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 Los Angeles Superior Court  
**SEP 30 2005**  
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7  
 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 9 **FOR THE COUNTY OF LOS ANGELES**

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

12 Applicant,

13 vs.

14 MISSION INSURANCE COMPANY, a  
 15 California corporation,

16 Respondent.

17 Consolidated with Case Numbers

18 C 576 324; C 576 416;  
 19 C 576 323; C 576 325; C 629 709

Case No. C 572 724

Honorable John Shepard Wiley Jr.

**NOTICE OF MOTION AND MOTION  
 TO AUTHORIZE CLOSING  
 PROCEDURE FOR MISSION  
 NATIONAL INSURANCE COMPANY  
 TRUST; MEMORANDUM OF POINTS  
 AND AUTHORITIES; DECLARATION  
 OF MOHSEN SULTAN**

**BY FAX**

Hon. John Shepard Wiley Jr.

Department : 50

Action filed: October 31, 1985

Hearing date: November 8, 2005

Hearing time: 8.30 a.m.

1 PLEASE TAKE NOTICE THAT ON THE 8<sup>th</sup> day of November, 2005, at the hour of 8:30 a.m.,  
2 or as soon thereafter as the matter may be heard, John Garamendi, Insurance Commissioner of the State  
3 of California, in his capacity as Trustee of the Mission National Insurance Company Trust, will appear  
4 before Department 50 of the Superior Court of Los Angeles County, California, and present a Motion  
5 to Authorize a Closing Procedure for the Mission National Insurance Company Trust, and would show:

6 1. Mission National Insurance Company was placed into liquidation on February 24, 1987. The  
7 assets of Mission National Insurance Company have been, in the main, marshaled, and the creditor  
8 claims of that insurance company have been valued or are in the process of final valuation. See  
9 Declaration of Mohsen Sultan. The assets of Mission National Insurance Company have been placed  
10 into the Mission National Insurance Company Trust by previous court order.

11 2. This Court has previously approved interim distributions to approved creditors of Mission  
12 National Insurance Company in the amount of seventy five and seven tenths percent (75.7%). See  
13 Declaration of Mohsen Sultan. The Insurance Commissioner now moves this Court to authorize a  
14 closing procedure to close the Mission National Insurance Company Trust estate.

15 3. The Insurance Commissioner proposes that the closing of Mission National Insurance  
16 Company Trust shall take place in two phases. The first phase shall be a distribution of most of the  
17 assets of the Mission National Insurance Company Trust. Prior to the final hearing, this Court will be  
18 provided with a final accounting. The distribution percentages shall be determined and finalized by the  
19 time of the final hearing. This distribution will not be of all the assets of the trust. A significant reserve  
20 shall be retained for matters not yet fully liquidated, including the Georgia-Pacific Corporation proof  
21 of claim (an appeal from the rejection of which is now pending in the California Supreme Court), the  
22 Industrial Trucking Service Corporation matter (which is now on remand to this Court after a reversal  
23 by the Court of Appeal), various tax contingencies, and other matters.

24 The reserve to be retained in the trust shall be a substantial sum, to be distributed after the  
25 passage of time, to permit the case to be closed consistent with the contingencies. The Insurance  
26 Commissioner is optimistic that the remaining claims matters will be resolved by the time of the final  
27 hearing, but will request appropriate relief in the alternative in the resulting orders if the case must  
28 remain open to deal with pending appeals. In such an event, the Insurance Commissioner will seek an

1 order which permits the distributions to the other policyholders and creditors, pending these resolutions.

2 4. The Insurance Commissioner requests that this Court set a final hearing at which this Court  
3 shall do consider a request by the Insurance Commissioner that the Court enter an order which does each  
4 of the following:

5 a. settles and approves the final accounting of the Insurance Commissioner;

6 b. affirms the distribution of Covanta shares pro rata to appropriate policyholders and creditors, on such  
7 schedule as may be devised in connection with the hearing;

8 c. settles the final accounts of the Insurance Commissioner and discharge the Insurance Commissioner  
9 as Trustee and as Liquidator as to the accounts;

10 d. authorizes the closing of the Mission National Insurance Company case, subject to this Court's  
11 continuing jurisdiction should further unanticipated collections be received after the date of closing,  
12 which will necessitate a further distribution;

13 e. sets the deadline for any oppositions to be filed twenty one days prior to the final hearing date, and  
14 any replies by the Insurance Commissioner to be filed seven days prior to the final hearing date, with  
15 service by expedited service upon the service list;

16 f. authorizes the Insurance Commissioner to take such steps as are necessary and appropriate to close  
17 the proceedings by the final date set by the Court;

18 g. discharges the Liquidator and Trustee;

19 h. authorizes the Trustee to maintain the records of Mission National Insurance Company Trust for  
20 three years, after which such records may be destroyed in the Trustee's discretion;

21 i. enter an order that the Trustee and Liquidator shall have no liability of any kind or nature arising from  
22 the activities prior to or during the liquidation of Mission National Insurance Company and the Mission  
23 National Insurance Company Trust;

24 j. authorizes the Insurance Commissioner to immediately destroy a group of old computer data tapes no  
25 longer used by the trusts but kept in storage at trust expense; and

26 k. to implement document retention policies which permit the eventual destruction of such other records  
27 as the Insurance Commissioner may determine appropriate.

28 The Insurance Commissioner may further request that the order setting the hearing address other related

1 issues regarding the closing procedure as to the matters set forth above.

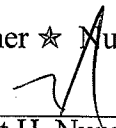
2 In connection with this motion, the Insurance Commissioner will request that the trusts remain  
3 open for the collection of such additional funds and distributions as may be received by the Trusts for  
4 a period of some years after the order. The Insurance Commissioner will request the Court to retain  
5 jurisdiction over these proceedings, and enter an order closing these proceedings, subject to re-opening  
6 these proceedings for a subsequent further distribution. In connection with the closing procedures, the  
7 Insurance Commissioner will request that this Court authorize the Insurance Commissioner to authorize  
8 the withholding of a substantial reserve from the early 2006 distribution, in order to ensure that all  
9 contingencies are adequately reserved against. The Insurance Commissioner anticipates a further  
10 distribution will be required, in some years, for which this Court is requested to retain continuing  
11 jurisdiction.

12 The Insurance Commissioner further shall request this Court to authorize publication of the order  
13 setting the final distribution motion in national publications and California newspapers, as well as the  
14 Insurance Commissioner's website. The cost will vary depending on the ultimate notice to be given,  
15 but is estimated to exceed three hundred thousand dollars (\$300,000).

16 This motion is based upon California Insurance Code Sections 1011-1057, and the attached  
17 points and authorities. A Declaration of Mohsen Sultan filed with this motion provides evidence in  
18 support of this motion.

19 Respectfully submitted,

20 Wisener ★ Nunnally ★ Gold, LLP

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1 Cal. App. 4<sup>th</sup> 344. The Insurance Commissioner's ultimate duty is to collect the assets and distribute  
2 them ratably among creditors. *W. J. Jones & Sons v. Independence*, (1942) 52 Cal. App. 2d 374.

3 The following steps remain for completion:

- 4 a. distribution of the final assets;
- 5 b. Covanta shares distribution;
- 6 c. steps to ensure tax and other regulatory compliance;
- 7 d. a final closing motion authorizing final distribution; and
- 8 e. miscellaneous closing activities.

9 Thus, the Insurance Commissioner has proposed a phased closing plan, with notice of the final  
10 closing hearing to creditors and policyholders with approved claims. This will ensure that this  
11 insolvency estate closes in good order this year. The Insurance Commissioner will also request at this  
12 final hearing each of the following forms of relief, in the form of an order which will:

- 13 a. settle the final accounts of the Insurance Commissioner and discharge the Insurance Commissioner  
14 as Trustee and as Liquidator;
- 15 b. settle and approve the final accounting of the Insurance Commissioner;
- 16 c. affirm the distribution of Covanta shares pro rata to all policyholders and creditors;
- 17 d. authorize the closing of the Mission National Insurance Company estate, subject to this Court's  
18 continuing jurisdiction should further unanticipated collections be received after the date of closing,  
19 which will necessitate a further distribution;
- 20 e. sets the deadline for any oppositions to be filed twenty-one days prior to the final hearing date, and  
21 any replies by the Insurance Commissioner to be filed seven days prior to the final hearing date;
- 22 f. authorizes the Insurance Commissioner to take such steps as are necessary and appropriate to close  
23 the proceedings by the final date set by the Court;
- 24 g. discharges the Liquidator and Trustee;
- 25 h. authorizes the Trustee to maintain the records of Mission National Insurance Company Trust for  
26 three years, after which such records may be destroyed in the Trustee's discretion;
- 27 i. enter an order that the Trustee and Liquidator shall have no liability of any kind or nature arising from  
28 the activities prior to or during the liquidation of Mission National Insurance Company and the Mission

1 National Insurance Company Trust; and

2 j. provides for records destruction.

3 k. to authorize publication of the order setting the final distribution motion in national publications and  
4 California newspapers, as well as the Insurance Commissioner's website. The cost will vary depending  
5 on the ultimate notice to be given, but our initial estimate is that this will be in excess of three hundred  
6 thousand dollars (\$300,000).

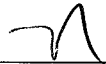
7 The Insurance Commissioner may further request that the order setting the hearing address other related  
8 issues regarding the closing procedure as to the matters set forth above.

9 The Insurance Commissioner also requests that this Court retain jurisdiction to supervise  
10 additional distributions. Funds will be reserved in the trust and funds will be received in the trust, which  
11 will require a further dividend to general creditors. This Court therefore will close this case, but leave  
12 the Mission National Insurance Company trust open. The Insurance Commissioner will move this Court  
13 to re-open the case, in approximately three years, to distribute any remaining collections.

14 **Conclusion**

15 The time has come to implement a closing process for Mission National Insurance Company  
16 Trust. This Court is requested to grant this motion to begin the end of this phase of the case.

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1. I am Mohsen Sultan. I am an employee of the California Insurance Commissioner's Conservation and Liquidation Office ("CLO"). I am the Estate Trust Officer for the Mission National Insurance Company Trust. I am over the age of eighteen years. I am competent to be a witness. I have personal knowledge of the facts to which I attest. I acquired my personal knowledge through my involvement in the events described herein.

3. I am also a person qualified to testify about the records of Mission National Insurance Company. These records are kept in a systematic manner in the ordinary course of business, with entries logged into those records at or about the time that the events occur. I base my testimony as to historical matters upon the review of these records.

- a. litigation to collect reinsurance due, resulting in asset recoveries;
- b. proof of claim notices were sent out to tens of thousands of policyholders and creditors;
- c. numerous proofs of claims were received and processed, including the litigation of the Insurance Commissioner's adjudication of claims;
- d. guaranty association claims were processed and valued;
- e. interim distributions were made to approved policyholder class claimants;
- f. suits were settled with officers and with the company's accountants;
- g. a rehabilitation plan resulted in the creation of the Mission National Insurance Company Trust, and in a transaction which makes Covanta shares (formerly Danielson Holding Corporation shares) available



1 for distribution.

2 5. At my direction, notices will be sent by CLO to the policyholders, creditors and guaranty  
3 associations regarding this closing motion setting for Mission National Insurance Company Trust.

4 6. The Court is requested to authorize the distribution of the remaining assets of Mission  
5 National Insurance Company Trust, less only a reserve to be held in the trust to deal with expense and  
6 potential reserve items. Prior to the final hearing, a final accounting will be provide to include the  
7 projected policyholder distribution percentage. A distribution of Covanta shares will be distributed to  
8 unpaid creditors. The distributions should be able to be made with sufficient reserve for the two pending  
9 claims and other potential contingencies.

10 7. Upon the distribution of the assets, the Court is requested to authorize a declaration of  
11 compliance to be filed.

12 8. In connection with the closing of this case, a number of additional findings and relief are  
13 requested, including the following. The Insurance Commissioner requests that this Court set a final  
14 hearing at which this Court shall consider a request by the Insurance Commissioner that the Court enter  
15 an order which does each of the following:

16 a. settles and approves the final accounting of the Insurance Commissioner;

17 b. affirms the distribution of Covanta shares pro rata to appropriate creditors, on such schedule as may  
18 be devised in connection with the hearing;

19 c. settles the final accounts of the Insurance Commissioner and discharge the Insurance Commissioner  
20 as Trustee and as Liquidator as to the accounts;

21 d. authorizes the closing of the Mission National Insurance Company case, subject to this Court's  
22 continuing jurisdiction should further unanticipated collections be received after the date of closing,  
23 which will necessitate a further distribution;

24 e. sets the deadline for any oppositions to be filed twenty one days prior to the final hearing date, and  
25 any replies by the Insurance Commissioner to be filed seven days prior to the final hearing date, with  
26 service by expedited service upon the service list;

27 f. authorizes the Insurance Commissioner to take such steps as are necessary and appropriate to close  
28

1 the proceedings by the final date set by the Court;  
2 g. discharges the Liquidator and Trustee;  
3 h. authorizes the Trustee to maintain the records of Mission National Insurance Company Trust for three  
4 years, after which such records may be destroyed in the Trustee's discretion;  
5 i. enter an order that the Trustee and Liquidator shall have no liability of any kind or nature arising from  
6 the activities prior to or during the liquidation of Mission National Insurance Company and the Mission  
7 National Insurance Company Trust;  
8 j. authorizes the Insurance Commissioner to immediately destroy a group of old computer data tapes no  
9 longer used by the trusts but kept in storage at trust expense; and  
10 k. to implement document retention policies which permit the eventual destruction of such other records  
11 as the Insurance Commissioner may determine appropriate.  
12 l. to authorize publication of the order setting the final distribution motion in national publications and  
13 California newspapers, as well as the Insurance Commissioner's website. The cost will vary depending  
14 on the ultimate notice to be given, but our initial estimate is that this will be in excess of three hundred  
15 thousand dollars (\$300,000).  
16 The Insurance Commissioner may further request that the order setting the hearing address other related  
17 issues regarding the closing procedure as to the matters set forth above.

18 9. In connection with this motion, the Insurance Commissioner will request that the trusts remain  
19 open for the collection of such additional funds and distributions as may be received by the Trusts for  
20 a period of some years after the order. The Insurance Commissioner will request the Court to retain  
21 jurisdiction over these proceedings, and enter an order closing these proceedings, subject to re-opening  
22 these proceedings for a subsequent further distribution. In connection with the closing procedures, the  
23 Insurance Commissioner will request that this Court authorize the Insurance Commissioner to authorize  
24 the withholding of a substantial reserve from the early 2006 distribution, in order to ensure that all  
25 contingencies are adequately reserved against. The Insurance Commissioner anticipates a further  
26 distribution will be required, in some years, for which this Court is requested to retain continuing  
27 jurisdiction.  
28

1           10. The above relief presents a way to close this case, and make a substantial distribution to  
2 claimants. This approach seeks to close the case, while recognizing that the trusts themselves must  
3 continue to function, in order to receive assets. In addition, due to the sums involved, the Insurance  
4 Commissioner must keep a substantial reserve in the Trust, to ensure that no unexpected events,  
5 including unexpected tax events, arise which create new issues for the Trusts. While one alternative is  
6 to keep this case open, the relief requested is to close this case, with the trusts remaining open and a  
7 substantial sum reserved from distribution, in order to protect against any unforeseen contingencies. The  
8 Court is requested to retain jurisdiction over the case, which would be re-opened for subsequent  
9 distributions until a final distribution is ultimately made and the trust fully distributed. The approach  
10 outlined in this declaration is a reasonable approach to achieve the Court's and the Insurance  
11 Commissioner's goal of closing this case, consistent with prudence.

12  
13           I hereby execute this declaration under the penalty of perjury of the laws of the State of California  
14 in San Francisco, California, on the 30<sup>th</sup> day of September, 2005.

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17           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 W. Centerville Rd., Suite 110. Garland, TX. 75041.

On this day, I served the foregoing documents described Notice of Motion and Motion To Authorize Closing Procedure For Mission National Insurance Company Trust; Memorandum of Points and Authorities; Declaration of Mohsen Sultan by placing a copy thereof enclosed in sealed envelopes addressed as follows:

Sent via Federal Express


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.

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 September 30, 2005

  
Sha'Toria Danforth

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