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

17 STEVE POIZNER, Insurance Commissioner )  
18 of the State of California, )

19 Plaintiff, )

20 vs. )

21 MISSION INSURANCE COMPANY, a )  
22 California corporation, )

23 Respondent. )

24 Consolidated with Case Numbers: )

25 C 576 324, C 576 416, C 576 323 )  
26 C 576 325, C 629709 )

CASE NO. C 572 724

NOTICE OF MOTION AND MOTION TO  
APPROVE FINAL VALUATIONS OF  
LATENT DEFICIENCY CLAIMS,  
AGAINST MISSION INSURANCE  
COMPANY TRUST AND ALLOCATION  
OF SHARES OF COVANTA HOLDING  
CORPORATION PURSUANT TO THE  
REHABILITATION PLAN  
IMPLEMENTATION AGREEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF

[Filed concurrently with Declarations of  
Stefan R. Boshkov, C. Guerry Collins,  
Richard McNamee and Robert H. Nunnally;  
and [Proposed] Valuation Order]

DATE: July 25, 2008

TIME: 8:30 a.m.

DEPT: 50

Filed: October 31, 1985

1 PLEASE TAKE NOTICE THAT ON THE 25th day of July, 2008, at 8:30 a.m., or as soon  
2 thereafter as the matter may be heard, Steve Poizner, Insurance Commissioner of the State of  
3 California (the "Commissioner"), in his capacity as Trustee of the Mission Insurance Company Trust  
4 ("MICT"), and Covanta Holding Corporation ("Covanta") shall present to the Los Angeles Superior  
5 Court, Department 50, a Motion to Approve Final Valuations of Latent Deficiency Claims, Against  
6 Mission Insurance Company Trust and Allocation of Shares of Covanta Holding Corporation Stock  
7 Pursuant to the Rehabilitation Plan Implementation Agreement. This motion requests the Court to  
8 approve a valuation of claims and distribution of stock in accordance with the closing procedures  
9 previously approved by this Court. The motion seeks to implement the Rehabilitation Plan  
10 Implementation Agreement approved by this Court, and to authorize the distribution to approved  
11 claimants holding Deficiency Claims against MICT of shares of Covanta common stock held on  
12 behalf of claimants. The motion thereby continues the closing process for MICT, Mission National  
13 Insurance Company Trust, and Enterprise Insurance Company Trust (collectively, with MICT, the  
14 "Trusts"), which have already distributed cash distributions which have paid the principal amount of  
15 all approved policyholder claims and further made substantial distributions to general creditors of  
16 the Trusts. The result of this motion, if granted, will be distributions to approved "Deficiency  
17 Claimants", as described herein, of shares of Covanta common stock to which they are entitled, and  
18 a further step towards completion of this case.

19 The relief requested by this motion will be that the Court will be requested to issue an order  
20 which approves the valuation of Latent Deficiency Claims and the distribution to all those claimants  
21 against MICT entitled to receive the shares under the Rehabilitation Plan Implementation  
22 Agreement. The result will be that an order which permits distribution of shares of Covanta common  
23 stock to approved Deficiency Claims holders, to further advance the process of closing of MICT.

24 The Rehabilitation Plan Implementation Agreement provides for the Court to make a final  
25 determination of the value of the individual Latent Deficiency Claims against MICT (which are  
26 described in paragraph 30 of the Rehabilitation Plan Implementation Agreement) and of the final  
27 aggregate valuation of such claims, and such other orders and findings as required in the  
28 Rehabilitation Plan Implementation Agreement in order to permit the distribution of the shares of

1 Covanta common stock pursuant to the 1990 Agreement for Reorganization, Rehabilitation, and  
2 Restructuring and the subsequent Rehabilitation Plan Implementation Agreement. The  
3 Commissioner and Covanta will present evidence to allow the Court to determine the valuation of  
4 the claims against MICT, individually as listed in the supporting evidence, and in the aggregate  
5 amount of \$923,419,693 arising from policies of direct insurance and reinsurance; to approve such  
6 valuation as an indebtedness owed by MICT under policies of direct insurance and reinsurance  
7 issued by Mission Insurance Company; to determine that the distribution of shares of Covanta  
8 common stock is consistent with the proportionality requirements of former section 108(e)(8)(B) of  
9 the Internal Revenue Code; and, to determine that the distribution of Covanta shares shall be in full  
10 satisfaction of the indebtedness of MICT owed to such claimants consistent with the Internal  
11 Revenue Code debt for equity swap that formed the basis for the 1990 Agreement for  
12 Reorganization, Rehabilitation, and Restructuring of the Mission Insurance Companies.

13 The motion will seek an order contemplated by the Rehabilitation Plan Implementation  
14 Agreement, which provides for further distributions to Deficiency Claims holders after a valuation  
15 process. The order requested will seek to approve the valuation, enter findings that the valuation is in  
16 compliance with the Rehabilitation Plan Implementation Agreement, and seek findings that the facts  
17 contemplated by those agreements and by opinion of counsel have been fulfilled.

18 This Motion will be supported by the Declarations of Robert H. Nunnally, Richard  
19 McNamee, C. Guerry Collins, and Stefan Boshkov, and the exhibits thereto, as well as all of the  
20 pleadings and papers on file in these liquidation proceedings.

21 Wherefore, premises considered, this Court is requested to issue an order which rules in  
22 accordance with the relief requested in this motion to implement the agreement previously approved

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by this Court, approves the valuations and proposed distributions set forth herein, issues the findings set forth herein and in the attached exhibits, and all other just and equitable relief.

Dated: June 16, 2008

Respectfully submitted,



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Attorneys for Insurance Commissioner

LOCKE LORD BISSELL & LIDDELL LLP

By: 

C. Guerry Collins  
Attorneys for Covanta Holding Corporation

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 This insurance company insolvency proceeding was, at its inception, the largest property and  
4 casualty insurance company insolvency in United States history. The effort to marshal assets and pay  
5 claims has been successful, as the policyholders of each of the three California companies have been  
6 paid the principal amount of their claims, while general creditors of two of the companies have been  
7 paid all of the principal amount of their claims and the general creditors of one company have been  
8 paid thirty percent of the principal amount of their claims, with more distributions expected to be  
9 made. Orders setting up a closing procedure for the liquidating trusts holding the assets of these  
10 companies have been issued by the Court. The three Trusts (as defined below) are holding  
11 substantial assets pending the passage of an appropriate period to make sure that no unexpected  
12 contingencies such as taxation or other unknown matters arise. After this time has passed, the  
13 Insurance Commissioner for the State of California (the "Insurance Commissioner") intends to seek  
14 permission to make final distributions in this matter.

15 This motion deals with a rehabilitation plan which was set into place and which has the  
16 effect, among other things, of providing relief to certain claimants whose "long-tail" claims could  
17 not be liquidated even within the lengthy deadlines provided by the duration of this proceeding.  
18 Pursuant to the rehabilitation agreements which this Court previously approved, holders of these  
19 "latent deficiency claims" would have the right to receive equity as part of a debt-for-equity swap.  
20 Covanta Holding Corporation, a corporate successor to the parent company of the three insolvent  
21 insurers, undertook a valuation process of these claims, which has now been completed.

22 The Declaration of Robert H. Nunnally, Jr. attaches the documents by which the  
23 Rehabilitation Plan was adopted in 1990, and the Rehabilitation Plan Implementation Agreement  
24 was adopted in January 2006. Under these documents, a debt-for-equity swap under the Federal tax  
25 laws was made in 1990 to provide value to the claimants to the extent of any deficiency in the  
26 payment of their claims through an exchange of debt for equity to those claimants. The  
27 Rehabilitation Plan Implementation Agreement provided for Covanta Holding Corporation to  
28 conduct a claims process to ensure that all holders of Deficiency Claims, including holders of

1 Deficiency Claims whose latent claims may not have entitled them to cash distributions from the  
2 Trusts, were identified and quantified.

3 The Declaration of C. Guerry Collins describes how Covanta Holding Corporation (i)  
4 conducted a claims valuation process in compliance with the Rehabilitation Plan Implementation  
5 Agreement. (ii) provided notice to the claimants, (iii) processed the claims, and (iv) determined the  
6 amount of Latent Deficiency Claims entitled to participate in the debt for equity distribution of  
7 Covanta Holding Corporation shares held by the Trust on claimants' behalf since 1990.

8 The Declaration of Richard McNamee quantifies for the Court the amount of Deficiency  
9 Claims, including Latent Deficiency Claims, further illustrates how the Covanta shares allocated to  
10 holders of Deficiency Claims should be distributed in order to comply with the debt-for-equity  
11 requirements of the Rehabilitation Plan. Mr. McNamee provides evidence of the numerical findings  
12 which are requested of this Court.

13 The Declaration of Stefan Boshkov, a tax attorney with the firm of Nixon Peabody LLP  
14 provides his firm's tax legal opinion analysis that the valuation of the Deficiency Claims and the  
15 distribution of the Covanta shares comply with the debt-for-equity requirements of the Rehabilitation  
16 Plan.

17 This motion seeks to implement the successful completion of the rehabilitation  
18 implementation process, by seeking a Court order which approves the valuation thus reached, and by  
19 seeking from this Court findings in accordance with the facts of the debt-for-equity swap approved  
20 by this Court. The result will be a distribution of shares of Covanta Holding Corporation stock to  
21 approved claimants, and an additional step forward in moving these trusts towards closure.

## 22 II. HISTORICAL PROCEEDINGS

### 23 A. Liquidation of the Mission Insurance Companies

24 In 1985, orders were entered in the Los Angeles Superior Court (the "Court") placing five  
25 affiliated insurance entities in conservatorship proceedings: Mission Insurance Company ("MIC"),  
26 Mission National Insurance Company ("MNIC"), and Enterprise Insurance Company ("EIC") and  
27 two insurance companies domiciled in Missouri (collectively with the other insurance operating  
28 companies of Mission Insurance Group, Inc., the "Mission Insurance Companies"). On February 24,



1 1987, upon application of the Insurance Commissioner, the Court issued orders finding that the  
2 Mission Insurance Companies were insolvent, ordered the companies into liquidation, and appointed  
3 the Insurance Commissioner as liquidator of the Mission Insurance Companies. Receivership  
4 proceedings were also commenced in Missouri as to the two insurance companies in Missouri.

5 **B. The Reorganization of the Mission Insurance Companies and Creation of the**  
6 **Trusts**

7 In December 1989 and August 1990, respectively, Mission Insurance Group, Inc., as debtor  
8 in possession under the Federal Bankruptcy Code (renamed Danielson Holding Corporation and  
9 subsequently renamed Covanta Holding Corporation and referred to herein as "Covanta"), entered  
10 into the Agreement of Reorganization, Rehabilitation and Restructuring dated as of December 13,  
11 1989 (the "RRR Agreement") and the Agreement Regarding Closing dated as of August 9, 1990 (the  
12 "Closing Agreement") with the Insurance Commissioner (among others). The RRR Agreement  
13 provided for a comprehensive rehabilitation, including a "debt for equity swap" and a Chapter 11  
14 reorganization for Mission Insurance Group, Inc. Covanta is the successor of that reorganized  
15 debtor. On April 25, 1990, the Final Order of Rehabilitation was issued by the Court, which had the  
16 effect, inter alia, of entering a rehabilitation order as to MIC, MNIC and EIC, and upon the closing  
17 of the transactions described in the RRR Agreement, resulted in the creation of the Mission  
18 Insurance Company Trust ("MICT"), Mission National Insurance Company Trust ("MNICT"), and  
19 Enterprise Insurance Company Trust ("EICT" and collectively with MICT and MNICT, the  
20 "Trusts"), and the transfer of the Mission Insurance Companies assets and liabilities to the Trusts, as  
21 described in the RRR Agreement. While the liquidation proceedings terminated as to the Mission  
22 Insurance Companies, it continued as to the MICT, MNICT, and EICT, which function as the  
23 liquidating insurance entities. (See, Declaration of Robert H. Nunnally, Exhibit A "Nunnally Dec.")

24 Pursuant to the RRR Agreement, as of August 15, 1990, an aggregate of 1,648,488 shares of  
25 Covanta stock were issued to the Insurance Commissioner to be held for and on behalf of the holders  
26 of Deficiency Claims (the "Allocated Shares"). Under the RRR Agreement, "Deficiency Claims"  
27 were defined as those claims that were made or could have been made against the Mission Insurance  
28 Companies and which remain unsatisfied after the final determination of claims by the Insurance

1 Commissioner and distribution of the Trusts' then current assets. The RRR Agreement provided that  
2 the Allocated Shares then would be distributed to the holders of Deficiency Claims. The Allocated  
3 Shares were distributed to MICT (1,172,874 shares), MNICT (339,751 shares), and EICT (75,863  
4 shares). On September 24, 2004, the Court entered its order approving the above distribution of the  
5 Allocated Shares among the three Trusts. (Nunnally Dec., Exhibit B).

6 **C. The Rehabilitation Plan Implementation Agreement**

7 The Insurance Commissioner continued to conduct the liquidation proceedings for each of  
8 the Trusts over the intervening time. The Insurance Commissioner marshaled the assets (primarily  
9 collecting reinsurance and other recoveries due to the Mission Insurance Companies) and processed  
10 claims made against the Trusts. On January 11, 2006, in order to provide for the processes and  
11 mechanisms to implement the RRR Agreement and to resolve other outstanding issues involving the  
12 interpretation and administration of the RRR Agreement and the Agreement Regarding Closing, the  
13 Insurance Commissioner and Covanta entered into the Rehabilitation Plan Implementation  
14 Agreement (the "Implementation Agreement"), the Amendment to Agreement Regarding Closing  
15 (the "Amended Closing Agreement") and the Latent Deficiency Claim Administration Procedures  
16 Agreement (the "Procedures Agreement" and together with the Implementation Agreement and the  
17 Amended Closing Agreement, collectively, the "Implementation Agreements"). (Nunnally Dec.,  
18 Exhibits C, D, and E.)

19 The Implementation Agreement provides for the distribution of the Allocated Shares not only  
20 among those claimants against the Trusts who qualified by having unpaid approved proofs of claim,  
21 but also those who "could have made" claims against the Trusts, as defined and contemplated under  
22 the RRR Agreement but who, due to various limitations of the Final Amended Dividend Plan  
23 governing the approval of claims against the Trusts and other orders issued by the Court, no longer  
24 were entitled to share in cash distributions from the assets of the Trusts. The nature of these  
25 limitations was that deadlines were established by which claims against the Trusts had to be  
26 liquidated; however, some claimants had "long-tail" policies as to which such claims were not  
27 liquidated within the specified time periods under the Court's orders. These claims are defined as  
28 Latent Deficiency Claims and referred to as "LDCs". The Implementation Agreement also

1 incorporated the Procedures Agreement under which Covanta agreed and was required to (1)  
2 identify the holders of those claims which "could have been made" against the Trusts and to quantify  
3 the amount of those claims (at its own expense); and (2) indemnify the Insurance Commissioner and  
4 the Trusts against a number of events, as described in the Implementation Agreement. In addition,  
5 the Implementation Agreement provided for the payment of agreed upon amounts by Covanta to  
6 settle and resolve various disputes as to the interpretation and implementation of the RRR  
7 Agreement relating to the LDCs (as defined and described in Paragraph 30 of the Implementation  
8 Agreement). Thus, the Implementation Agreement resolved a number of outstanding issues  
9 confronting the Insurance Commissioner's efforts to close the Trusts, thereby saving the Trusts  
10 additional expense. The Implementation Agreement did not adversely affect existing claimants,  
11 provided additional assets to the Trusts for distribution to claimants and relieved the Trusts of certain  
12 costs that otherwise would have been borne by the Trusts thereby freeing up more assets for  
13 claimants.

14 On March 2, 2006, the Court entered its order authorizing the Insurance Commissioner to  
15 enter into the Implementation Agreements, as well as such other necessary agreements ancillary to  
16 the implementation of the transactions as he deemed appropriate. (Nunnally Dec., Exhibit F).

17 **D. The Court Issues an Order Establishing the Minimum Aggregate Amount of the**  
18 **Latent Deficiency Claims**

19 A condition of the Implementation Agreement provided that the Insurance Commissioner  
20 and Covanta request an order of the Court which initially established the valuation of the amount of  
21 the minimum ultimate aggregate liability of the Trusts to the holders of LDCs (as defined and  
22 described in paragraph 30 of the Implementation Agreement), which amount is one component in  
23 the distribution of the Covanta shares pursuant to the Implementation Agreement. This condition  
24 was fulfilled in prior proceedings before this Court. Based upon the evidence submitted in support  
25 of the Insurance Commissioner's and Covanta's joint request for the order, in the Court's order  
26 issued on April 28, 2006, the Court set the minimum aggregate ultimate liability of the three Trusts  
27 to the holders of LDCs in the amount of \$712,160,927. The Court further held this amount was an  
28 obligation and indebtedness arising under insurance and reinsurance contracts of the three Mission

1 Insurance Companies and owed under California law pursuant to the RRR Agreement and  
2 Implementation Agreement previously approved by the Court. The Court also held that the  
3 distribution of shares of Covanta stock to holders of all Deficiency Claims, including LDCs, shall be  
4 in full satisfaction of and in compliance with Covanta's obligations under the RRR Agreement and  
5 the Implementation Agreement and such finally determined and ascertainable indebtedness and  
6 obligations to holders of Deficiency Claims, including LDCs, against MIC, MNIC and EIC shall be  
7 satisfied by the Insurance Commissioner through the distribution of shares of Covanta stock  
8 previously issued to and held by the Insurance Commissioner on behalf of such holders as provided  
9 in the RRR Agreement and the Implementation Agreement. (Nunnally Dec., Exhibit G).

10 After the Court issued its April 28, 2006 order setting the initial minimum aggregate amount  
11 of the LDCs, pursuant to clauses (a) and (b) Paragraph 31 of the Implementation Agreement,  
12 Covanta and the Insurance Commissioner agreed upon a preliminary allocation among holders of all  
13 Deficiency Claims, including LDCs, against (1) MICT of the 1,172,874 shares of Covanta stock held  
14 by the Insurance Commissioner on behalf of holders of claims against MICT and (2) MNICT of the  
15 339,751 shares of Covanta stock held by the Insurance Commissioner on behalf of holders of claims  
16 against MNICT, pursuant to the provisions of the RRR Agreement and the Implementation  
17 Agreement.<sup>1</sup> The parties now jointly seek approval for a final allocation and seek by this motion to  
18 request this Court to issue an order establishing the amount of LDCs and the determination that the  
19 distribution of the Covanta shares would be consistent with the proportionality requirements of  
20 Internal Revenue Code former section 108(e)(8)(B) (hereinafter referred to as "Code section 108").

### 21 **III. LATENT DEFICIENCY CLAIMS ADMINISTRATION PROCESS**

22 As contemplated by and consistent with the Implementation Agreement, Covanta assumed  
23 the responsibility to identify and make a final determination of the value of each of the individual  
24 LDCs pursuant to the procedures set forth in the Procedures Agreement attached to and forming a  
25 part of the Implementation Agreement. The universe of potential LDC holders consisted of the  
26 164,690 Proofs of Claim ("POC") filed in the MIC, MNIC, and EICT liquidation proceedings. The

27 <sup>1</sup> Consistent with clause (c) of Paragraph 31 of the Implementation Agreement, no shares were allocated holders of  
28 claims against EICT because the 75,863 shares of Covanta stock allocated to EICT and held by the Insurance  
Commissioner on behalf of the holders of claims against EICT had previously been distributed to such claims holders in  
2004 in connection with the closing of the EIC estate.

1 Insurance Commissioner's Conservation and Liquidation Office (which managed the liquidation  
2 proceedings against the companies) provided Covanta's claims counsel and claims examiners access  
3 to the Mission Direct Insurance POC System (the "LAS System") and the Mission Reinsurance POC  
4 System, which contained information about all of the direct insurance and reinsurance claims filed  
5 against the liquidated companies. Covanta prepared a claims review protocol and methodology  
6 consistent with the Implementation Plan definition of LDCs and the claims administration  
7 procedures set forth in the Procedures Agreement previously approved by the Court. The protocol  
8 excluded from review all POCs which did not meet the definition of LDCs contained in the  
9 Implementation Plan (such as, -0- dollar POCs, workers' compensation claims paid in full by the  
10 guaranty associations, \$100 deductible claims, and commuted reinsurance claims) and identified a  
11 universe of 17,314 direct insured POCs and 8,820 reinsurance POCs as potential LDCs. From  
12 January 2006 through October 2006, Covanta's claims personnel reviewed the LAS System's  
13 information on these claims and determined a preliminary LDC amount for the claims. (See,  
14 Declaration of C. Guerry Collins, paragraphs 3 to 5 "Collins Dec.")

15         Beginning in November 2006, Covanta conducted a mass mailing to approximately 38,000  
16 direct policyholder insureds of the Trusts who had submitted 164,690 individual POCs to the Trusts  
17 and to 540 reinsurance companies which had submitted a total of 10,062 POCs to the Trusts. In  
18 mid-January 2007, a supplemental mailing to 330 large-loss direct insureds and insurance guaranty  
19 associations was completed. The mailings contained an explanation of the LDC determination and  
20 Covanta stock distribution process; advised the claimants of the value of their LDCs, as determined  
21 by Covanta's claims professionals; and, provided an Updated Proof of Claim form which could be  
22 submitted should the claimant wish to provide additional information to support a re-evaluation of  
23 his/her claim. (Collins Dec., paragraphs 6 to 7.)

24         Covanta received 117 Updated Proofs of Claim against the Trusts with supporting  
25 documentation. The majority of these were complicated asbestos, pollution, and mass toxic tort  
26 claims. Covanta completed the review and analysis of these Updated Proofs of Claim by year-end  
27 2007 and sent out the remaining Notices of Determination for those claims. (Collins Dec.,  
28 paragraph 8.)

1 A complete listing of each individual LDC holder, the final determined value of their claim  
2 against MICT, and the number of shares of Covanta stock such holder is entitled to receive is  
3 attached as Exhibit C to the Richard McNamee Declaration ("McNamee Dec."). The aggregate  
4 amount of all of the MICT LDCs listed thereon is \$923,419,693. Covanta is in the process of  
5 completing its determination of claims against MNICT, which will be addressed with the Court in a  
6 subsequent filing.

7 As previously determined by the Court's April 28, 2006 order, the above amount constitutes  
8 an indebtedness owed by MICT arising from direct insurance and reinsurance contracts of MIC, as  
9 described in and consistent with the RRR Agreement and Implementation Agreement.

10 Further, as previously determined by the Court's April 28, 2006 order, the LDCs constitute  
11 finally determined, fixed and ascertained indebtedness of MIC for which the Insurance  
12 Commissioner has the obligation to issue Covanta stock to satisfy such indebtedness as provided in  
13 the RRR Agreement and Implementation Agreement in amounts proportional to the value of each of  
14 the individual LDCs in relationship to the total aggregate amount of LDCs stated above, and which  
15 distribution satisfies the proportionality requirements of Code section 108.

16 **IV. SATISFACTION OF INDEBTEDNESS THROUGH DISTRIBUTION OF COVANTA**  
17 **SHARES TO HOLDERS OF LATENT DEFICIENCY CLAIMS MEETS THE**  
18 **REQUIREMENTS OF CODE SECTION 108**

19 **A. Requirements for Stock for Debt Distributions**

20 The Trust structure and issuance of shares of Covanta stock to the Insurance Commissioner  
21 in 1990 was made pursuant to the provisions of Code section 108. Under Code section 108, the  
22 shares of Covanta stock were issued to and held by the Insurance Commissioner on behalf of  
23 claimants and to be issued to claimants in full satisfaction of their indebtedness. Paragraph 31 of  
24 the Implementation Agreement ("Paragraph 31") and the underlying trust agreements under which  
25 each of the Trusts were formed, all expressly require that distributions of Covanta shares must be  
26 consistent with the proportionality requirements of Code section 108. (Nunnally Dec., Exhibit C.)

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1           **B. Covanta's Tax Counsel's Opinions Conclude That The Distribution of Covanta**  
2           **Stock to the Deficiency Claims Holders Meets the Requirements of Code Section**  
3           **108**

4           Following completion of the LDC evaluation and determination process discussed above  
5           establishing the amount of LDCs, and consistent with the requirements of clause (d) of Paragraph  
6           31, Covanta and the Insurance Commissioner reviewed the individual and aggregate allocations of  
7           Covanta shares held by the Insurance Commissioner for distribution among holders of all Deficiency  
8           Claims, including LDCs, against MICT. The Implementation Agreement, consistent with the RRR  
9           Agreement and underlying trust agreements, requires that any distribution of Covanta shares must be  
10          consistent with the proportionality requirements of Code section 108. As provided in clause (e) of  
11          Paragraph 31, Covanta and the Insurance Commissioner conferred and agreed that the allocation and  
12          distribution of shares of Covanta stock held by the Insurance Commissioner on behalf of holders of  
13          all Deficiency Claims, including LDCs, in MICT in accordance with the share distribution schedule  
14          attached as Exhibit C to the McNamee Dec. and the legal opinions of Nixon Peabody LLP,  
15          Covanta's tax counsel, is a distribution that complies with the proportionality requirements of Code  
16          section 108, the requirements of Paragraph 31 and the underlying trust agreement for MICT under  
17          which such Trust was formed in 1990. (Declaration of Stephen Boshkov "Boshkov Dec.")

18          **C. Distribution of Covanta Shares Shall Be in Satisfaction of Indebtedness**

19          The Insurance Commissioner and Covanta request that the Court (1) order that Exhibit C to  
20          the McNamee Dec. sets forth a schedule of the finally determined, fixed and ascertainable amounts  
21          of indebtedness from direct insurance and reinsurance contracts that are owed to the individual  
22          holders of LDCs against MICT and in the aggregate amount of \$923,419,693; (2) approve the final  
23          allocation of shares of Covanta stock to holders of all Deficiency Claims, including LDCs, against  
24          MICT, as set forth in the share distribution schedule attached hereto as Exhibit C to the McNamee  
25          Dec.; (3) determine that such distribution of Covanta shares is consistent with the proportionality  
26          requirements of Code section 108; and (4) order that such distribution of Covanta shares shall be in  
27          full satisfaction of the indebtedness from direct insurance and reinsurance contracts of MIC owed to

28          ///

1 such claimants consistent with the Internal Revenue Code's debt for equity swap that formed the  
2 basis for the 1990 RRR Agreement.

3 **D. The Factual Assumptions Underlying the Tax Opinions Have Been Satisfied**

4 The Nixon Peabody tax opinion letters of May 2, 2006 and June 19, 2008 conclude that the  
5 legal and factual requirements of the stock for debt exception under Code section 108 have been met  
6 and apply to the distribution of shares of Covanta stock to the holders of Deficiency Claims as  
7 described in the distribution schedules attached as Exhibits A, B, and C to the McNamee  
8 Declaration. The opinions are subject to certain qualifications and factual assumptions, the  
9 fulfillment of which are an essential element of the opinions. As described in more detail below,  
10 each of the following factual conditions to the Nixon Peabody tax opinions have been fulfilled:

11 1. Covanta's claims administration process has properly identified and quantified the  
12 amounts of each individual LDC holder's claim and determined as a fixed amount each holder's  
13 claims with respect to the totality of all Deficiency Claims. (Collins Dec. and McNamee Dec.)

14 2. This Court's April 28, 2006 Order previously fixed the preliminary minimum  
15 ultimate aggregate liability of the three Trusts for all LDCs existing against the Trusts. The Court,  
16 after acting upon this Joint Motion, will fix the final total aggregate amount of all Deficiency Claims  
17 against the MICT, which were not previously identified and fixed and ascertained, in the amount of  
18 \$923,419,693. (See Exhibit G to Nunnally Dec. and [Proposed] Valuation Order filed concurrently  
19 herewith.)

20 3. This Court's April 28, 2006 Order determined that the LDCs are final determined,  
21 fixed and ascertained indebtedness of MICT under California law. (See Exhibit G to Nunnally Dec.)

22 4. The Court, after acting upon this Joint Motion, shall order that the Deficiency Claims  
23 previously identified and determined as liquidated and certain under Section 1025 of the California  
24 Insurance Code shall be combined with the LDCs and the mathematical ratio consistent with Code  
25 section 108 shall be applied to determine the allocation of the shares of Covanta stock held on behalf  
26 of MICT claimants. (See [Proposed] Valuation Order filed concurrently herewith.)

27 5. The Court, after acting upon this Joint Motion, shall direct that the shares of Covanta  
28 stock held on behalf of MICT claimants will be allocated in the amounts and in accordance with the



1 calculations contained in Exhibits A, B, and C to the McNamee Declaration. (See [Proposed]  
2 Valuation Order filed concurrently herewith.)

3         6.         The Court, after acting upon this Joint Motion, shall direct that the shares of Covanta  
4 stock shall be physically distributed to each holder of a Deficiency Claim, including LDCs, in  
5 accordance with the mathematical ratio set forth in Exhibit A to the McNamee Declaration. (See  
6 [Proposed] Valuation Order filed concurrently herewith.)

7         7.         The April 26, 2006 Order previously determined that the distribution of the shares of  
8 Covanta stock was in full satisfaction of MICT's indebtedness to the holders of Deficiency Claims,  
9 including LDCs. The Court, after acting upon this Joint Motion, shall determine and direct that the  
10 distribution of shares of Covanta stock held on behalf of MICT claimants shall be in full satisfaction  
11 of MICT's indebtedness to the holders of Deficiency Claims, including LDCs, as finally determined  
12 by the Court. (See [Proposed] Valuation Order filed concurrently herewith.)

13 **V.         THE INSURANCE COMMISSIONER IS GRANTED BROAD DISCRETION IN**  
14 **SETTLING THE AFFAIRS OF LIQUIDATED INSURANCE COMPANIES**

15         "The Commissioner is an officer of the state [citation] who, when he or she is a conservator,  
16 exercises the state's police power to carry forward the public interest and to protect policyholders  
17 and creditors of the insolvent insurer. [Citation.]...In exercising this power, the Commissioner is  
18 vested with broad discretion." (*In re Executive Life Ins. Co.* (1995) 32 Cal.App.4th 344, 356.)  
19 "[T]he actions of the Commissioner are subject to judicial review....[T]his review is not de novo.  
20 The trial court reviews the Commissioner's action under the abuse of discretion standard [citation]:  
21 was the action arbitrary, i.e., unsupported by a rational basis, or is it contrary to specific statute, a  
22 breach of the fiduciary duty of the conservator as trustee, or improperly discriminatory?" (Id. at p.  
23 358.) The Insurance Commissioner's actions herein are required by, and reasonably related to, the  
24 performance of the previously Court approved Implementation Agreements and resolve key issues in  
25 the closing process for these liquidated companies.

26 **VI.         CONCLUSION**

27         The Insurance Commissioner and Covanta jointly request that the Court issue an Order  
28 finding and determining: (1) that Exhibit C to the McNamee Declaration sets forth a schedule of the


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1 finally determined and ascertainable amounts of indebtedness from direct and reinsurance contracts  
2 that are owed to the individual holders of Deficiency Claims, including LDCs, against MICT and  
3 owed by MICT in the aggregate amount of \$923,419,693; (2) that approves the final allocation of  
4 shares of Covanta stock to holders of all Deficiency Claims, including LDCs, against MICT, as set  
5 forth in the share distribution schedule attached as Exhibit C to the McNamee Declaration; (3) that  
6 determines that the underlying factual assumptions of the Nixon Peabody LLP May 2, 2006 and June  
7 19, 2008 tax opinion letters have been satisfied; (4) that the distribution of shares of Covanta stock  
8 set forth in the schedule attached as Exhibit C to the McNamee Declaration is consistent with the  
9 proportionality requirements of Code Section 108; and, (5) that such distribution of shares of  
10 Covanta stock shall be in full satisfaction of the indebtedness from direct and reinsurance contracts  
11 of MIC owed to such claimants consistent with the Internal Revenue Code's debt for equity swap  
12 that formed the basis for the 1990 RRR Agreement previously approved by this Court's Order of  
13 April 20, 1990 and the May 9, 1990 Order of the United States Bankruptcy Court for the Central  
14 District of California.

15 The Court's approval of this Motion will result in the distribution of shares of stock to  
16 approved claimants and will be a further step towards completion of this case.


17 Dated: June 16, 2008

Respectfully submitted,

  
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