

COPY

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OF ORIGINAL FILED
Los Angeles Superior Court

JUN 06 2006

John A. Clark, Executive Officer/Clerk
By D.M. Swain Deputy
D.M. Swain

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

JOHN GARAMENDI, Insurance
Commissioner of the State of California,

Applicant,

vs.

MISSION INSURANCE COMPANY, a
California corporation,

Respondent.

Consolidated with Case Numbers

C 576 324; C 576 416;
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 RE-OPEN PROCEEDINGS ON
ENTERPRISE INSURANCE
COMPANY TRUST; MEMORANDUM
OF POINTS AND AUTHORITIES**

Hon. John Shepard Wiley Jr.
Department : 50
Action filed: October 31, 1985
Hearing date: June 30, 2006
Hearing time: 8.30 a.m.

1 PLEASE TAKE NOTICE THAT ON THE 30th day of June, 2006, 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
3 State of California, in his capacity as Trustee of the Enterprise Insurance Company Trust, will
4 appear before Department 50 of the Superior Court of Los Angeles County, California, and present a
5 Motion to Re-open Proceedings on Enterprise Insurance Company Trust for the limited purpose of
6 further distribution, and would show:

7 1. On April 16, 2004, the Court entered its Order Which Authorizes Closing Procedures for
8 Enterprise Insurance Company Trust (the *Closing Procedure Order*).

9 2. On September 24, 2004, the Court entered its Order Which Authorizes Distribution and
10 Closure of Enterprise Insurance Company Trust (the *Closing Order*).

11 3. The Closing Procedure Order contemplated in part (d) that there might be a need to re-
12 open the estate, and therefore, provided for a closing of the estate "subject to this Court's continuing
13 jurisdiction should further unanticipated collections be received after the date of closing, which will
14 necessitate a further distribution."

15 4. Similarly, the Closing Order provides in part (d):

16 Upon the distribution of the remaining assets and shares, as set
17 forth above, this Court authorizes the closing of the Enterprise
18 Insurance Company estate, subject to this Court's continuing
19 jurisdiction should further unanticipated collections be received
20 after the date of closing, or funds remain in this trust, which will
necessitate a further distribution. This Court retains jurisdiction in
the event that the case should be re-opened for further
distributions, but otherwise the case shall be administered as
closed.

21 5. The Commissioner is receiving from the California Insurance Guarantee Association
22 (CIGA) money that is in excess of the claim of CIGA in this estate, after allowing for all offsets and
23 credits. It is necessary that the estate be re-opened so that the Court can consider a motion from the
24 Commissioner to distribute these excess funds to claimants.

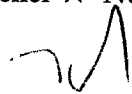
25 6. This motion is based upon California Insurance Code Sections 1011-1057, and the
26 attached points and authorities. A Declaration of Mohsen Sultan filed with this motion provides
27 evidence in support of this motion.
28

- 1 7. The relief requested by this motion is:
- 2 A. That the Court approve the re-opening of the proceedings as to Enterprise Insurance Company
- 3 Trust;
- 4 B. That the Court approve a distribution to increase the distribution percentage on approved
- 5 policyholder class claims to one hundred percent of the principal amount of such claims;
- 6 C. That in calculating the distribution amounts, the Insurance Commissioner may take into account
- 7 any distributions of shares pursuant to the rehabilitation plan, to achieve a result that is both
- 8 appropriate mathematically and consistent with the plan; and
- 9 D. That the Insurance Commissioner shall file a declaration of compliance within one hundred
- 10 eighty days of the order, whereupon the proceedings will again be closed, subject to this Court's
- 11 continuing jurisdiction, and the Insurance Commissioner shall be discharged as to the sums do
- 12 distributed;
- 13 E. The Court authorize the inter-company approvals as to claims against Enterprise Insurance
- 14 Company Trust as set forth in the Sultan Declaration;
- 15 and all other just and equitable relief.

16

17 Respectfully submitted,

18 Wisener ★ Nunnally ★ Gold, LLP

19 

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6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES**

9
10 JOHN GARAMENDI, Insurance
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

) Honorable John Shepard Wiley Jr.

) **DECLARATION OF MOHSEN**
) **SULTAN IN SUPPORT OF MOTION**
) **TO RE-OPEN PROCEEDINGS ON**
) **ENTERPRISE INSURANCE**
) **COMPANY TRUST**

) Hon. John Shepard Wiley Jr.

) Department : 50

) Action filed: October 31, 1985

) Hearing date: June 30, 2006

) Hearing time: 8.30 a.m.
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1 I, Mohsen Sultan, hereby make this declaration in San Francisco, California, and affirm
2 under penalty of perjury of the laws of the State of California that the following facts are true and
3 correct:

4 1. I am Mohsen Sultan. I am over the age of eighteen years. I am competent to be a witness.
5 I have personal knowledge of the facts to which I attest. I acquired my personal knowledge in my
6 role as the Estate Trust Officer for the Enterprise Insurance Company Trust. I am employed by the
7 Conservation and Liquidation Office (CLO), which assists the California Insurance Commissioner
8 with insurance company liquidations and conservations. I am a person qualified to testify as to
9 business records for the Enterprise Insurance Company Trust estate. The records of these estates are
10 maintained by CLO in the ordinary course of CLO business. Regular entries are made into the
11 records in the regular course of business. The writings are made at or near the time of the events set
12 forth therein. The liquidation estate's distribution information's sources and derivation indicate
13 their trustworthiness. As the Estate Trust Officer, I am qualified to attest to the records' status as
14 business records for this estate. CLO accounting prepared the accounting records to which I attest.

15 2. I am, and have been since April 2002, the person at CLO responsible for overseeing the
16 management and final wind-up of the Enterprise Insurance Company Trust, as well as the Mission
17 Insurance Company Trust and the Mission National Insurance Company Trust.

18 3. Enterprise Insurance Company was placed into liquidation on February 24, 1987. The
19 records reflect that notice was given to known policyholders and creditors for a claims bar date of
20 September 12, 1987, and notice was published of the bar date. I am aware that numerous persons
21 and entities filed proofs of claims, and numerous of those persons and entities updated those claims
22 in 1995 in conjunction with an Amended Final Liquidation Dividend Plan including affiliates of the
23 company in liquidation.

24 4. Pursuant to order dated September 24, 2004, this court has approved a final distribution to
25 approved creditors. Based on available assets, policyholder class creditors were paid 60.8773 % of
26 their approved claim and received pro-rata share of the Danielson Holding Corporation (now called
27 Covanta Holding Corporation) common stock based on the deficiency (unpaid portion) of their
28

1 approved claim. Based on the limited assets available, general creditors received only pro-rata share
2 of the Danielson Holding Corporation common stock.

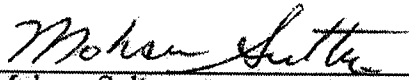
3 5. On October 15, 2004, the Commissioner, in his capacity as the Trustee for Mission
4 Insurance Company Trust, Enterprise Insurance Company Trust and Mission National Insurance
5 Company Trust entered into an agreement with the California Insurance Guarantee Association
6 (CIGA). This agreement reconciled the sums due to CIGA from statutory workers' compensation
7 deposits posted by Mission Insurance Company and Mission National Insurance Company pursuant
8 to CIC 11690 (the Deposit Statute) and in accordance with the intercompany pooling agreement.
9 The court approved this agreement in 2004.

10 6. My analysis of the completed CIGA Agreement led me to conclude that the transactions
11 contemplated in the agreement had a direct impact on all five Mission companies in liquidation,
12 which required a further reconciliation with CIGA. Since the Commissioner has possession of all
13 records (*i.e.*, payment history, distributions and other accounting records, etc.), I directed the CLO
14 Accounting staff to analyze the intercompany receivables resulting from the reconciliation and
15 redistribution of workers' compensation claims pursuant to the agreement. The accounting work
16 concluded on or about August 2005. Such analysis confirmed and identified the following
17 intercompany impacts as shown in Exhibit "A." We then began a process of communicating with
18 CIGA. CIGA agrees with the results of this reconciliation.

19 7. A review of intercompany transactions further led to analyzing additional receivables
20 from CIGA associated with the redistribution of claims and corresponding shift in statutory deposit.
21 Based on such redistribution of claims and corresponding shift in statutory deposit, CIGA owed the
22 Enterprise Insurance Company Trust a payment of \$33,720,766.00 (as of October 15, 2005) plus
23 interest. All other amounts due to Mission Insurance Company Trust or Mission National Insurance
24 Company Trust have been previously satisfied. The result is shown in Exhibit "B." The result of
25 this reconciliation is that sufficient funds will be generated to permit all policyholders of Enterprise
26 Insurance Company Trust to receive a distribution of 100% (one hundred percent) of their approved
27 claims.
28

1 8. One other issue that we request the Court to resolve is to establish the sums due from
2 Enterprise Insurance Company Trust to other Mission affiliates. The amounts due should be set
3 forth on Exhibit "C" and incorporated herein by reference. These amounts are the mathematic result
4 of the implementation of the agreement with CIGA.

5
6 I hereby execute this declaration under the penalty of perjury of the laws of the State of
7 California in San Francisco, California, on the 5th day of June, 2006.

8
9 
10 Mohsen Sultan

Sultan "Exhibit A"

CIGA Reserves

Additional Claims Assumed by HAIC, MNIC and MRC

Ref	A Redistribution	B Claims allocation	C Total	D Percentage
E	43,638,208.00	(1,842,323.00)	41,795,885.00	56.44%
F	10,091,060.00	-	10,091,060.00	13.63%
G	22,767,435.00	(596,362.00)	22,171,073.00	29.94%
	76,496,703.00	(2,438,685.00)	74,058,018.00	100.00%

Total Reduction of Claims against MIC and EIC

H	33,720,766.00	1,835,538.00	35,556,304.00	73.50%	EIC Claims Reduction
I	12,157,955.00	26,343,763.00	38,501,718.00	26.50%	MIC Claims Reduction
	45,878,721.00	28,179,301.00	74,058,022.00	100.00%	
		Difference	4.00		

J=CH*DE
K=CI*DE
L=CI*DF
M=CH*DF
N=CH*DG
O=CI*DG

20,066,796.72	170.13012.EIC	MNIC receivable from EIC
21,729,090.53	170.13012.MIC	MNIC receivable from MIC
5,246,199.63	685.13012.MIC	MRC receivable from MIC
4,844,860.92	685.13012.EIC	MRC receivable from EIC
10,644,646.36	756.13012.EIC	HAIC receivable from EIC
11,526,427.84	756.13012.MIC	HAIC receivable from MIC
74,058,022.00		

CIGA reserves
Intercompany Pooling
As of 12/31/2004

G/L accounts	Description	Co.	Ref	CIGA Claims adjustment to match CLO	Ref	CIGA Redistribution A/R, (A/P)	Total Adjustments
170.13012	Receivable from Affilia MNIC	C2		1,842,323	A3	43,638,208	41,795,885
540.30002	Payable to Affiliates EIC	C4		1,835,538	A5	(33,720,766)	(35,556,304)
672.30002	Payable to Affiliates MIC	C1		26,343,763	A2	(12,157,955)	(38,501,718)
685.13012	Receivable from Affilia MRC			0	A6	10,091,060	10,091,060
756.13012	Receivable from Affilia HAIC	C3		596,362	A4	22,767,435	22,171,074
	Total	B		30,617,985		30,617,982	(3)

Sultan “Exhibit B”

CIGA reserves
Liquidator Advances & Deposits adjusted for Redistribution
12/31/2002 and 12/31/2004 Difference
Journal to Book to Advances Acct 28007

Description	CIGA Statement 12/31/2004	Redistribution	Total Deposits after Redistribution	Balance CLO GL 12/31/2004	Difference
Liquidator Advance	66,707,302.00	-	66,707,302.00	47,838,197.00	18,869,105.00
Interest on Advance	24,694,616.98	-	24,694,616.98	-	24,694,616.98
Accrued interest on Advance	-	-	-	-	-
Total Income	91,401,918.98	-	91,401,918.98	47,838,197.00	43,563,721.98

Mission Insurance

Liquidator Advance	189,588,648.00	12,157,955.00	201,746,603.00	252,124,646.00	(50,378,043.00)
Interest on Advance	19,285,002.14	-	19,285,002.14	-	19,285,002.14
Accrued interest on Advance	-	-	-	-	-
Total Income	208,873,650.14	12,157,955.00	221,031,605.14	252,124,646.00	(31,093,040.86)

Enterprise Insurance

Assessments	10,794,345.70	-	10,794,345.70	-	10,794,345.70
Liquidator Advance	64,776,200.80	33,720,766.00	98,496,966.80	85,054,605.00	13,442,361.80
Interest on Advance	-	-	-	-	-
Accrued interest on Advance	-	-	-	-	-
Total Income	75,570,546.50	33,720,766.00	109,291,312.50	85,054,605.00	24,236,707.50

Holland America Insurance

Liquidator Advance	28,914,479.74	-	28,914,479.74	46,332,653.74	(17,418,174.00)
Reserve for excess Advance	(16,735,859.00)	-	(16,735,859.00)	-	(16,735,859.00)
Interest on Advance	13,106,599.89	-	13,106,599.89	-	13,106,599.89
Accrued interest on Advance	1,816.19	-	1,816.19	-	1,816.19
Total Income	25,287,036.82	-	25,287,036.82	46,332,653.74	(21,045,616.92)

Mission Reinsurance

Liquidator Advance	-	(10,091,060.00)	(10,091,060.00)	-	(10,091,060.00)
Reserve for excess Advance	-	-	-	-	-
Interest on Advance	-	-	-	-	-
Accrued interest on Advance	-	-	-	-	-
Total Income	-	(10,091,060.00)	(10,091,060.00)	-	(10,091,060.00)

MNIC Redistribution	-	(43,638,208.00)	(43,638,208.00)	-	(43,638,208.00)
Holland Redistribution	-	(22,767,435.00)	(22,767,435.00)	-	(22,767,435.00)
Aggregate Change	401,133,152.44	(30,617,982.00)	393,282,605.44	431,350,101.74	(60,834,931.30)

Sultan "Exhibit C"

Enterprise Insurance Company Trust Intercompany Liabilities

Prepared 06/05/2006

Intercompany payable to:

Mission National Insurance Co.	\$20,066,797
Mission Reinsurance Corporation	4,844,861
Holland America Insurance Co.	10,644,646
Total Intercompany Liabilities	<u><u>\$35,556,304</u></u>

Attorneys for Insurance Commissioner

MINEHAN DECLARATION

1 I, Raymond Minehan, hereby make this declaration in San Francisco, California, and affirm
2 under penalty of perjury of the laws of the State of California that the following facts are true and
3 correct:

4 1. I am Raymond Minehan. I am over the age of eighteen years. I am competent to be a
5 witness. I have personal knowledge of the facts to which I attest. I acquired my personal knowledge
6 in my role as the Chief Financial Officer for the Conservation and Liquidation Office.. I am
7 employed by the Conservation and Liquidation Office (CLO), which assists the California Insurance
8 Commissioner with insurance company liquidations and conservations. I am a person qualified to
9 testify as to business records for the Conservation and Liquidation Office. The records of these
10 estates are maintained by CLO in the ordinary course of CLO business. Regular entries are made
11 into the records in the regular course of business. The writings are made at or near the time of the
12 events set forth therein. The liquidation estate's distribution information's sources and derivation
13 indicate their trustworthiness.

14 2. I attach as Exhibit "A" the financial reports for Enterprise Insurance Company Trust,
15 which were prepared by my department. To the best of my knowledge, Exhibit "A" is accurate.
16 Based on my department's work, a further distribution to policyholder class claimants to bring them
17 up to one hundred percent of their approved claims is appropriate.

18
19 I hereby execute this declaration under the penalty of perjury of the laws of the State of
20 California in San Francisco, California, on the 6 day of June, 2006.

21
22 
23 Raymond Minehan

Minehan "Exhibit A"

**INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA
CONSERVATION & LIQUIDATION OFFICE**

**FINANCIAL STATEMENTS OF
ENTERPRISE INSURANCE COMPANY - ESTATE IN LIQUIDATION**
As of March 31, 2006

(Prepared on a Liquidation Basis of Accounting)

INDEX

Statement of Net Assets & Liabilities	Page 1
Statement of Revenues and Expenses	Page 2
Estimated closing Budget	Page 3

Note: These unaudited financial statements should be read in conjunction with the Report on Audits of Combined Financial Statements of Estates in Conservation, with opinion by independent public accountants.

Date of Conservation: 11/26/1985
Date of Liquidation: 2/24/1987
Date of Report: 3/31/2006

INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA
CONSERVATION & LIQUIDATION OFFICE

ENTERPRISE INSURANCE COMPANY - ESTATE IN LIQUIDATION

STATEMENT OF ASSETS AND LIABILITIES

As of March 31, 2006

(Liquidation Basis of Accounting)

	Est Liq Value <u>03/31/06</u>	<u>01/01/98</u>	<u>Change</u>
ASSETS			
Cash and cash equivalents:			
Unrestricted	\$ -	\$ 29,771,772	\$ (29,771,772)
Participation in pooled investments, at market:			
Unrestricted	642,479	-	642,479
Non-pooled investments, at market:			
Short-term investments	12,069,813	-	12,069,813
Accrued investment income	28,225	-	28,225
Recoverable from reinsurers	-	299,581	(299,581)
Receivable from Affiliates	-	40,108,050	(40,108,050)
Receivable from CIGA	34,369,511	-	34,369,511
Receivable from Covanta	420,705	-	420,705
Other Receivables	57,722	848,164	(790,442)
Total assets	<u>47,588,455</u>	<u>71,027,567</u>	<u>(23,439,112)</u>
LIABILITIES			
Secured claims			
Administrative expenses (Class 1)	463	341,083	(340,620)
Federal Income Taxes (Class 1)	425,000		425,000
Claims against policies, including guarantee associations (Class 5)	120,573,113	75,391,507	45,181,606
Advances to Guarantee Associations (Class 5)	(74,176,939)	-	(74,176,939)
Premium Tax claims having preference (Class 3)	39,680	-	39,680
Distribution (Class 3)	(39,680)	-	(39,680)
All other Claims (Class 6)	36,043,708	18,008,695	18,035,013
Distribution (Class 6)	(5,556)	-	(5,556)
Total liabilities	<u>82,859,789</u>	<u>93,741,285</u>	<u>(10,881,496)</u>
Net excess (deficiency) in assets	<u>\$ (35,271,334)</u>	<u>\$ (22,713,718)</u>	<u>\$ (12,557,616)</u>

INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA
CONSERVATION & LIQUIDATION OFFICE

ENTERPRISE INSURANCE COMPANY - ESTATE IN LIQUIDATION

STATEMENT OF REVENUES AND EXPENSES
January 01, 1998 through March 31, 2006

(Liquidation Basis of Accounting)

Revenues:

Income from settlement of litigation	\$ 205,000
Salvage and subrogation recoveries	7,402
Net investment income	9,741,725
Other income	14,996
Total revenues	<u>9,969,123</u>

Expenses:

Claims expenses:

Incurred losses and loss adjustment expenses	<u>20,348,082</u>
Total claims expense	20,348,082

General and administrative expenses	5,823
Professional fees	422,926
Legal fees	20,563
Revaluation of assets net of gains/(losses) on sales	(302,198)
Allocated expenses	1,409,620
Investment expense	<u>103,794</u>

Total operating expenses	<u>1,660,528</u>
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Total expenses	<u>22,008,611</u>
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Excess (deficiency) of revenue over expenses before federal income taxes	(12,039,488)
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Cumulative Federal income tax expense	<u>518,128</u>
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Excess (deficiency) of revenue over expenses	<u><u>(\$12,557,616)</u></u>
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**Enterprise Insurance Company
Estimated Administrative Budget
For 2006-2008**

Revised 6/05/2006

Description		Amount
Direct Expenses		
CDI Legal allocation	4,848	
Other Legal Expense	<u>137,000</u>	141,848
Distribution Audit	2006	
	<u>20,000</u>	20,000
Stock Related Distribution		20,000
ADP -Distribution Check processing		<u>10,000</u>
Total Direct Expenses		<u>191,848</u>
Indirect Expenses		
Allocated Expenses: CLO department labor costs		129,061
Total Estimated Re-opening Budget		<u><u>320,909</u></u>
Remaining Estimated Budget From July 01, 2004 through March 31, 2006		
Total previously approved Closing Budget (as of 07-01- 2004)	352,218	
Less incurred expenses	<u>152,739</u>	
Remaining Budget (as of 03- 31- 2006)		199,479
Total Estimated Budget		<u><u>520,387</u></u>

PROOF OF SERVICE: By Federal Express
(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 described **NOTICE OF MOTION AND MOTION TO RE-OPEN PROCEEDINGS ON ENTERPRISE INSURANCE COMPANY TRUST; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF MOHSEN SULTAN IN SUPPORT OF MOTION TO RE-OPEN; DECLARATION OF RAYMOND MINEHAN IN SUPPORT OF MOTION TO RE-OPEN** by placing a copy thereof enclosed in sealed envelopes addressed as follows:

Sent via Federal Express to:

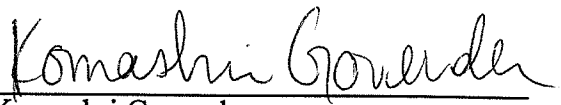
See Attached Exhibit "A"

I am readily familiar with my employer's practices of collection and processing correspondence for mailing with Federal Express and the above-referenced correspondence will be deposited with Federal Express on the same date as stated below, 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 June 5, 2006 at Garland, Texas


Komashri Govender

New York Liquidation Bureau
Attn: Mission - Nicholas L. Cremonese
123 William Street
New York, New York 10038-3889

John Horner
Conservation & Liquidation Office
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San Francisco, CA 94126

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Guy Carpenter
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Hartford, CT 06103

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