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JUL 16 2003
LOS ANGELES
SUPERIOR COURT

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

9 JOHN GARAMENDI, Insurance
10 Commissioner of the State of California,
11 Applicant,

) Case No. C 572 724

12 vs.

) Honorable J. Stephen Czuleger

13 MISSION INSURANCE COMPANY, a
14 California corporation,
15 Respondent.

) **THE INSURANCE COMMISSIONER'S**
) **MOTION TO SET SECTION 1025**
) **DATE FOR LIQUIDATION OF**
) **CLAIMS FOR FINAL DISTRIBUTION;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES; DECLARATION OF**
) **MOHSEN SULTAN**

16 Consolidated with Case Numbers
17 C 576 324; C 576 416;
18 C 576 323; C 576 325; C 629709

) Hearing Date: September 26, 2003, at 8:30
) a.m.

) Department: 50

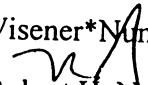
) Filed: October 31, 1985

1 PLEASE TAKE NOTICE THAT ON THE 26TH DAY OF SEPTEMBER, 2003, at the hour
2 of 8:30 a.m., OR AS SOON THEREAFTER AS THE MATTER MAY BE HEARD, John
3 Garamendi, Insurance Commissioner of the State of California, in his capacity as Trustee of the
4 Mission Insurance Company Trust, the Mission National Insurance Company Trust and the
5 Enterprise Insurance Company Trust will move the Department 50 of the Los Angeles County
6 Superior Court, located at 111 North Hill Street, Los Angeles, California, for an order which sets
7 the last date by which policyholder class unliquidated and contingent claims must be liquidated at
8 December 31, 2003. In accordance with California Insurance Code Section 1025, the order will, if
9 granted, have the effect of denying any policyholder class claim not liquidated within the meaning of
10 California Insurance Code Section 1025 by December 31, 2003 the right to share in any distribution
11 as to the unliquidated or contingent portion of the claim. The order requested shall not deal with
12 reinsureds or general creditor class claimants, who may be dealt with by subsequent motion. This
13 motion shall not prevent approval of a policyholder class proof of claim as to damages liquidated by
14 December 31, 2003, even if the approval happens subsequent to December 31, 2003. Instead, this
15 motion requests the Court to set a final deadline for liquidation of claims within the meaning of
16 Section 1025 of the California Insurance Code. The motion shall be based on California Insurance
17 Code Section 1025, the prior orders of this Court, the Declaration of Mohsen Sultan and the Request
18 for Judicial Notice,, filed with this motion, and the accompanying memorandum of points and
19 authorities. The Insurance Commissioner shall also rely upon the pleadings and papers on file in this
20 matter, and all matters within the Court's judicial notice.

21 Wherefore, premises considered, this Court is requested to set the Section 1025 date at December
22 31, 2003, or at such other time as the Court may determine, and to further order such other just and
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1 equitable relief to which the Insurance Commissioner may be entitled.

2 Respectfully submitted,

3 Wisener*Nunnally, LLP
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5 Robert H. Nunnally, Jr.

6 Attorneys for the Insurance Commissioner
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Memorandum of Points and Authorities

Introduction

The Insurance Commissioner files this motion to take another step in the Amended Liquidation Dividend Plan. Mission Insurance Company, Enterprise Insurance Company and Mission National Insurance Company have been in liquidation since February 24, 1987. During the intervening sixteen years, policyholder class claimants have been afforded the opportunity to liquidate their contingent and undetermined proof(s) of claim, and many have done so.

The Court asked the Insurance Commissioner to develop a case plan during 2002 that would permit closure of the Mission cases. The Insurance Commissioner developed a case plan that targeted December 31, 2004 for Mission Insurance Company and Mission National Insurance Company, and December 31, 2003 for Enterprise Insurance Company. The instant motion seeks to effectuate the case plan by providing a final date for liquidation of the proofs of claim against these companies.

Facts

Mission Insurance Company, Mission National Insurance Company and Enterprise Insurance Company wrote property and casualty liability insurance in a number of states (Sultan Declaration, paragraph 2). Each entered liquidation on February 24, 1987. (Sultan Declaration, paragraph 2). The initial bar date for proofs of claim was set for September 12, 1987. (Sultan Declaration, paragraph 3). The Mission records show that over 300,000 proof of claim forms were sent out, and over 170,000 returned. (Sultan Declaration, paragraph 4). Interim distributions have been made, with court approval, to policyholder class claimants with approved claims, ranging from 49% for Enterprise Insurance Company claimants to 75% for Mission National Insurance Company claimants (Sultan Declaration, paragraph 4).

The Mission claimants include numerous insureds with "long tail" exposures. These claimants purchased occurrence policies which, in some cases, provide coverage for occurrences which tend to be reported over decades, such as toxic tort matters. (Sultan Declaration, paragraph 5). If the liquidations

1 remained open until the last claim were liquidated, the liquidations could last for additional decades.
2 (Sultan Declaration, paragraph 5).

3 The Insurance Commissioner has therefore determined to "strike a balance" between the claims of
4 long-tail insureds, and the necessity to close the estates. The vast majority of the reinsurance assets of
5 the liquidation estates, over one billion dollars' worth, has been collected. The Insurance Commissioner
6 allowed the claimants from 1987 through 2003 to liquidate their claims. The Insurance Commissioner
7 requests that the Court set December 31, 2003 as the last date for liquidation of contingent and
8 undetermined claims. (Sultan Declaration, paragraph 6).

9 In connection with this motion, the Insurance Commissioner has had to perform a balancing of
10 equities. On the one hand, if the "tail" on policies is "cut", the Insurance Commissioner may collect less
11 investment income and reinsurance recoverables than if the policies are allowed to "run off" indefinitely.
12 On the other hand, insureds and third party claimants at policyholder class wish to obtain their final
13 distributions. The Insurance Commissioner's interim distributions have provided substantial recoveries
14 to approved claimants. The setting of a Section 1025 date as to policyholder class claims is appropriate
15 at this time in order to ensure that the liquidation trusts are wound up. (Sultan Declaration, paragraph
16 7).

17 One result of the determination to set a Section 1025 date is that some claimants' claims which are
18 not liquidated as of the "cut-off" will not be entitled to share in the distribution as to these unliquidated
19 portion of their claims (Sultan Declaration, paragraph 8). It is possible that other policyholders (and
20 perhaps general creditors, if sufficient funds exist to pay all existing policyholders) might get increased
21 distributions, while unliquidated policyholders' valuation would exclude future development. (Sultan
22 Declaration, paragraph 8).

23 No similar date is sought at this time as to reinsureds and general creditors. Until each policyholder
24 is paid in full--which may or may not happen, general creditors shall receive only their share of
25 Danielson shares at the end of the day. A Section 1025 date might merely truncate the recoverable
26 retrocessional reinsurance without a corresponding benefit in estate closure. A subsequent motion may
27 be filed on this issue.
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Argument and Authorities

California Insurance Code Section 1025 provides that contingent and unliquidated claims must be liquidated by the time of the final distribution in order to share in the assets of the estate. In this case, the Mission companies have been in liquidation since February 24, 1987 (See Exhibit "A" to the Request for Judicial Notice). Interim distributions have been made to policyholders with approved claims. Policyholders are permitted to file "contingent and unliquidated" claims in California.

Garamendi v. Mission, 15 Cal. App.4th 1277, 19 Cal. Rptr.2d 190 (1993). This allows them to preserve the "tail" coverage on their policies. The Insurance Commissioner originally proposed a Final Liquidation Dividend Plan which permitted the Insurance Commissioner to use actuarial coverage to value the "tail" coverage. The order approving this plan was overturned by the Court of Appeal, however, in the case of *Quackenbush v. Mission Ins. Co.*, 46 Cal. App. 4th 458, 54 Cal. Rptr. 2d 112 (1996). The Court of Appeal held in that case that Section 1025 did not permit such valuations on unliquidated claims.

Subsequently, the Insurance Commissioner proposed the Amended Final Liquidation Dividend Plan. This plan provided for interim distributions. The plan also provided that at some point, the Insurance Commissioner would apply for an order which set the Section 1025 valuation date. This plan has been upheld by the Court of Appeal. *Quackenbush v. Mission Insurance Company*, 62 Cal.App.4th 797, 73 Cal. Rptr. 2d 95 (1998).

The Insurance Commissioner now makes this motion to set the final date for liquidation of claims as December 31, 2003. Because the vast majority of the reinsurance has been collected, and insureds have had sixteen years to liquidate their claims, this strikes a reasonable balance between the need to close the cases and the need to permit insureds and third party claimants to liquidate as many claims as possible. The Court applies an abuse of discretion standard to the Insurance Commissioner's actions in this regard. *Low v. Golden Eagle Ins. Co.*, 104 Cal. App. 4th 306; 128 Cal. Rptr. 2d 423

In this case, the requested deadline is not an abuse of discretion.

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3 **Declaration of Mohsen Sultan**

4 I, Mohsen Sultan, do hereby declare under penalty of perjury of the laws of the State of California as
5 follows:

6 1. I am Mohsen Sultan. I am over the age of eighteen years. I am competent to be a witness. I have
7 personal knowledge of the facts to which I attest. I acquired my personal knowledge in my role as Estate
8 Trust Officer for Mission Insurance Company Trust, Mission National Insurance Company Trust, and
9 Enterprise Insurance Company Trust. I rely upon records of these trusts in making my declaration.

10 2. Mission Insurance Company, Mission National Insurance Company and Enterprise Insurance Company
11 wrote property and casualty liability insurance in a number of states Each entered liquidation on February
12 24, 1987.

13
14 3. The initial bar date for proofs of claim was set for September 12, 1987.

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16 4. The Mission records show that over 300,000 proof of claim forms were sent out, and over 170,000
17 returned. Interim distributions have been made, with court approval, to policyholder class claimants with
18 approved claims, ranging from 49% for Enterprise Insurance Company claimants to 75% for Mission
19 National Insurance Company claimants.

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21 5. The Mission claimants include numerous insureds with "long tail" exposures. These claimants
22 purchased occurrence policies which, in some cases, provide coverage for occurrences which tend to be
23 reported over decades, such as toxic tort matters. If the liquidations remained open until the last claim
24 were liquidated, the liquidations could last for additional decades.

25
26 6. The Insurance Commissioner has therefore determined to "strike a balance" between the claims of
27 long-tail insureds, and the necessity to close the estates. The vast majority of the reinsurance assets of the
28 liquidation estates, over one billion dollars' worth, has been collected. The Insurance Commissioner

1 allowed the claimants from 1987 through 2003 to liquidate their claims. The Insurance Commissioner
2 requests that the Court set December 31, 2003 as the last date for liquidation of contingent and
3 undetermined claims.

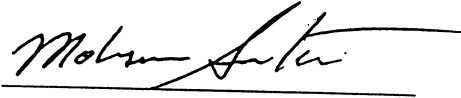
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5 7. In connection with this motion, the Insurance Commissioner has had to perform a balancing of equities.
6 On the one hand, if the "tail" on policies is "cut", the Insurance Commissioner may collect less investment
7 income and reinsurance recoverables than if the policies are allowed to "run off indefinitely. On the other
8 than, insureds and third party claimants at policyholder class wish to obtain their final distributions.
9 Although the Insurance Commissioner's interim distributions have provided substantial recoveries to
10 approved claimants, the setting of a Section 1025 date as to policyholder class claims is appropriate at
11 this time in order to ensure that the liquidation trusts are wound up.

12
13 8. One result of the determination to set a Section 1025 date is that some claimants' claims which are not
14 liquidated as of the "cut-off" will not be entitled to share in the distribution as to these unliquidated
15 portion of their claims. It is possible that other policyholders (and perhaps general creditors, if sufficient
16 fund exist to pay all existing policyholders) might get increased distributions, while unliquidated
17 policyholders' valuation would exclude future development.

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19 9. No similar date is sought at this time as to reinsureds and general creditors. Until each policyholder
20 is paid in full--which may or may not happen, general creditors shall receive only their share of Danielson
21 shares at the end of the day. A Section 1025 date might merely truncate the recoverable retrocessional
22 reinsurance without a corresponding benefit in estate closure. A subsequent motion may be filed on this
23 issue.

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1 I hereby declare the foregoing to be true and correct under the penalty of perjury of the laws of the State
2 of California on this 14th day of July, 2003.

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5 Mohsen Sultan
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PROOF OF SERVICE: By Mail
(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 The Insurance Commissioner's Motion to set Section 1025 Date for Liquidation of Claims for Final Distribution; Memorandum of Points and Authorities; Declaration of Mohsen Sultan in the envelopes addressed as follows:


See Attached Exhibit "A"

I am readily familiar with my employer's practices of collection and processing correspondence for mailing with the United States Postal Service and the above-referenced correspondence will be deposited with the United States Postal Service on the same date as stated above, 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 July 15, 2003 at Garland, Texas


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