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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN FRANCISCO**

12 **INSURANCE COMMISSIONER OF THE STATE**
13 **OF CALIFORNIA,**

14 Applicant,

15 v.

16 **MUNICIPAL MUTUAL INSURANCE COMPANY,**

17 Respondent.

CPF-07-507033

**MOTION TO MODIFY
CLAIMS PROCESS**

Date: April 24, 2007

Time: 9:30 A.M.

Location: Superior Court, County
of San Francisco

Law & Motion D-301

400 McAllister Street

San Francisco, CA 94102

Judge: Hon. PETER BUSCH

21 The Petitioner, Steve Poizner, Commissioner of Insurance for The State of California,
22 acting in His Capacity as Liquidator of the Respondent, Municipal Mutual Insurance Company,
23 Hereby Gives Notice of his motion, and hereby moves, this Court for an Order Permitting the
24 Liquidator to Modify the Claims Process as contemplated by California Insurance Code §1021(c)(1)
25 due to insufficient estate assets to satisfy claimant classes (a)(3) through (a)(9) as described in
26 California Insurance Code §1033. This Motion is supported by the accompanying Memorandum of
27 Points and Authorities and the declarations of Jack Hom, Esq., Senior Staff Attorney for the
28 California Department of Insurance and John Battle, of the Insurance Commissioner's Conservation

1 and Liquidation Office.

2 Dated: March 20, 2007

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Respectfully submitted,


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RANDALL BORCHERDING
Supervising Deputy Attorney General

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SCOTT T. FLEMING
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10 **COUNTY OF SAN FRANCISCO**

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12 **INSURANCE COMMISSIONER OF THE STATE**
OF CALIFORNIA,

13 Applicant,

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17 v.
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20 **MUNICIPAL MUTUAL INSURANCE COMPANY,**

21 Respondent.
22

CPF-07-507033

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF LIQUIDATOR'S
MOTION FOR A MODIFIED
CLAIMS PROCESS**

[Cal. Insurance Code §1021(c)(1)]

Date: April 24, 2007

Time: 9:30 a.m.

Dept: Law & Motion
Dept.301

Superior Court
400 McAllister Street,
San Francisco, CA 94102

Judge: Hon. Peter Busch

Filed: 10/23/2006

Transferred: 2/14/2007

23 **STATEMENT OF THE CASE**

24 The Superior Court for the County of Solano issued its order appointing the
25 Commissioner of Insurance as Liquidator of Municipal Mutual Insurance Company ("MMIC"),
26 on October 24, 2006, effective on October 31, 2006. On February 22, 2007, the Superior Court of
27 the County of San Francisco acknowledged receipt of the transfer of this action to its court, and
28 assigned the case number as set forth in the caption above.

1 The Commissioner and his Conservation and Liquidation Office ("CLO") have
2 reviewed and assessed MMIC's assets and liabilities, evaluated the potential for recovering other
3 assets in which MMIC had an interest, and then the liquidator computed the likelihood of
4 payment to MMIC's claimants and creditors.

5 The Commissioner has concluded, based upon the CLO's review, that MMIC's assets
6 should be sufficient to pay the Class 1 expenses ("Administrative Expenses"); however, at this
7 time, it appears unlikely that MMIC will have sufficient assets to fully satisfy the claims of
8 claimants in the second priority classification as set forth in California Insurance Code section
9 1033(a). The Class 2 claimants are, generally, the policyholders and insurance guarantee
10 associations.

11 MMIC was licensed only in California and issued only workers' compensation
12 policies and approximately 12 commercial general liability ("CGL") policies. Because MMIC
13 issued policies only in California, the only insurance guarantee association which will have a
14 claim against MMIC's assets is the California Insurance Guarantee Association ("CIGA") There
15 are seven (7) additional junior claimant classes of claimants that are described in section 1033(a),
16 referred to hereafter as Classes (a)(3) through (a)(9) inclusive. For the reasons set forth below,
17 the Liquidator anticipates that there will be no assets to satisfy, in whole or in part, any claims
18 beyond those in Class 1 (a)(1) and Class 2 (a)(2).

19 **RELIEF SOUGHT**

20 The Liquidator seeks this Court's order that it be permitted to provide a proof of claims
21 process *only for Class 2 claimants who were CGL policyholders*. This proof of claim process for
22 CGL policyholders is described in the discussion below regarding section 1063.7.
23 As discussed hereinafter, it is not necessary to provide a proof of claims process for the other two
24 categories of Class 2 claimants. For all claimants in priority classes below class 2 and for whom
25 it appears that there will be insufficient assets to pay claims, the Liquidator seeks this Court's
26 order to forego the time and expenses required to publish, solicit, enroll, classify, examine,
27 determine and (potentially) litigate proofs of claim in classes that will ultimately receive no
28 distribution, pursuant to the authority set forth in section 1021(c)(1).

1 section 1033(a)(2) 3/ and the administrative expenses incurred to date, the insolvent company has
2 net deficiency of assets in the amount of one million, five hundred eighty three thousand, sixty-six
3 dollars. (See Decl. of John Battle, 1:24-26).

4 Additional administrative costs, including expenses incurred for the solicitation, receipt,
5 retention, evaluation and resolution of proofs of claim for Classes 1033(a)(3) through (a)(9), will
6 increase the administrative expense(s) class by over one hundred thousand dollars and reduce the
7 distribution to Class 2 dollar for dollar. [See Decl. of John Battle, 2:7-10]. The allowed Class 2
8 CIGA and CGL policyholders' claims, if any, will not be satisfied in full by the available assets even
9 if the claims process is foregone. Therefore, requiring the full proof of claims process to go forward
10 will be detrimental and burdensome to the insolvency estate and its claimants.

11 II.

12 **"NO ASSET" PUBLICATION AND PUBLISHED NOTICE TO** 13 **CLAIMANTS AND CREDITORS OCCUPYING PRIORITIES 1033(A)(3)** 14 **THROUGH (A)(9) SHALL SET FORTH THAT PROOFS OF CLAIM** 15 **WILL NOT BE ACCEPTED DUE TO LACK OF SUFFICIENT ASSETS.**

16 The Commissioner, as MMIC's liquidator, proposes to give published notice to Creditors
17 and Claimants as required by sections 1021 and 1022, including the following phrases:

18 "It appears at this time that insufficient assets exist to satisfy any claims
19 that fall within priorities 3 through 9 under Insurance Code Section 1033;
20 and that if it should later appear that sufficient assets are available to distribute
21 to pay such classes of creditors, those classes will be notified by the Commissioner
22 to file their proofs of claim at that time; and a new deadline for filing proofs of
23 claim will be set forth in that notice. The Liquidator will accept claims from
24 commercial general liability policyholders only [Ins. Code Section 1033(a)(2).
25 These policyholders will receive notice of the proof of claims process via United
26 States Postal Service delivery. No other creditors should submit claims until further
27 notice."

28 This type of "no-asset" notice is routinely provided to general creditors in U.S. Bankruptcy
proceedings under Chapter 7 [liquidation proceedings] of the Federal Bankruptcy Code, where
insufficient assets are available to pay the general creditors listed in the debtor's Schedule of
Unsecured Creditors. [See Bankruptcy Official Form B9A, individual or joint debtor (no asset case)
(9/97); Bankruptcy Official Form B9B, Corporation/partnership (no asset case) (9/97)].

1 III.

2 DISCUSSION OF NOTICE UNDER INSURANCE CODE SECTION 1063.7

3 In addition to the notice required by sections 1021 and 1022, section 1063.7 provides in
4 relevant part as follows:

5 1063.7. When a liquidator, domiciliary or ancillary, is appointed in this state for any
6 member insurer, the liquidator shall promptly give notice of his or her appointment and a brief
7 description of the contents of this article and of the nature and functions of the association by prepaid
8 first-class mail to: (a) all persons known or reasonably expected to have or be interested in claims
9 against the insurer, at the last known address within this state; (b) all insureds of the insurer, at the
10 last known address within this state, accompanied by a notice of the date of termination of insurance;
11 and (c) the board of governors of the association. Such notice may, but need not be, combined with
12 the notice provided for in Section 1021.

13 Given the current financial circumstances of MMIC, the Commissioner requests this
14 court's consent to implement an amended Section 1063.7 notice for the following reasons:

15 MMIC has been in "runoff" since August 2003. Accordingly, the last date upon which
16 any worker's compensation policyholder had an effective insurance policy with MMIC was
17 August 1, 2004 (the last date MMIC would have renewed or issued a policy would have been August
18 2, 2003). (See, Decl. of Jack Hom, 2:1-2) Because there is an one-year statute of limitations to file
19 workers' compensation claims, all of MMIC's workers' compensation claims which could
20 conceivably be filed, have been filed. (Decl. of Jack Hom, 2:6-9) Therefore, there is no reason to
21 expend scarce resources to mail notices to "all insureds of the insurer."

22 Pursuant to section 1033(a)(2), there are generally three categories of Class Two claims:
23 (1) unearned premium refund claims; (2) policyholder claims that are not "covered" claims (by an
24 insurance guarantee association); (3) insurance guarantee associations' claims.

25 There will not be any "unearned premium refund" claims because those arise only when
26 an insurance policy is canceled prior to the policy expiration date and the premium was prepaid for
27 the full term of the policy. Because MMIC has not issued any renewals or new policies since August
28 2003, there were no in-force policies to cancel at the time of liquidation. As to policyholder claims

1 that are not “covered claims” (as defined in section 1063.1(c)(7) [CIGA cap on CGL claims is
2 \$500,000]), the only possible claimants here are CGL policyholders because there is no CIGA cap
3 on workers’ compensation policyholders.

4 As to the last category of Class 2 claimants, the CIGA already has notice of MMIC’s
5 liquidation. Therefore, the only Class 2 category of possible claimants to whom notice must be
6 mailed is the CGL policyholders who had “occurrence–based” policies. These are liability policies
7 that provide coverage for covered claims arising from incidents that occur during the policy period
8 regardless of whether the policy is still in effect at the time the claim is made. An example of such
9 a claim is a toxic tort or environmental claim, which often arises years after the specific occurrence
10 which gave rise to the claim. (Decl. of Jack Hom, 2:10-17)

11 In order for these types of claims to be covered by the California Insurance Guarantee
12 Association, such claims must be processed by the Liquidator pursuant to a proof of claims process.
13 Section 1063.1(c)(1). Therefore, the Liquidator must establish a proof of claim process for *only* this
14 category of policyholders. A POC process would set a claims bar date for occurrence-based liability
15 policies. A claims bar date would permit the CIGA to make an actuarial calculation as to its liability
16 regarding MMIC's commercial general liability policyholders. Without a POC process, i.e., personal
17 notice and a claims bar date, for this category of policyholders, the Liquidator would be estopped
18 from asserting a claims bar date for CGL claims. See, *Middleton v. Imperial Insurance Co.* (1983)
19 34 Cal.3d 134. (Decl. of Jack Hom, 2:10-17)

20 Next, there is no reason to mail notice to general creditors (i.e., "all persons known or
21 reasonably expected to have or be interested in claims against the insurer") because there are
22 insufficient assets to pay 100 percent of approved claims to Class 2, much less anything to pay to
23 claimants in Classes 3-9. (Decl. of Jack Hom, 3:4-9)

24 IV.

25 LIQUIDATION CASE TO REMAIN OPEN PENDING COLLECTION 26 OF REINSURANCE PROCEEDS.

27 Pursuant to section 1021(c)(2), the Commissioner may petition the Court to terminate an
28 insolvency proceeding where the assets are insufficient to pay administrative expenses. Although

1 the Liquidator does not expect to collect assets sufficient to permit distribution to claims below
2 section 1033(a)(2) claims, assets are adequate to pay the administrative costs of the estate, and to pay
3 a portion of the section 1033(a)(2) claims. The rationale for this estate to remain open (thereby
4 incurring additional administrative expenses) is that the insolvent company is owed money from its
5 reinsurers. The Commissioner, in his role as Liquidator, is required to take such action as is
6 necessary to collect that which is due to the insolvent company's liquidation estate, to maximize
7 returns to the policyholders and creditors, including reinsurance proceeds that are owed to the
8 company.

CONCLUSION

9 For the foregoing reasons, and based upon the declarations and exhibits submitted
10 herewith, the Commissioner of Insurance as liquidator requests that the Court enter the
11 accompanying [proposed] order permitting the Commissioner to modify the claims process and to
12 provide notice to the creditors as set forth in the proposed order submitted herewith.
13

14 Dated: March 21st, 2007

15 Respectfully submitted,
16 EDMUND G. BROWN JR.
17 Attorney General of the State of California

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19 SCOTT T. FLEMING
20 Deputy Attorney General
21 Attorneys for Applicant

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9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO**

11 **INSURANCE COMMISSIONER OF THE STATE**
12 **OF CALIFORNIA,**
13 Applicant,
14 v.
15 **MUNICIPAL MUTUAL INSURANCE COMPANY,**
16 Respondent.

Case no. CPF-07-507033

**DECLARATION OF JACK K.
HOM IN SUPPORT OF
LIQUIDATOR'S MOTION
FOR A MODIFIED CLAIMS
PROCESS**

Date: April 24, 2007
Time: 9:30 a.m.
Dept: L&M 301
Judge: Hon. Peter Busch
Action Filed: 10/23/2006

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19 I, JACK K. HOM, declare as follows:

20 1. I am an attorney for the California Department of Insurance ("CDI") in the
21 Corporate Affairs Bureau.

22 2. My duties include providing legal counsel to the California Insurance Commissioner's
23 Conservation & Liquidation Office, which is comprised of insurance professionals hired to assist
24 the Insurance Commissioner in managing and administering the conservation and liquidation of
25 California insurance companies.

26 3. By order of the Solano County Superior Court, on October 31, 2006, Municipal Mutual
27 Insurance Company ("MMIC") was found to be insolvent and ordered into liquidation. The
28 Insurance Commissioner was appointed the Liquidator of MMIC.

1 4. Since August 1, 2003, MMIC has been in “runoff,” which means MMIC has not
2 renewed any policies or issued any new policies since that time.

3 5. Due to its insolvency and liquidation, MMIC’s policyholders’ claims are paid by the
4 California Insurance Guarantee Association (assuming such claims are “covered,” as defined by
5 Insurance Code Section 1063.1(c)(1)).

6 6. Because there is a one-year statute of limitations on workers’ compensation claims, all
7 workers’ compensation claims which could be made have been made. Therefore, at this time, the
8 California Insurance Guarantee Association has all the information it needs to calculate its
9 exposure regarding MMIC’s workers’ compensation claims.

10 7. There is a category of policyholders for whom the CIGA cannot calculate its exposure
11 at this time. Policyholders who had occurrence-based commercial general liability policies can
12 still make a claim for coverage under their MMIC policy. If these CGL policyholders do not
13 receive personal notice of the claims process and claims bar date, the Liquidator is estopped from
14 citing a deadline for not accepting claims. *Middleton v. Imperial Insurance Co.* (1983) 34 Cal.3d
15 134. In order for the CIGA to make an actuarial determination as to its exposure to this group of
16 policyholders, the Liquidator must establish a proof of claim process that will include a claims
17 bar date for CGL policyholders.

18 8. Pursuant to Insurance Code Section 1033(a)(2), there are generally three categories of
19 Class Two claims: (1) unearned premium refund claims; (2) insurance guarantee associations
20 claims; (3) policyholder claims which are not “covered” claims (by an insurance guarantee
21 association).


22 9. There will not be any “unearned premium refund” claims because those arise only
23 when an insurance policy is canceled prior to the policy expiration date and the premium was
24 prepaid for the full term of the policy. Because MMIC has not issued any renewals or new
25 policies since August 2003, there were no in-force policies to cancel at the time of liquidation.

26 10. As to policyholder claims that are not “covered claims” (as defined in Insurance Code
27 section 1063.1(c)(7) [CIGA cap on claims is \$500,000]), the only possible claimants here are
28 CGL policyholders because there is no CIGA cap on workers’ compensation policyholders.

1 11. As to the last category of Class 2 claimants, the CIGA already has notice of MMIC's
2 liquidation. Therefore, the only Class 2 category of possible claimants to whom notice must be
3 mailed is the CGL policyholders who had "occurrence-based" policies.

4 12. All Class 3 through Class 9 claimants will not participate in a distribution of assets of
5 MMIC because the CLO projects that there are insufficient assets to reach claimants in those
6 statutory priority classifications. If assets are subsequently located that are sufficient to reach
7 Class 3 through Class 9, the Liquidator proposes to provide written notice to those classes whose
8 claims will participate, directing those creditors to file their claims by a date certain as set by the
9 Liquidator at that time.

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11 Dated: 3/14/07



JACK K. HOM

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10 **COUNTY OF SAN FRANCISCO**

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12 **INSURANCE COMMISSIONER OF THE STATE**
OF CALIFORNIA,
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14 Applicant,
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16 v.
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18 **MUNICIPAL MUTUAL INSURANCE COMPANY,**
Respondent.

Case No. CPF-07-507033

**DECLARATION OF JOHN
BATTLE IN SUPPORT OF
LIQUIDATOR'S MOTION
FOR A MODIFIED CLAIMS
PROCESS**

Date: April 24, 2007
Time: 9:30 a.m.
Dept: L&M 301
Judge: Hon. Peter Busch
Action Filed: 10/23/2006

19 I, JOHN BATTLE, declare as follows:

- 20 1. I am John Battle, Chief Claims Officer, in the Insurance Commissioner's
21 Conservation & Liquidation Office ("CLO"), and I have held this position since June 1, 2005.
- 22 2. My duties include overseeing the administration of the liquidation of Municipal
23 Mutual Insurance Company ("MMIC").
- 24 3. As of December 31, 2006, MMIC has net a deficiency of assets in the amount of
25 one million, five hundred eighty three thousand, sixty-six dollars (\$1,583,066), as set forth in
26 Exhibit A hereto and incorporated herein by reference.

27 / / / /

28 / / / /

1 4. The CLO has indentified 3,304 potential creditors to whom a proof of claim
2 process would typically be provided by the CLO on behalf of the Liquidator of MMIC. The cost
3 of preparing the notices, conducting mailings, setting up an appropriate database to administer
4 the claim responses, evaluating the claims and the responses, and making claim determinations
5 for each filed claim would add administrative costs associated with Claims for Classes
6 1033(a)(3) through 1033(a)(9).

7 5. Based upon the CLO's prior experience in administering claims, the costs of
8 providing the standard claim process to Classes 1033(a)(3) through (a)(9) will increase
9 administrative expenses by over \$100,000, reducing the distribution to Class 2 claimants, dollar
10 for dollar.

11 6. To the extent MMIC has assets to distribute to Class 2 claimants, such
12 distribution will almost certainly be less than 100 percent of the Class 2 claimants' approved
13 claims and it is equally certain that there will be no proceeds available for those classes that are
14 subordinate to Class 2, pursuant to California Insurance Code Section 1033.

15 7. Requiring the full proof of claim process to go forward will be detrimental and
16 burdensome to the insolvency estate of MMIC and its claimants.

17 8. Therefore, I am of the opinion that it is appropriate at this time to petition this
18 Court for an order authorizing the Liquidator to provide a claims process only for commercial
19 general liability ("CGL") policyholders who had occurrence-based policies. This will permit
20 CGL policyholders to file a protective Class 2 claim, which would be a necessary predicate for
21 the California Guaranty Association to consider any long-tail claim under those policies that
22 might be brought forth in the future.

23 DATED: 3/19/07



JOHN BATTLE

Exhibit “A”

Municipal Mutual Financial Statement (Simplified)

12/31/06

Liabilities

1) Workers Compensation Liabilities (Paid)	\$76,451
2) Workers Compensation Liabilities Reserved	\$2,588,642
Total Workers Compensation Liability	\$2,665,083
3) Excess General Liability (Paid)	\$0
4) Excess General Liability Owed	\$100,000
Total Excess General Liability	\$100,000
5) Other Liabilities (Reserve)	\$50,000
6) 2007 Operating Expenses	\$65,000
Total Liability	\$2,980,083

Assets

1) Cash	\$470,017
2) Premiums Collectible	\$70,000
3) Reinsurance Due	\$12,700
4) Ceded Reinsurance Due	\$845,000
Total Assets	\$1,397,017
Net Deficiency	\$1,583,066

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Insurance Commissioner v. Municipal Mutual Insurance Company**

San Francisco County Superior Court Case No.: **CPF-07-507033**

I declare: I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 21, 2007, I served the attached **Motion to Modify Claims Process; Memorandum of Points and Authorities in Support of Liquidator's Motion for a Modified Claims Process; Declaration of Jack K. Hom in Support of Liquidator's Motion for a Modified Claims Process; Declaration of John Battle in Support of Liquidator's Motion for a Modified Claims Process and Exhibit** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

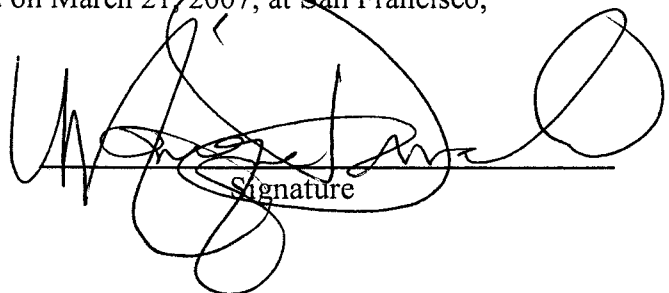
Dennis Evans
Municipal Mutual Insurance Company
560 First Street, Suite C-150
Benecia, CA 94510

C. Guerry Collins, Esq.
Lord, Bissel & Brook
300 South Grand Avenue 8th Floor
Los Angeles, CA 90071
(Attorney for CIGA)

California Insurance Guarantee Association
PO Box 16860
Beverly Hills, CA 90209-3319

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 21, 2007, at San Francisco, California.

Monique Davalos
Declarant



Signature