

NOV 04 2010

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BY  Deputy
Glorietta Robinson

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6

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

10 STEVE POIZNER, Insurance Commissioner of the State of California,	}	Case No. C 572 724
11		
12 Applicant,	}	Honorable John Shepard Wiley Jr.
13 vs.		
14 MISSION INSURANCE COMPANY, a California corporation,	}	THE INSURANCE COMMISSIONER'S STATUS CONFERENCE REPORT AND UPDATED CLOSING PLAN
15 Respondent.		
16	}	Date: November 19, 2010
17 Consolidated with Case Numbers		Time: 8:30 a.m.
18 C 576 324; C 576 416; C 576 323; C 576 325; C 629709	}	Department 50
19		
20		Action Filed: October 31, 1985

21 Steve Poizner, Insurance Commissioner of the State of California, in his capacity
22 as Trustee of the Mission Insurance Company Trust, the Mission National Insurance
23 Company Trust and the Enterprise Insurance Company Trust ("Insurance
24 Commissioner"), hereby submits this Status Report and advises the Court as follows:
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1 received thus far in 2010, but further payments are anticipated, assuming everything occurs as
2 projected.

3 **Reinsurance Debtors Owe Sums to Mission Insurance Company Trust**

4 The Mission Insurance Company Trust is owed money by insurers in rehabilitation or
5 liquidation. One substantial proof of claim is approved in the Centaur Insurance Company estate,
6 a rehabilitation in Illinois. The Conservation and Liquidation Office has been in touch with the
7 Illinois Special Deputy's office to try to get a firm date for the likely distribution from Centaur,
8 but no firm date has yet been forthcoming. Another reinsurer, Universal Ruckversicherungs, is a
9 foreign insolvency in its final stages, is expected to make a further dividend in the near future.
10 Future reinsurance collections could exceed ten million dollars.

11 **B. The Timing Issues Posed by the Tax Concerns**

12 The Mission estates are currently grantor trusts of subsidiaries of Covanta Holding
13 Corporation ("Covanta"). As a result, the income or loss allocable to the Mission estates is
14 included in the consolidated federal income tax return filed by Covanta. Under the Tax Sharing
15 Agreement between the Mission estates and Covanta, Covanta is liable to pay for all federal
16 income taxes allocable to the estates for taxable years beginning in 2004.

17 Nevertheless, under 31 U.S.C. 3713(a)(1)(A), a claim of the United States Government
18 shall be paid first when a taxpayer indebted to the government is insolvent and either (i) the
19 debtor makes a voluntary assignment of property to some other party without retaining enough
20 property to pay all debts or (ii) an act of bankruptcy is committed. Under 31 U.S.C. 3713(b), a
21 representative of an insolvent taxpayer paying any part of a debt of a person or estate before
22 paying a claim of the government is liable to the extent of the payment for unpaid claims of the
23 Government. Courts have interpreted this provision as causing personal liability on behalf of the
24 representative if the personal representative distributed assets of the estates which rendered the
25 estate insolvent and the distribution took place after the personal representative had notice or
26 knowledge of the unpaid claims of the U.S. *See Allen v. Commissioner*, T.C. Memo 1999-385

1 (1999). The Insurance Commissioner lacks notice of such claims. The Insurance Commissioner
2 believes that Covanta will be required to meet, and will meet, any unexpected contingencies
3 associated with Covanta's primary obligation for taxes due. However, as a matter of
4 conservatism, the Insurance Commissioner has reserved against the contingency. Consequently,
5 the Mission Insurance Company Trust and Mission National Insurance Company Trust are
6 currently retaining assets on account of the possibility that additional federal income taxes will
7 be owed by the estates. In general, the statute of limitations on assessment closes three years
8 after the tax return was filed (whether or not such return was filed on the date prescribed by
9 law). Internal Revenue Code Section 6501. Corporate returns generally can be filed no later
10 than September 15th for the previous taxable year for a corporate taxpayer maintaining its tax
11 records on the basis of a calendar year (which is the case for the parties involved). In general,
12 tax returns must be filed, despite the liquidation process, for all years ending with the taxable
13 year in which the final distribution is made. Internal Revenue Code Section 6012.

14 The Insurance Commissioner continues to project that the most substantial portion of
15 these assets will be released by the estates and distributed to creditors no later than year-end
16 2011, and that most of the remaining amounts will be distributed in 2012 through 2014. As of
17 year-end 2014, the statute of limitations on assessment for federal income taxes will remain open
18 for 2011 and later taxable years. Some assets will still need to be available in the event there is
19 additional tax liability until the statute of limitations for 2014 has expired, but the Insurance
20 Commissioner believes he can develop a solution whereby the assets in question can be held, so
21 as not to prevent the estates from being closed as of year-end 2014, and hopefully even earlier.

22 Therefore, it is anticipated that the Mission and Mission National estates can be closed by
23 year-end 2014, although as described above, it may be necessary to retain a minimal amount of
24 assets in the unlikely event that there is additional federal income tax liability until all of the
25 taxable years are closed for purposes of assessment by the Internal Revenue Service.

III. Insurance Commissioner's Time Line for Wind-up

3. April 22, 2009 [re-set from March 31, 2009 to permit expanded notice of a motion]

Motion to approve an Enterprise distribution—Enterprise Insurance Company Trust has paid all of the principal amount of its policyholder claims.

4. June 30, 2009: Actual distribution to the Enterprise creditors set forth in the April motion.

4. October 31, 2009—Approval will be sought to distribute all sums collected in 2009 above tax and closing reserves: completed.

5. October 31, 2010: Approval will be sought to distribute all sums collected in 2009 above tax and closing reserves: completed.

6. October 31, 2011: Approval of the Court to distribute the vast majority of the remaining assets of the trusts shall be sought, as the tax contingencies will in the main have expired.

7. Final reserve distribution: Assuming that no tax or other unforeseen issues arise, a small sum will be required to be reserved for potential tax issues as to which the statute of limitations has not yet expired. This is projected to be a small fraction of the funds now being held, and current projections are that this small fraction will be distributed either to claimants or to a trust for the benefit of claimants by 2014.

IV. Financial Status of the Trusts

Attached as Exhibit "A" is a statement of assets and liabilities for the Trusts. One claimant raised the question about the amounts owed to general creditors vis a vis the amount shown as owed in the distribution motion. Rather than provide an explanation to one creditor,

1 Attached as Exhibit "A" is a statement of assets and liabilities for the Trusts. One
2 claimant raised the question about the amounts owed to general creditors vis a vis the amount
3 shown as owed in the distribution motion. Rather than provide an explanation to one creditor,
4 the explanation is placed into this status report. In 2008, the Mission and Mission National trusts
5 distributed to its claimants common shares of Covanta Holdings, which was recorded in the
6 trusts' books as an additional distribution. See Declaration of Richard McNamee filed with the
7 Court on July 25, 2008. This distribution would not be included in a calculation of the amount
8 due to general creditors for purposes of the cash distributions.

9 Conclusion:

10 The wind-up of this case is continuing on track. The Court is requested to set a May 2011 status
11 conference.

12
13 Respectfully submitted,

14 WISENER*NUNNALLY*GOLD, LLP

15
16 

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EXHIBIT A

Conservation & Liquidation Office

Mission Ins Co**STATEMENT OF ASSETS AND LIABILITIES**

As of September 30, 2010

	(Opening Balance)		
	Jan 1	Sep 30	
	1998	2010	Change
ASSETS			
Cash and cash equivalents:			
Unrestricted	217,610	-	(217,610)
Restricted	16,455,223	580,863	(15,874,360)
Participation in pooled investments, at market	480,851,923	160,031,590	(320,820,333)
Accrued investment income	-	692,625	692,625
Statutory deposits held by other states	16,677,901	-	(16,677,901)
Recoverable from reinsurers	63,758,552	21,586,435	(42,172,117)
Receivable from affiliates, net of allowances	91,265,656	22,779,108	(68,486,548)
Deposits and other assets	256,437	-	(256,437)
Total Assets	669,483,302	206,670,621	(463,812,681)
LIABILITIES			
Unclaimed Funds and Other Secured Claims	-	1,813,822	1,813,822
Reserve for Federal Income Tax Liability	-	77,588,184	77,588,184
Claims against policies, including guaranty associations, before distributions	784,277,837	846,832,561	62,554,724
Policyholder distributions	-	(846,832,560)	(846,832,560)
California and Federal claims having preference	-	-	-
All other claims	1,024,261,559	256,898,792	(767,362,767)
Total Liabilities	1,808,539,396	336,100,798	(1,472,438,598)
NET ASSETS (DEFICIENCY)	(1,139,056,094)	(130,430,177)	1,008,625,917

Conservation & Liquidation Office

Mission Ins Co

STATEMENT OF CHANGES TO NET ASSETS

As of September 30, 2010

	1998 to 2008	2009	Sep 30 ytd 2010	Jan 1998 to Sep 2010
Income				
Reinsurance Recoveries	17,019,505	-	-	17,019,505
Litigation Recoveries	2,633,791	-	-	2,633,791
Premiums and Other Collections	1,693,824	233,245	5,809,640	7,736,708
Salvage/Subrogation Recoveries	773,701	-	-	773,701
Net Investment Income	232,034,833	5,965,978	4,641,027	242,641,838
	<u>254,155,654</u>	<u>6,199,223</u>	<u>10,450,666</u>	<u>270,805,543</u>
Operating Expenses				
Legal and Professional	8,671,297	98,673	66,942	8,836,912
General and Administrative	13,418,990	216,843	171,081	13,806,914
Allocated Expenses	6,875,120	424,279	308,361	7,607,761
Loss (Gain) on Disposition of Assets	(2,975,024)	-	-	(2,975,024)
	<u>25,990,383</u>	<u>739,795</u>	<u>546,385</u>	<u>27,276,563</u>
Losses and Other Expenses				
Incurred Losses and Claims Expense	52,514,422	25,067,674	45,281	77,827,377
Court-ordered Debt Forgiveness	(915,746,819)	-	-	(915,746,819)
Provision for Federal Income Taxes	78,933,754	-	-	78,933,754
	<u>(784,298,643)</u>	<u>25,067,674</u>	<u>45,281</u>	<u>(769,185,888)</u>
NET INCOME (LOSS)	<u>1,012,463,914</u>	<u>(19,808,246)</u>	<u>9,859,000</u>	<u>1,002,714,868</u>
Adjustments to assets and liabilities	5,557,627	(2,119)	355,740	5,911,248
Changes to Net Assets	<u>1,018,021,541</u>	<u>(19,810,365)</u>	<u>10,214,740</u>	<u>1,008,625,917</u>

Conservation & Liquidation Office

Mission National Ins Co

STATEMENT OF ASSETS AND LIABILITIES

As of September 30, 2010

	(Opening Balance) Jan 1 1998	Sep 30 2010	Change
ASSETS			
Cash and cash equivalents:			
Unrestricted	102,520	-	(102,520)
Participation in pooled investments, at market	232,119,932	22,443,372	(209,676,560)
Accrued investment income	-	97,747	97,747
Statutory deposits held by other states	1,947,958	-	(1,947,958)
Recoverable from reinsurers	13,739,903	5,119,864	(8,620,039)
Receivable from affiliates, net of allowances	(23,054,953)	-	23,054,953
Other receivable	-	97,728	97,728
Total Assets	224,855,360	27,758,710	(197,096,650)
LIABILITIES			
Unclaimed Funds and Other Secured Claims	-	1,886,786	1,886,786
Reserve for Federal Income Tax Liability	-	15,867,175	15,867,175
Claims against policies, including guaranty associations, before distributions	354,972,480	596,098,477	241,125,997
Policyholder distributions	-	(499,851,864)	(499,851,864)
All other claims	14,177,008	16,838,096	2,661,088
Total Liabilities	369,149,488	130,838,689	(238,310,819)
NET ASSETS (DEFICIENCY)	(144,294,128)	(103,079,958)	41,214,170

Conservation & Liquidation Office

Mission National Ins Co

STATEMENT OF CHANGES TO NET ASSETS

As of September 30, 2010

	1998 to 2008	2009	Sep 30 ytd 2010	Jan 1998 to Sep 2010
Income				
Reinsurance Recoveries	(2,348,254)	-	-	(2,348,254)
Litigation Recoveries	943,000	-	-	943,000
Premium and Other Collections	148,324	57,184	-	205,508
Salvage/Subrogation Recoveries	236,868	-	-	236,868
Net Investment Income	109,756,297	1,251,135	750,694	111,758,126
	<u>108,736,235</u>	<u>1,308,320</u>	<u>750,694</u>	<u>110,795,249</u>
Operating Expenses				
Legal and Professional	1,333,168	36,617	17,172	1,386,958
General and Administrative	118,411	3,759	623	122,794
Allocated Expenses	5,717,097	121,866	67,355	5,906,307
Loss (Gain) on Disposition of Assets	(7,868,879)	-	-	(7,868,879)
	<u>(700,203)</u>	<u>162,232</u>	<u>85,150</u>	<u>(452,820)</u>
Losses and Other Expenses				
Incurred Losses and Claims Expense	131,125,699	(678,723)	-	130,446,976
Court-ordered Debt Forgiveness	(75,397,352)	-	-	(75,397,352)
Provision for Federal Income Taxes	17,442,781	-	-	17,442,781
	<u>73,171,128</u>	<u>(678,723)</u>	<u>-</u>	<u>72,492,405</u>
NET INCOME (LOSS)	<u>36,265,310</u>	<u>1,824,810</u>	<u>665,644</u>	<u>38,755,664</u>
Adjustments to assets and liabilities	2,213,373	-	245,133	2,458,506
Changes to Net Assets	<u>38,478,683</u>	<u>1,824,810</u>	<u>910,677</u>	<u>41,214,170</u>

Conservation & Liquidation Office

Enterprise Ins Co

STATEMENT OF ASSETS AND LIABILITIES

As of September 30, 2010

	(Opening Balance)		
	Jan 1	Sep 30	
	1998	2010	Change
ASSETS			
Cash and cash equivalents:			
Unrestricted	29,771,800	-	(29,771,800)
Participation in pooled investments, at market	-	1,614,884	1,614,884
Accrued investment income	-	7,028	7,028
Recoverable from reinsurers	299,581	-	(299,581)
Receivable from affiliates, net of allowances	40,108,050	-	(40,108,050)
Other receivable	848,164	-	(848,164)
Total Assets	71,027,695	1,621,912	(69,405,683)
LIABILITIES			
Unclaimed Funds and Other Secured Claims	-	661,189	661,189
Reserve for Federal Income Tax Liability	341,083	579,337	238,254
Claims against policies, including guaranty associations, before distributions	75,391,507	120,573,416	45,181,909
Policyholder distributions	-	(120,573,414)	(120,573,414)
All other claims	18,008,695	30,780,908	12,772,211
Total Liabilities	93,741,285	32,021,434	(61,719,851)
NET ASSETS (DEFICIENCY)	(22,713,690)	(30,399,522)	(7,685,832)

Conservation & Liquidation Office

Enterprise Ins Co

STATEMENT OF CHANGES TO NET ASSETS

As of September 30, 2010

	1998 to 2008	2009	Sep 30 ytd 2010	Jan 1998 to Sep 2010
Income				
Litigation Recoveries	205,000	-	-	205,000
Premium and Other Collections	2,105,526	175	-	2,105,701
Salvage/Subrogation Recoveries	7,402	-	-	7,402
Net Investment Income	8,068,862	242,275	50,779	8,361,916
	<u>10,386,790</u>	<u>242,450</u>	<u>50,779</u>	<u>10,680,020</u>
Operating Expenses				
Legal and Professional	460,260	43,343	3,836	507,439
General and Administrative	6,561	5,395	3,362	15,318
Allocated Expenses	1,528,714	136,025	16,301	1,681,040
Loss (Gain) on Disposition of Assets	(594,494)	-	-	(594,494)
	<u>1,401,041</u>	<u>184,763</u>	<u>23,499</u>	<u>1,609,303</u>
Losses and Other Expenses				
Incurred Losses and Claims Expense	16,001,031	76,591	-	16,077,623
Provision for Federal Income Taxes	672,454	-	-	672,454
	<u>16,673,485</u>	<u>76,591</u>	<u>-</u>	<u>16,750,077</u>
NET INCOME (LOSS)	<u>(7,687,736)</u>	<u>(18,905)</u>	<u>27,281</u>	<u>(7,679,360)</u>
Adjustments to assets and liabilities	(6,472)	-	-	(6,472)
Changes to Net Assets	<u>(7,694,208)</u>	<u>(18,905)</u>	<u>27,281</u>	<u>(7,685,832)</u>

PROOF OF SERVICE: By REGULAR 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, Garland, Texas 75041.

On this date, I served the foregoing document described as **The Insurance Commissioner's Status Conference Report and Updated Closing Plan** by placing a copy thereof enclosed in sealed envelopes addressed as follows:

Sent via REGULAR MAIL to:
The Attached List

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

 X (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 November 4, 2010 at Garland, Texas.


Belinda Jones

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*** FAX TX REPORT ***

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November 4, 2010

Via Fax (213) 413-8024

Janney & Janney Attorney Services
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Los Angeles, CA 90017

Re: Steve Poizner, Insurance Commissioner of the State of California v. Mission
Insurance Company; Case No. C 572 724
Reference Number: 5013-000 (for billing purposes)

To Whom It May Concern:

Attached please find the following document:

1. The Insurance Commissioner's Status Conference Report and Updated Closing Plan.

Please fax file this document with the court today. Please call our office (972-840-9080 ext. 14) when this has been completed as well as fax a conformed copy to 972-840-6575. Also, mail the conformed copies back to our office. If you have any further questions please feel free to call our office.

Sincerely,
Wisener★Nunnally★Gold, L.L.P.

