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SEP 30 2005

John A. Claims, Executive Officer/Clerk

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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  
California corporation,  
15 Respondent,  
16

17 Consolidated with Case Numbers

18 C 576 324; C 576 416;  
19 C 576 323; C 576 325; C 629 709  
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Case No. C 572 724

Honorable John Shepard Wiley Jr.

**NOTICE OF MOTION AND MOTION  
TO AUTHORIZE CLOSING  
PROCEDURE FOR MISSION  
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 Insurance Company Trust, will appear before  
4 Department 50 of the Superior Court of Los Angeles County, California, and present a Motion to  
5 Authorize a Closing Procedure for the Mission Insurance Company Trust, and would show:

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

11 2. This Court has previously approved interim distributions to approved creditors of Mission  
12 Insurance Company in the amount of seventy two percent (72%). See Declaration of Mohsen Sultan.  
13 The Insurance Commissioner now moves this Court to authorize a closing procedure to close the  
14 Mission Insurance Company Trust estate.

15 3. The Insurance Commissioner proposes that the closing of Mission Insurance Company Trust  
16 shall take place in two phases. The first phase shall be a distribution of most of the assets of the Mission  
17 Insurance Company Trust. The Insurance Commissioner has calculated that claimants who are Class  
18 Five under California Insurance Code Section 1033 (as it existed in 1987), *i.e.*, the policyholder class,  
19 should receive an immediate distribution to bring each claimant's distribution percentage up to one  
20 hundred percent (100%) of the amount of their claim. Because the distribution to policyholder class  
21 claimants will reach one hundred percent (100%), the Insurance Commissioner shall also request a  
22 distribution to general creditors on their claims. This distribution will not be of all the assets of the trust.  
23 A significant reserve shall be retained for matters not yet fully liquidated, including the Georgia-Pacific  
24 Corporation proof of claim (an appeal from the rejection of which is now pending in the California  
25 Supreme Court), the Industrial Trucking Service Corporation matter (which is now on remand to this  
26 Court after a reversal by the Court of Appeal), various tax contingencies, and other matters.

27 The reserve to be retained in the trust shall be a substantial sum, to be distributed after the  
28 passage of time, to permit the case to be closed consistent with the contingencies. The Insurance

1 Commissioner is optimistic that the remaining claims matters will be resolved by the time of the final  
2 hearing, but will request appropriate relief in the alternative in the resulting orders if the case must  
3 remain open to deal with pending appeals. In such an event, the Insurance Commissioner will seek an  
4 order which permits the distributions to the general creditors, pending these resolutions.

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

- 8 a. settles and approves the final accounting of the Insurance Commissioner;
- 9 b. affirms the distribution of Covanta shares pro rata to all unpaid creditors, on such schedule as may  
10 be devised in connection with the hearing;
- 11 c. settles the final accounts of the Insurance Commissioner and discharge the Insurance Commissioner  
12 as Trustee and as Liquidator as to the accounts;
- 13 d. authorizes the closing of the Mission Insurance Company case, subject to this Court's continuing  
14 jurisdiction should further unanticipated collections be received after the date of closing, which will  
15 necessitate a further distribution;
- 16 e. sets the deadline for any oppositions to be filed twenty one days prior to the final hearing date, and  
17 any replies by the Insurance Commissioner to be filed seven days prior to the final hearing date, with  
18 service by expedited service upon the service list;
- 19 f. authorizes the Insurance Commissioner to take such steps as are necessary and appropriate to close  
20 the proceedings by the final date set by the Court;
- 21 g. discharges the Liquidator and Trustee;
- 22 h. authorizes the Trustee to maintain the records of Mission Insurance Company Trust for three years,  
23 after which such records may be destroyed in the Trustee's discretion;
- 24 i. enter an order that the Trustee and Liquidator shall have no liability of any kind or nature arising from  
25 the activities prior to or during the liquidation of Mission Insurance Company and the Mission Insurance  
26 Company Trust.
- 27 j. authorizes the Insurance Commissioner to immediately destroy a group of old computer data tapes  
28 no longer used by the trusts but kept in storage at trust expense; and

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

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

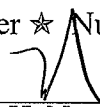
5 In connection with this motion, the Insurance Commissioner will request that the trusts remain  
6 open for the collection of such additional funds and distributions as may be received by the Trusts for  
7 a period of some years after the order. The Insurance Commissioner will request the Court to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

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

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

22 Respectfully submitted,

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1 Mission Companies' Trusts received substantial benefits from this transaction, including stock in  
2 Covanta. The ultimate distribution of this stock to general creditors will be made on a pro rata basis.

3 The Insurance Commissioner has broad powers under California Insurance Code Section 1037,  
4 whose exercise this Court reviews only for abuse of discretion. *In re Executive Life Ins. Co.*, (1995) 32  
5 Cal. App. 4<sup>th</sup> 344. The Insurance Commissioner's ultimate duty is to collect the assets and distribute  
6 them ratably among creditors. *W. J. Jones & Sons v. Independence*, (1942) 52 Cal. App. 2d 374.

7 The following steps remain for completion:

- 8 a. distribution of the final assets;
- 9 b. Covanta shares distribution;
- 10 c. Steps to ensure tax and other regulatory compliance;
- 11 d. a final closing motion authorizing final distribution; and
- 12 e. miscellaneous closing activities.

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

- 17 a. settle the final accounts of the Insurance Commissioner and discharge the Insurance Commissioner  
18 as Trustee and as Liquidator;
- 19 b. settle and approve the final accounting of the Insurance Commissioner;
- 20 c. affirm the distribution of Covanta shares pro rata to general creditors;
- 21 d. authorize the closing of the Mission Insurance Company estate, subject to this Court's continuing  
22 jurisdiction should further unanticipated collections be received after the date of closing, which will  
23 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;
- 26 f. authorizes the Insurance Commissioner to take such steps as are necessary and appropriate to close  
27 the proceedings by the final date set by the Court;
- 28 g. discharges the Liquidator and Trustee;

- 1 h. authorizes the Trustee to maintain the records of Mission Insurance Company Trust for three years,  
2 after which such records may be destroyed in the Trustee's discretion;  
3 i. enter an order that the Trustee and Liquidator shall have no liability of any kind or nature arising from  
4 the activities prior to or during the liquidation of Mission Insurance Company and the Mission Insurance  
5 Company Trust; and  
6 j. provides for records distribution.

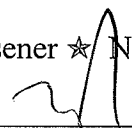
7 The Insurance Commissioner may further request that the order setting the hearing address other related  
8 issues regarding the closing procedure as to the matters set forth above.

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 Insurance Company trust open. The Insurance Commissioner will move this Court to re-  
13 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 Insurance Company Trust. This  
16 Court is requested to grant this motion to begin the end of this phase of the case.

17  
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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 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 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 Insurance Company Trust, and in a transaction which makes Covanta shares (formerly Danielson Holding Corporations shares) available for distribution.



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

3           6. The Court is requested to authorize the distribution of the remaining assets of Mission  
4 Insurance Company Trust, less a substantial reserve to be held in the Trust to deal with expense and  
5 potential reserve items. This distribution will be in the amount of one hundred percent (100%) of  
6 approved policyholder claimants' principal claims. Prior to the final hearing, a final accounting will be  
7 provided to include the percent of approved general creditors' claims. Substantial reserves are being  
8 retained for future distribution, in light of pending claims appeals and in light of unforeseen  
9 contingencies, such as taxation matters.

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 general creditors, on such schedule as may be  
18 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 Insurance Company case, subject to this Court's continuing  
22 jurisdiction should further unanticipated collections be received after the date of closing, which will  
23 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 the proceedings by the final date set by the Court;

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

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

27 10. The above relief presents a way to close this case, and make a substantial distribution to  
28 claimants. This approach seeks to close the case, while recognizing that the trusts themselves must

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

10  
11 I hereby execute this declaration under the penalty of perjury of the laws of the State of California  
12 in San Francisco, California, on the 30<sup>th</sup> day of September, 2005.

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15 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 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

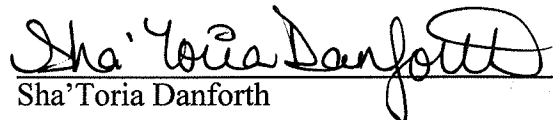
See Attached Exhibit "A"

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.

☒ (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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