

JUL 03 2014

Sherri R. Carter, Executive Officer/Clerk  
By Victor Sino-Cruz, Deputy

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

10 DAVE JONES, Insurance Commissioner of  
11 the State of California,

12 Applicant,

13 vs.

14 MISSION INSURANCE COMPANY, a  
15 California corporation, et al

16 Respondent.

) Case No. C 572 724

) Honorable John L. Segal

) **NOTICE OF MOTION AND MOTION TO**  
) **APPROVE DISTRIBUTIONS TO**  
) **CLAIMANTS AGAINST ENTERPRISE**  
) **INSURANCE COMPANY TRUST;**  
) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES; DECLARATION OF**  
) **SCOTT PEARCE**

) October 29, 2014 at 8:30 a.m.

18  
19 Consolidated with Case Numbers

20 C 576 324; C 576 416;  
21 C 576 323; C 576 325; C 629709

) Department: 50  
) Court: Stanley Mosk Courthouse  
) 111 North Hill St., Floor 5 Room 508  
) Los Angeles, CA 90012

) Filed: October 31, 1985

**BY FAX**

23 Please take notice that on the 29<sup>th</sup> day of October, 2014, at the hour of 8:30 a.m., or as  
24 soon thereafter as the matter may be heard, Dave Jones, Insurance Commissioner of the State of  
25 California, in his capacity as Trustee of the Enterprise Insurance Company Trust ("Insurance  
26 Commissioner"), will appear in Department 50 of the Los Angeles Superior Court, Stanley Mosk  
27 Courthouse, 111 North Hill St., Los Angeles, CA 90012, and present his Motion to Approve  
28 Distributions to Claimants Against Enterprise Insurance Company Trust, and would show:

- 1           1. On April 16, 2004, this Court entered its *Order Which Authorizes Closing Procedures*  
2           *for Enterprise Insurance Company Trust*, and authorized the payment of an interim  
3           distribution to approved policyholder class claims, to bring their distribution  
4           percentage to fifty-eight percent (58%).
- 5           2. On September 24, 2004, this Court entered its *Order Which Authorizes Distribution*  
6           *and Closure of Enterprise Insurance Company Trust* which authorized distribution of  
7           the remaining assets and shares, and upon the distribution, authorized the closing of  
8           the Enterprise Insurance Company estate, subject to this Court's continuing  
9           jurisdiction should further unanticipated collections be received after the date of  
10          closing, or funds remain in the trust, which would necessitate a further distribution.
- 11          3. On June 30, 2006, this Court entered its *Order to Re-Open Proceedings on Enterprise*  
12          *Insurance Company Trust* and approved a distribution to increase the distribution  
13          percentage on approved policyholder class claims to one hundred percent (100%) of  
14          the principal amount of such claims. Thereafter the Insurance Commissioner filed a  
15          declaration of compliance whereupon the proceedings were again closed, subject to  
16          this Court's continuing jurisdiction.
- 17          4. On April 24, 2009, this Court entered its *Order Granting Motion to Approve*  
18          *Distribution to General Creditors of Enterprise Insurance Company Trust*. This  
19          Court ordered a distribution be made to general creditors other than the companies  
20          affiliated with Enterprise Insurance Company Trust of 73.2% of the principal amount  
21          of their claims, in a first and final distribution; and also authorized a distribution, to  
22          the companies which are affiliated with Enterprise Insurance Company Trust as an  
23          interim and non-final distribution, of 12.7%.
- 24          5. On July 16, 2010, this Court entered its *Order Granting Motion to Extend Mission*  
25          *Insurance Company Trust, Mission National Insurance Company Trust, and*  
26          *Enterprise Insurance Company Trust* which extended Enterprise Insurance Company  
27          Trust's formal existence until at least year-end 2013.

1           6. On October 7, 2013, the Insurance Commissioner filed the Motion to Extend Mission  
2           Insurance Company Trust, Mission National Insurance Company Trust, and  
3           Enterprise Insurance Company Trust to at least December 31, 2016.

4           7. The Enterprise Insurance Company Trust has distributed substantial assets, but has  
5           assets waiting to be distributed until further events took place:

6           a. Super-Priority Release: Enterprise Insurance Company Trust was waiting on a release  
7           from any super-priority claim from the United State Department of Justice. This release  
8           has now been obtained, executed, and court-approved.

9           b. Tax Review of Covanta: Enterprise Insurance Company Trust was created as part of a  
10          transaction with that company now known as Covanta Holding Corporation. A tax review  
11          of the Covanta Holding Corporation for the tax years 2004-2009 is underway and the  
12          Enterprise Insurance Company Trust is part of the Covanta Holding Corporation  
13          consolidated tax return.

14          Enterprise Insurance Company Trust is holding a substantial sum of money in reserve for  
15          unknown and unexpected contingencies. In light of the fact that the super-priority release has  
16          been obtained, and that the further distribution is limited only by awaiting a tax review, the  
17          Insurance Commissioner as Trustee will and hereby does move this Court for leave to distribute  
18          its remaining assets to its remaining affiliate creditors. Distribution of these sums is another step  
19          in the right direction for winding up this case.

20          The order would provide that any other receivables to the Enterprise Insurance Company  
21          Trust would be assigned to the Mission Insurance Company Trust, which will distribute the  
22          proceeds of any such collections to the approved affiliate claimants against Enterprise Insurance  
23          Company Trust.

24          The requested order will further provide that should any other assets be collected on  
25          behalf of Enterprise Insurance Company Trust, then Mission Insurance Company Trust will be  
26          empowered and directed to distribute those assets to Enterprise Insurance Company's three  
27          remaining creditors. Mission Insurance Company Trust shall be assigned any receivables due to  
28          Enterprise Insurance Company Trust, subject to this provision that such receivables will be

1 distributed, upon collection, to creditors of Enterprise Insurance Company Trust. . The motion  
2 will further reaffirm that the Insurance Commissioner may dispose of or transfer to its former  
3 parent Covanta Holding Corporation any records of Enterprise Insurance Company. The Trustee  
4 shall be permitted to keep a reserve for final wind-up, but otherwise shall distribute the sum of  
5 \$ 7,141,551.27 to creditors upon grant of this motion. This motion will be based upon the  
6 pleadings, papers and orders on file, the declaration of Scott Pearce, and the accompanying  
7 memorandum of points and authorities.

8 Wherefore, premises considered, this Court is requested to approve the distribution to  
9 creditors of the Enterprise Insurance Company Trust while allowing the trust to remain open,  
10 pending resolution of the Covanta tax review; and all other just and equitable relief.

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12 Respectfully submitted,

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28 Attorneys for Insurance Commissioner

1 **Memorandum of Points and Authorities**

2 Enterprise Insurance Company was placed into liquidation along with other Mission  
3 affiliates on February 24, 1987. The proof of claims deadline pursuant to California Insurance  
4 Code Section 1024 ran on September 12, 1987. The deadline to amend timely proofs of claim  
5 was August 18, 1995. In 2006, the Enterprise Insurance Company Trust distributed one hundred  
6 cents on the dollars in principal to approved policyholder creditors. The trust has also distributed  
7 substantial sums to affiliates and non-affiliates of Enterprise Insurance Company Trust.  
8 Enterprise Insurance Company Trust expects to make further distributions to claimants including  
9 those which are companies affiliated with Enterprise Insurance Company Trust as the final assets  
10 of Enterprise Insurance Company Trust are collected. The trust continues to collect assets, and  
11 hold substantial reserves until dates in which contingencies might arise, including tax matters,  
12 have passed.

13 California Insurance Code Section 1037 provides the Insurance Commissioner as  
14 liquidator with the authority to do acts as are “necessary or expedient to collect, conserve” and  
15 “protect” the assets of the insurer. Section 1037 concludes with a statement of broad general  
16 powers on the part of the Insurance Commissioner. California Insurance Code Section 1020  
17 authorizes this Court to make such orders as may be required to prevent interference with the  
18 proceedings. *In re Executive Life Ins. Co.*, (1995) 32 Cal. App. 4th 344, 38 Cal. Rptr. 2d 453.

19 The Enterprise Insurance Company Trust is in its final stages of winding up. In 2009, the  
20 Insurance Commissioner sought and obtained approval from this Court for a distribution to be  
21 made to general creditors other than the companies affiliated with Enterprise Insurance Company  
22 Trust at 73.2% of the principal amount of their claims, in a first and final distribution; and, to the  
23 companies which are affiliated with Enterprise Insurance Company Trust as an interim and non-  
24 final distribution of 12.7%. The Insurance Commissioner now seeks approval to make further  
25 distribution to claimants that are companies which are affiliated with Enterprise Insurance  
26 Company Trust. In support of the motion, the Insurance Commissioner, through the Scott Pearce  
27 Declaration, states that it is in the best interest of the trust to approve a distribution to affiliated  
28 claimants against Enterprise Insurance Company Trust upon final resolution of, *inter alia*, any

1 pending tax matters. The motion further seeks leave to assign outstanding receivables to Mission  
2 Insurance Company Trust for collection, with the proviso that Mission Insurance Company Trust  
3 must distribute those assets, when collected, to creditors of Enterprise Insurance Company Trust.

4 Conclusion:

5 The Court is requested to approve this motion which allows for additional distribution  
6 from Enterprise Insurance Company Trust pending resolution of the Covanta Holding  
7 Corporation tax review and to otherwise take steps to wind-up this run-off of this trust

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9 Respectfully submitted,

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11 \_\_\_\_\_  
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Attorneys for Insurance Commissioner

1 Declaration of Scott Pearce

2 I, Scott Pearce, hereby declare under the penalty of perjury of the laws of the State of  
3 California that the following facts are true and correct and declare:

- 4 1. I am Scott Pearce. I am over the age of eighteen years. I am competent to be a  
5 witness. I have personal knowledge of the facts which I declare. I acquired my  
6 personal knowledge in my role as the Senior Vice President and Estate Trust Officer  
7 for Enterprise Insurance Company Trust.
- 8 2. The Enterprise Insurance Company Trust was created as part of an agreement with  
9 Covanta Holding Corporation, which is a successor-in-interest to rights of the  
10 Mission Insurance Companies. In 1990, the Insurance Commissioner as Liquidator  
11 entered into the RRR agreement with Covanta Holding Corporation, which was then  
12 known as Danielson Holding Corporation. Enterprise Insurance Company Trust is  
13 part of the Covanta Holding Corporation consolidated tax return. A tax review for  
14 Covanta Holding Corporation for the tax years 2004-2009 is underway. It appears  
15 that the audit is progressing toward a resolution, but an administrative appeal arising  
16 from the audit result is being pursued by Covanta Holding Corporation.
- 17 3. The continued existence of the trust assists in the administration of the assets in the  
18 trust pending the time that the trust may finally be closed. The Enterprise Insurance  
19 Company Trust holds substantial reserves until dates in which contingencies might  
20 arise, including tax matters, have passed. Further distribution of assets to claimants of  
21 Enterprise Insurance Company Trust are expected after that time.
- 22 4. It is in the best interest of the trust to approve further distribution of the assets of  
23 Enterprise Insurance Company Trust after all tax issues have been resolved. The  
24 Court is accordingly requested to enter an order which approves distributions to  
25 claimants against Enterprise Insurance Company Trust.
- 26 5. The Insurance Commissioner as Trustee recommends that the sum of \$ 7,141,551.27  
27 be distributed at this time to the affiliate creditors of Enterprise Insurance Company  
28 Trust, as follows: \$ 2,137,997.46 to Holland-America Insurance Company Trust;

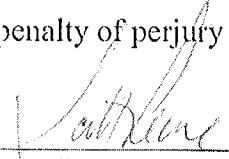
1 \$ 4,030,454.28 to Mission National Insurance Company Trust; and \$ 973,099.53 to  
2 Mission Reinsurance Corporation Trust.

3 6. The Trustee recommends that \$ 100,741 be retained in the Trust, for use in wind-up  
4 and close, and that the Insurance Commissioner as Trustee be authorized to expend  
5 these funds in a continued effort to wind up the remaining few items required to one  
6 day close the trust.

7 7. These business records were created by entries at or about the time period set forth in  
8 the records. I am the Estate Trust Officer and am qualified to attest to these records.

9 The Court is requested to approve this accounting by the Trustee.

10 I make this Declaration on the 2 day of July, 2014, and hereby declare that the  
11 foregoing facts are true and correct under the penalty of perjury of the laws of the State of  
12 California.

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15 Scott Pearce  
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