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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **FOR THE COUNTY OF LOS ANGELES**

9 RICARDO LARA, Insurance Commissioner of the State of California, Case No. C 572 724

10 Applicant,

Honorable Teresa A. Beaudet

11 vs.

12 MISSION INSURANCE COMPANY, a
13 California corporation, et al

14 Respondent.

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION TO EXTEND
MISSION INSURANCE COMPANY
TRUST, MISSION NATIONAL
INSURANCE COMPANY TRUST AND
MOTION TO AUTHORIZE
DISTRIBUTIONS**

15 Consolidated with Case Numbers

16 C 576 324; C 576 416;
17 C 576 323; C 576 325; C 629709

**September 18, 2020
Time: 8:30 a.m.
Department 50**

Action Filed: October 31, 1985

22 Ricardo Lara, Insurance Commissioner of the State of California, in his capacity as Trustee of
23 the Mission Insurance Company Trust, the Mission National Insurance Company Trust, and the
24 Enterprise Insurance Company Trust, respectfully gives notice that at the hearing on September
25 18, 2020 the Court granted the motions and the relief sought by the Motion to Extend the
26 Mission Insurance Company Trust, Mission National Insurance Company Trust and Enterprise
27

28 NOTICE OF ENTRY OF ORDER GRANTING MOTION TO EXTEND MISSION INSURANCE COMPANY
TRUST, MISSION NATIONAL INSURANCE COMPANY TRUST AND MOTION TO AUTHORIZE
DISTRIBUTIONS - 1

1 Insurance Company Trust, as well as the Motion to Authorize Distributions, as filed by the
2 Insurance Commissioner as Trustee. The order entered is attached as Exhibit "A".
3
4
5

6 Respectfully submitted,
7 WISENER NUNNALLY ROTH &
8 HIGGINS, LLP



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Exhibit A

FILED
Superior Court of California
County of Los Angeles

SEP 17 2020

Sherri R. Carter, Executive Officer/Clerk
By Sally Fletcher Deputy

Superior Court of California
County of Los Angeles
Department 50

RICARDO LARA,

Applicant,

vs.

MISSION INSURANCE COMPANY, et al.,

Respondents.

Case No.: C 572724

Hearing Date: September 18, 2020

Hearing Time: 10:00 a.m.

~~TENTATIVE~~ ORDER RE:

MOTION TO EXTEND MISSION
INSURANCE COMPANY TRUST, MISSION
NATIONAL INSURANCE COMPANY
TRUST, AND ENTERPRISE INSURANCE
COMPANY TRUST;

INSURANCE COMMISSIONER'S MOTION
TO AUTHORIZE DISTRIBUTIONS

Background

Ricardo Lara, Insurance Commissioner of the State of California, in his capacity as Trustee of the Mission Insurance Company Trust, the Mission National Insurance Company Trust and the Enterprise Insurance Company Trust (the "Insurance Commissioner") moves to extend the Mission Insurance Company Trust, the Mission National Insurance Company Trust and the Enterprise Insurance Company Trust (collectively, the "Trusts") through December 31, 2022. No opposition has been filed.

The Insurance Commissioner also moves for authorization to distribute money from the Trusts to certain creditors with claims. No opposition has been filed.

1 ***Motion to Extend Trusts***

2 The Trusts exist to hold assets of three failed insurance companies. The Trusts have
3 collected assets and made distributions to pay in full the approved policyholder claims against
4 each company's trust. The Trusts remain open and continue to hold substantial sums of money.
5 This Court previously extended the life of the Trusts through December 31, 2020. (Pearce Decl.
6 ¶ 6.) The evidence reflects that the Trusts will need to stay open longer in order to collect
7 additional assets on behalf of the Trusts. (Pearce Decl. ¶¶ 6-8.)

8 Based on the foregoing, the motion is granted. The Trusts' formal existence is extended
9 until December 31, 2022.

10
11 ***Motion to Authorize Distributions***

12 The Insurance Commissioner seeks authorization to make a series of distributions from
13 the Trusts to certain of their creditors holding approved proofs of claims. The proposed
14 distribution will take place in a series of steps. The first distribution will be made from Mission
15 Insurance Company Trust and is projected to be \$38,358,301.49. The second distribution will be
16 made by Enterprise Insurance Company Trust, which will have received a distribution from
17 Mission Insurance Company Trust. The second distribution is projected to be \$3,630,354.50. The
18 third distribution will be made by Mission National Insurance Company Trust and is projected to
19 be \$7,484,651.46. The Insurance Commissioner also requests that the Court set a "record date"
20 of August 31, 2020 by which creditors are to assign their claims.

21 Insurance Code section 1033 sets the priority list for distributions in this matter. Taxes
22 due to the State of California are higher in priority than claims of creditors. (Ins. Code, § 1033,
23 subd. (a)(5).) Therefore, all California taxes should be paid before general creditors receive
24 distributions. ~~The Court expects~~ ^{ed (JTB)} ~~The Insurance Commissioner to~~ confirm at the hearing that
25 **there are no California taxes to be paid or they already have been paid.**
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1 Insurance Code section 1037, which governs this action, states:

2 Upon taking possession of the property and business of any person in any
3 proceeding under this article, the commissioner, exclusively and except as
4 otherwise expressly provided by this article, either as conservator or liquidator . . .

5 (d) Shall have authority without notice, to acquire, hypothecate, encumber, lease,
6 improve, sell, transfer, abandon, or otherwise dispose of or deal with, any real or
7 personal property of that person at its reasonable market value, or, in cases other
8 than acquisition, sale, or transfer on the basis of reasonable market value, upon such
9 terms and conditions as the commissioner may deem proper. However, no
transaction involving real or personal property shall be made where the market
value of the property involved exceeds the sum of twenty thousand dollars
(\$20,000) without first obtaining permission of the court, and then only in
accordance with any terms that court may prescribe.

10 “[W]hen the Insurance Commissioner is appointed as receiver or liquidator of an
11 insolvent insurance company, he or she becomes a trustee for the benefit of all creditors.” (*In re*
12 *Title U.S.A. Ins. Corp.* (1995) 36 Cal.App.4th 363, 372.) Furthermore, “the Commissioner’s first
13 duty was to the grave and important [public] interest in not depriving the [insurer’s]
14 policyholders of the protection of their policies.” (*In re Exec. Life Ins. Co.* (1995) 32 Cal.App.4th
15 344, 365 (internal quotations omitted).) “In exercising this power, the Commissioner is vested
16 with broad discretion. This discretion is subject to . . . the requirement that the exercise of
17 discretion be neither arbitrary nor improperly discriminatory.” (*Ibid.* (internal citations omitted).)
18

19 The Insurance Commissioner seeks permission to make certain distributions.
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21 In the first distribution, the Insurance Commissioner seeks to increase the proportion of
22 payment to general creditors who hold approved proofs of claims for more than \$10,000. In the
23 past, the Court has approved distributions for paying 70% of these claims, and now, the
24 Insurance Commissioner requests permission to pay 78.92%. The trust has the assets necessary
25 to make this distribution, which is estimated to be \$38,358,301.49. (Minehan Decl., ¶ 4.) The
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1 Insurance Commissioner asserts that this distribution will generate recoveries for the remaining
2 Trusts, who will then be able to make their own distributions.

3 In the second distribution, the Insurance Commissioner seeks leave for the Enterprise
4 Insurance Company Trust to distribute an estimated \$3,630,354.50, which constitutes an increase
5 from 55.4% to 65.61% of the Enterprise Insurance Company Trust distributions, to its remaining
6 creditors, who are all affiliate companies. (Minehan Decl., ¶ 5.)

7
8 In the third distribution, the Insurance Commissioner seeks leave for the Mission
9 National Insurance Company Trust to distribute an estimated \$7,484,651.46, which constitutes
10 an increase from 63% to 66.85% of the Mission National Insurance Company Trust distributions,
11 to its policyholder-priority creditors. (Minehan Decl., ¶ 6.)

12 The effect of these distributions will be to distribute most of the cash and liquid assets on
13 hand of the Trusts, while maintaining a substantial reserve to permit wind-up and a final
14 distribution of the Trusts. (Minehan Decl., ¶ 7.)

15
16 The Court finds that the Insurance Commissioner's proposed distributions to general
17 creditors and policyholder class claimants have not violated his broad discretion in meeting his
18 duty to the "grave and important public interest." The Insurance Commissioner makes these
19 proposed distributions after having evaluated the proofs of claims from these creditors. Overall,
20 these proposed actions fall within the Insurance Commissioner's broad authority to administer
21 the business of liquidation. (See Ins. Code, § 1037; *Garris v. Carpenter* (1939) 33 Cal.App.2d
22 649, 654-655.)

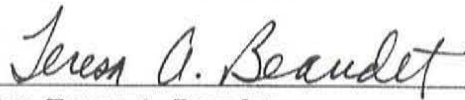
23
24 The Court defers to the Insurance Commissioner's decisions to increase the proportions
25 of payments to creditors. The proposed distributions do not appear to be arbitrary or improperly
26 discriminatory.

1 Finally, the Commissioner requests that the Court set August 31, 2020 as a cut-off date
2 for creditors to assign their claims. Although the date has passed, the Court retroactively sets this
3 deadline, so the Insurance Commissioner's record of assignments made as of August 31, 2020
4 controls the distributions of the Trusts.

5 Based on the foregoing and assuming there are no state taxes due, the Insurance
6 Commissioner's motion to authorize distributions will be granted. The assignment deadline is
7 August 31, 2020.
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9 The Insurance Commissioner is to provide notice of this ruling.

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11 DATED: September 18, 2020


12 Hon. Teresa A. Beaudet
13 Judge, Los Angeles Superior Court
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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 ENTRY OF ORDER GRANTING MOTION TO EXTEND MISSION INSURANCE COMPANY TRUST, MISSION NATIONAL INSURANCE COMPANY TRUST AND MOTION TO AUTHORIZE DISTRIBUTIONS** 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.

 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 29, 2020 at Garland, Texas.



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