

JUL 03 2014

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

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

12 DAVE JONES, Insurance Commissioner of
13 the State of California,

14 Applicant,

15 vs.

16 MISSION INSURANCE COMPANY, a
17 California corporation, et al

18 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.

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

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23 Please take notice that on the 29th 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.

11
 12 Respectfully submitted,

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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

8
9 Respectfully submitted,

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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;

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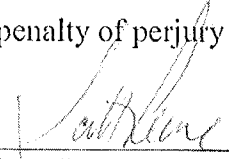
\$ 4,030,454.28 to Mission National Insurance Company Trust; and \$ 973,099.53 to Mission Reinsurance Corporation Trust.

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

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

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

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



Scott Pearce

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 245 Cedar Sage Drive, Suite 240, Garland, Texas 75040.

On this date, I served the foregoing document described as **NOTICE OF MOTION AND MOTION TO APPROVE DISTRIBUTIONS TO CLAIMANTS AGAINST ENTERPRISE INSURANCE COMPANY TRUST; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF SCOTT PEARCE** by placing a copy thereof enclosed in sealed envelopes addressed as follows:

Sent via FIRST CLASS 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.

(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 July 3, 2014 at Garland, Texas.



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