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9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF LOS ANGELES**

12 JOHN GARAMENDI, Insurance Commissioner )  
13 of the State of California, )  
14 Applicant, )  
15 vs. )  
16 MISSION INSURANCE COMPANY, a )  
17 California corporation, )  
18 Respondent. )  
19 \_\_\_\_\_ )  
20 Consolidated with Case Numbers C 576 324; )  
21 C 576 416; C 576 323; C 576 325; C 629 709 )

Case No. C 572 724  
Honorable John Shepard Wiley Jr.  
Dept. 50  
**NOTICE OF MOTION AND MOTION TO  
APPROVE REHABILITATION PLAN  
IMPLEMENTATION AGREEMENT AND  
RELATED EXHIBITS WITH COVANTA  
HOLDING CORPORATION**  
Hearing date: February 24, 2006  
Hearing time: 8:30 a.m.  
Dept. 50  
Action filed: October 31, 1985


22 PLEASE TAKE NOTICE THAT ON THE 24<sup>th</sup> day of February, 2006, at the hour of 8:30  
23 a.m., or as soon thereafter as the matter may be heard, John Garamendi, Insurance Commissioner of  
24 the State of California, in his capacity as Trustee of the Mission Insurance Company Trust, the  
25 Mission National Insurance Company Trust, and the Enterprise Insurance Company Trust  
26 (collectively, the "Trusts"), will seek approval of the Court for entry into a Rehabilitation Plan  
27 Implementation Agreement ("Implementation Agreement") with Covanta Holding Corporation  
28 ("Covanta"), which shall then be part of the rehabilitation plan. [Exhibit "1" to the Declaration of  
Robert H. Nunnally, Jr.] The Implementation Agreement provides for a valuation process for  
establishing the minimum liability to claimants under the agreement of Reorganization,

1 Rehabilitation, and Restructuring ("RRR Agreement") and administration process for the purpose of  
2 shares distribution under the RRR Agreement in place as a result of prior orders of this Court. This  
3 agreement also resolves various disagreements between Covanta Holding Corporation ("Covanta")  
4 and the Insurance Commissioner regarding the obligations of the parties under the RRR Agreement,  
5 the Agreement Regarding Closing, and the trust agreements for each of the Trusts (collectively, the  
6 "Rehabilitation Agreement") and offers to the Trusts each of the following benefits:

- 7 ---Covanta shall assume certain tax costs allocated to the Trusts under the RRR Agreement;
- 8 ---Covanta shall bear the expense of evaluating and processing certain claims under the RRR  
9 Agreement;
- 10 ---Covanta shall provide certain indemnifications, as described in the Implementation  
11 Agreement;
- 12 ---Covanta shall provide a tax opinion letter, whose form has been finalized;
- 13 ---Covanta shall contribute in excess of nine million dollars to the Trusts to assure the  
14 Trustee's compliance with his responsibility to ensure that no approved claimant suffers a dilution in  
15 distribution;
- 16 ---Covanta shall issue a release to the Trusts except as to future performance under the  
17 rehabilitation plan;
- 18 ---Covanta shall make appropriate disclosures regarding the Implementation Agreement to  
19 the SEC and to the IRS.

20 This motion will be based on the Declaration of Mohsen Sultan, the Declaration of Robert H.  
21 Nunnally, Jr., the proposed Agreements attached as exhibits to his declaration, and the  
22 accompanying memorandum of points and authorities.

23 Dated: January 19, 2006

Respectfully submitted,  
WISENER ★ NUNNALLY ★ GOLD, L.L.P  
By:   
Robert H. Nunnally, Jr.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 This motion seeks approval for entry into the Implementation Agreement with Covanta. If  
3 approved, this Implementation Agreement resolves a substantial outstanding issue in this case.

4 On December 13, 1989, the Insurance Commissioner, as Liquidator of Mission Insurance  
5 Company, Mission National Insurance Company, Enterprise Insurance Company, and as  
6 Conservator of Mission American Insurance Company and Compac Insurance Company, entered  
7 into the RRR Agreement with the Missouri Director of the Division of Insurance as Receiver of  
8 Holland-America Insurance Company and Mission Reinsurance Corporation, and with Mission  
9 Insurance Group, Inc. [Exhibit "2" to the Declaration of Robert H. Nunnally, Jr.]. The RRR  
10 Agreement provided for a comprehensive rehabilitation, including a "debt for equity swap" and a  
11 Chapter 11 reorganization for Mission Insurance Group, Inc. Covanta is the successor of that  
12 reorganized debtor. On April 25, 1990, the Final Order of Rehabilitation was issued by the  
13 Liquidation Court, which had the effect, *inter alia*, of entering a rehabilitation order as to Mission  
14 Insurance Company, Mission National Insurance Company and Enterprise Insurance Company and,  
15 upon closing of the transactions described in the RRR Agreement, resulted in the creation of MICT,  
16 MNICT and EICT, pursuant to the agreement of MICT, the agreement of MNICT and the agreement  
17 of EICT. [Exhibit "3" to the Declaration of Robert H. Nunnally, Jr.]. Pursuant to the Rehabilitation  
18 Agreement, as of August 15, 1990, an aggregate of 1,648,488 shares of Covanta common stock were  
19 issued to the Insurance Commissioner to be held for and on behalf of holders of Deficiency Claims  
20 (as defined in the RRR Agreement) (the "Allocated Shares"), which Allocated Shares have been  
21 allocated to MICT (1,172,874 shares), MNICT (399,751 shares) and EICT (75,863 shares). [Exhibit  
22 "4" to Declaration of Robert H. Nunnally, Jr.]. The RRR Agreement provides that these shares will  
23 be distributed to holders of "Deficiency Claims," that is, claimants who made or could have made  
24 claims against the Mission companies.

25 The Implementation Agreement seeks to allocate the shares among not only those who  
26 qualified by having unpaid approved proofs of claims, but also those who "could have made" claims  
27 as defined and contemplated under the Rehabilitation Agreement but did not due to the various  
28 strictures of the amended final dividend plan process. Covanta had filed objections to the closing

1 plan in this Court, contending that other claimants under the RRR Agreement should be included in  
2 the shares distribution in order to implement the rehabilitation plan correctly. The Implementation  
3 Agreement provides that Covanta will make a contribution to the Trusts in order to resolve various  
4 disagreements between Covanta and the Trustee and to resolve any issues as to the Trustee's  
5 compliance with his responsibility to ensure that no approved claimant is prejudiced by any arguable  
6 shares dilution caused by any distribution of shares to additional claimants under the RRR  
7 Agreement and will evaluate and process such claims at its own expense. Covanta will also  
8 indemnify the Insurance Commissioner and the Trusts against a number of events, as set forth in the  
9 Implementation Agreement. Thus, the Implementation Agreement resolves outstanding issues,  
10 thereby saving the Trusts additional expense, and also provides additional assets to the Trusts for  
11 distribution to claimants and relieves the Trusts of certain costs that otherwise would have been  
12 borne by the assets otherwise available for claimants.

13 This implementation plan contemplates an additional motion to approve a valuation of the  
14 minimum liability to certain claimants under the RRR Agreement, which motion is expected to be  
15 filed in January 2006 for hearing in February 2006. The valuation process should not delay or  
16 hinder closing of the other aspects of this case on January 24, 2006.

17 California Insurance Code Section 1037 accords the Insurance Commissioner wide latitude  
18 in settling matters, subject only to abuse of discretion review. *Low v. Golden Eagle Ins. Co.*, 104  
19 Cal.App.4th 306, 128 Cal.Rptr.2d 423 (2002).

20 The Declaration of Mohsen Sultan is submitted in support of the reasonableness of the  
21 Implementation Agreement. This agreement resolves a key issue in the closing process.

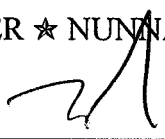
22 **CONCLUSION**

23 The Court is requested to approve the Implementation Agreement.

24 Dated: January 19, 2006

Respectfully submitted,

25 WISENER ★ NUNNALLY ★ GOLD, L.L.P

26 By:   
27 Robert H. Nunnally, Jr.

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

STATE OF TEXAS, COUNTY OF DALLAS.

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

On this date, I served the foregoing documents described NOTICE OF MOTION AND MOTION TO APPROVE REHABILITATION PLAN IMPLEMENTATION AGREEMENT AND RELATED EXHIBITS WITH COVANTA HOLDING CORPORATION 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 January 19, 2006 at Garland, Texas

  
Komashri Govender

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