

Robert M. Mason, III, Esq.
Bergman & Dacey, Inc.
10880 Wilshire Blvd., Suite 900
Los Angeles, CA. 90024

Stanley H. Shure, Esq.
Morgan, Lewis & Bockius, L.L.P.
300 South Grand Ave. 22nd Floor
Los Angeles, CA. 90071-3132

John E.V. Pieski, Esq.
Suite 400 Kane Building
116 North Washington Avenue
Scranton, PA 18501-0234

Michael T. Stone, Esq.
McQuaid Bedford & Van Zandt, LLP
221 Main St., 16th Floor
San Francisco, CA. 94105

Monika P. Lee, Esq.
Heller Ehrman White & McAuliffe LLP
333 Bush Street
San Francisco, CA. 94104-2878

David DeGroot, Esq.
Sheppard, Mullin, Richter & Hampton, LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA. 94111

Stanley Shure, Esq.
Morgan, Lewis & Bockius, L.L.P.
330 S. Grand Ave., 22nd Floor
Los Angeles, CA. 90071

David P. Schack
Kirkpatrick & Lockhart, L.L.P.
10100 Santa Monica Blvd., 7th Floor
Los Angeles, CA. 90067

David G. Stone
Neal, Gerber & Eisenberg, LLP
2 N. LaSalle Street, Suite 2200
Chicago, IL 60602
Helen L. Duncan, Esq.

Fulbright & Jaworski
555 S. Flower St.
41st Floor
Los Angeles, CA 90071

Maureen M. Michail, Esq.
Daniels, Fine, Israel & Schonbuch, L.L.P.
1801 Century Park East, Ninth Floor
Los Angeles, CA. 90067