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OF ORIGINAL FILED
Los Angeles Superior Court

APR 25 2005

John A. Clarke, Executive Officer/Clerk
By _____, Deputy
D. GILES

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

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

Case No. C 572 724

**NOTICE OF MOTION AND MOTION
TO APPROVE FIFTH INTERIM
DISTRIBUTION AS TO MISSION
INSURANCE COMPANY TRUST AND
MISSION NATIONAL INSURANCE
COMPANY TRUST; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATION OF MOHSEN
SULTAN; DECLARATION OF
REGINA ALAVA**

Honorable John Shepard Wiley, Jr.

Action Filed: October 31, 1985
Department: 50
Hearing Date: May 31, 2005
Time: 8:30 a.m.

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1 TO ALL POLICYHOLDERS CREDITORS, INSURANCE GUARANTY ASSOCIATIONS, AND
2 OTHER PERSONS AND ENTITIES INTERESTED IN MISSION INSURANCE COMPANY
3 MISSION NATIONAL INSURANCE COMPANY, THE MISSION INSURANCE COMPANY
4 TRUST, MISSION NATIONAL INSURANCE COMPANY TRUST (collectively the "Mission trusts"),
5 OR THEIR ASSETS:

6 PLEASE TAKE NOTICE THAT:

7 On May 31, 2005 at the hour of 8:30 a.m. or as soon thereafter as the matter may be heard, the
8 Insurance Commissioner, in his capacity as Trustee of the Mission Insurance Company Trust and the
9 Mission National Insurance Company Trust, shall apply to the Superior Court for the County of Los
10 Angeles, Department 50, for an order approving a Fifth Interim Distribution to holders of approved
11 claims under California Insurance Code Section 1033(a)(1) and 1033(a)(2). The motion shall be
12 supported by the Declaration of Mohsen Sultan and Regina Alava, as well as the Memorandum of Points
13 and Authorities filed with the Court with this motion.

14 1. The Fifth Interim Distribution shall be made to policyholders and other Class Five
15 claimants (pursuant to the 1987 version of California Insurance Code Section 1033, Class Five, which
16 provided for policyholder claimants to be priority Class Five), including Insurance Guarantee
17 Associations and approved third party claimants. The distribution percentage for which approval shall
18 be sought shall be seventy two percent (72%) as to Mission Insurance Company Trust Class Five
19 claimants and seventy five and seven tenths percent (75.7%) of their approved claims from the Mission
20 National Insurance Company Trust as to approved Class Five claimants. The approximate dollar
21 amount anticipated with this distribution is approximately one hundred thirty five million dollars
22 (\$135,000,000) as to Mission Insurance Company Trust and approximately ninety five million dollars
23 (\$95,000,000) as to Mission National Insurance Company Trust. This motion will seek approval for
24 this interim distribution to approved claimants, to bring all approved claimants at policyholder priority
25 up to the specified percentages. The distribution figures will depend on the final claims approval as of
26 the distribution date.

27 2. The Commissioner will ask the Court to grant the authority to enter into such agreements,
28

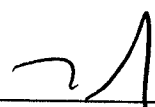
1 execute such documents, and make such disbursements as are necessary to effectuate this distribution
2 of assets as set forth herein.

3 WHEREFORE, ON PREMISES CONSIDERED, the Insurance Commissioner requests that the
4 proposal set forth herein be approved, and all other just and equitable relief.

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Dated: 4/22, 2005

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Memorandum of Points and Authorities

The Insurance Commissioner now seeks authority to take the next step in winding up these Trusts, a further interim distribution of the assets of the Mission Insurance Companies' Trusts. These insurance companies entered liquidation proceedings on February 24, 1987, and collection efforts in these estates have yielded recoveries in excess of 1.2 billion dollars. The bulk of the assets of the trusts have been recovered. The Insurance Commissioner wishes to again make a distribution to holders of claims under California Insurance Code Section 1033(a)(2). This will be a proposed fifth distribution to such claims holders, and will permit the Insurance Commissioner to pay interim distributions to those claims which have been allowed since the Fourth Interim Distribution.

The interim distribution approach has been utilized to ensure that as the last claims are liquidated, those persons whose claims have been long ago approved have been able to receive a substantial distribution on their claims. A number of settlements have taken place in the time since the Fourth Interim Distribution in 2003, and this fifth interim distribution is requested to allow those claimants to be "caught up" with prior distributees. In addition, as to Mission Insurance Company Trust, the distribution percentage will be increased by five percent, if this Court approves.

The methodology for the interim distributions is to distribute an amount which is less than the estimated ultimate value of the approved proof of claim, in order to ensure that as the remaining proofs of claims are ultimately approved, those claimants will receive their entitlement even if their claims are approved at levels greater than the current estimated reserves for such claims. As set forth in the Declarations, this is accomplished by projecting the likely ultimate recovery upon the proofs of claims, and then reserving for liabilities in excess of those projected to exist, as a matter of cushion to ensure that the distribution will minimize the risk of preference. Accordingly, the Insurance Commissioner has assessed those assets readily available for distribution, assessed the policyholder class and above

1 liabilities, and reserved additional sums for unforeseen contingencies. The Declaration of Regina Alava
2 sets forth that the methodology has been applied in this instance.

3
4 **I. The Court should Approve the Proposed Distributions**

5 The purpose of insurance insolvency proceedings is to ensure the orderly and equitable
6 distributions of assets of the insolvent insurer to those entitled to share in those assets. *In re Title USA*
7 *Corp* (1996) 36 Cal. App.4th 363, 42 Cal. Rptr. 498. California Insurance Code Sections 1025, 1033
8 and 1057 contemplate a ratable distribution in accordance with the priority statute. *Commercial*
9 *National Bank v. Superior Court* (1993) 14 Cal. App. 4th 393, 17 Cal. Rptr. 2d 884.

10
11 This Court previously approved an Amended Final Liquidation Dividend Plan which
12 contemplated the use of interim payments to ensure that those with approved claims received
13 appropriate distributions even while the resolution of the remaining claims continued.

14
15 In this case, the Conservation and Liquidation Office has once again calculated that an interim
16 distribution can be made to those with approved claims. The Declaration of Regina Alava and the
17 Declaration of Mohsen Sultan support the distribution of funds in accordance with the proposal. In
18 accordance with California Insurance Code Section 1037, the Insurance Commissioner's proposal for
19 distribution should be approved, unless the Insurance Commissioner has abused his discretion.
20 *Carpenter v. Pacific Mutual Life Ins. Co.* (1937) 10 Cal. 2d 307, 74 P.2d 761, affirmed sub nom. *Neblett*
21 *v. Carpenter*, 305 U.S. 297 (1938).


22
23 As with prior distributions, the Insurance Commissioner requests authority to set a "record date"
24 of who may share in this distribution, so that the deadline for approved claims can be determined.

25 **Conclusion**

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27 This is one more step in the wind-up of these trusts, which the Court is respectfully requested
28 to approve.

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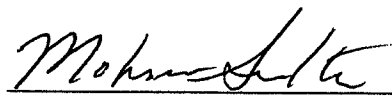
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Declaration of Mohsen Sultan

I, Mohsen Sultan, do hereby declare under penalty of perjury as follows:

I am Mohsen Sultan. I am over the age of eighteen years. I am competent to be a witness. If called upon to testify, I could and would testify to the matters set forth in this declaration. I am the Estate Trust Officer for the Mission Insurance Company Trust and the Mission National Insurance Company Trust, and am employed by the California Insurance Commissioner's Conservation and Liquidation Office, which assists the Insurance Commissioner with the liquidation of insurance companies. As part of my duties, I manage the efforts to wind up the Mission Insurance Companies' Trusts. I have reviewed the requested fifth interim distribution and ask the Court to approve this distribution. The distribution is reasonable, in that it permits claimants with approved claims to receive a portion of their funds without further delay, and the distribution assists the estates in moving towards final wind-down. We will continue to press forward to seek final distribution in these estates.

I hereby execute this declaration in San Francisco, California, and declare the foregoing under the penalty of perjury, on this 21st day of April, 2005.



Mohsen Sultan

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Declaration of Regina Alava

I, Regina Alava, do hereby make this declaration and declare under the penalty of perjury of the State of California:

1. I am Regina Alava. I am the Vice President of Finance for the Conservation and Liquidation Office. I am responsible for the supervision and management of all accounting and financial matters pertaining to all companies for which the Commissioner has been appointed Conservator or Liquidator, and which are managed by the CLO. Such financial matters include, but are not limited to, the supervision of the investment of estate assets, the maintenance and management of the CLO's accounting and financial records, the allocation of the CLO's general and administrative expenses among estates, and preparation of the financial statements for the estates, among other duties.

2. I am well familiar with the financial statements for the Mission Insurance Companies' Trusts. I am the person who supervises the Accounting staff in producing those financial statements. In conjunction with the Accounting staff, I have analyzed the statements to see if an interim distribution can be paid at the levels paid in the past for the various Mission companies. I believe, based on my review of the financial information of the Mission Companies, that an interim distribution can be made at this time, consistent with the financial statements of the company, without working a preference to any creditor. The dividend percentages should increase from sixty seven percent (67 %) of their approved claims from the Mission Insurance Company Trust to seventy two percent (72 %) of their approved claims from the Mission Insurance Company Trust. As a matter of prudence, we have advised that at this time the Mission National Insurance Company Trust distribution be set at seventy five and seven tenths percent (75.7%), which is not an increase over the fourth distribution. In setting the interim distribution percentages, my staff has added reserves based upon recommendations from the claims department, to allow for the remaining open claims, in case they develop more adversely than

1 current reserves project. In addition, reserves of eight percent to the Mission Insurance Company Trust
2 reserves and five percent as to the Mission National Insurance Company Trust reserves have been
3 added. In addition, a cushion of an additional sum in excess of \$ 250,000,000 has been established,
4 which provides an additional buffer for unexpected contingencies, including claim or administrative
5 contingencies. In light of these reserves, which serve as a "cushion," I believe it is reasonable to pay
6 these interim payments at this time.
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8 I hereby execute this declaration in San Francisco, California, and declare the foregoing under
9 the penalty of perjury on this 21st day of May, 2005.
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13 _____
14 Regina Alava
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3 **PROOF OF SERVICE: By Mail**
4 **(Code Civ. Proc., §§ 1013, 2015.5)**

5 STATE OF TEXAS, COUNTY OF DALLAS.

6 I am employed in the County of Dallas, State of Texas. I am over the age of 18 and not a party to the
7 within action; my business address is 625 West Centerville Road, Suite 110, Street, Garland, Texas
8 75041

9 On this date, I served the foregoing document described Notice of Motion and Motion to Approve Fifth
10 Interim Distribution As To Mission Insurance Company Trust And Mission national Insurance Company
11 Trust; Memorandum of Points And Authorities; Declaration Of Mohsen Sultan; Declaration of Regina
12 Alava; by placing a copy thereof enclosed in envelopes addressed as follows:

13 **Sent via Federal Express**


14 See Attached Exhibit "A"

15 I am readily familiar with my employer's practices of collection and processing correspondence for
16 mailing with the United States Postal Service and the above-referenced correspondence will be deposited
17 with the United States Postal Service on the same date as stated above, following ordinary course of
18 business.

19 (State) I declare under penalty of perjury under the laws of the State of California that the above
20 is true and correct.

21 (Federal) I declare that I am employed by the office of a member of the bar of this court at whose
22 direction the service was made.

23 Executed on April 22, 2005 at Garland, Texas

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Tammy Houghton

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