

1. J. Lee Covington, II ("Mr. Covington") is the Superintendent of the Ohio Department of Insurance. Mr. Covington serves as the Liquidator of Credit Insurance Company ("CGIC") and Credit General Indemnity Company ("CGIND") (collectively referred to as "Credit General") pursuant to Court Orders entered on December 22, 2000 and January 5, 2001 in the case of *J. Lee Covington, II v. Credit General Insurance Company, et al.*, Franklin County Common Pleas Case No. 00CVH-11-9867. As the Liquidator, Mr. Covington has all those powers enumerated in said Court Orders and those found in Ohio Revised Code Chapter 3903. Mr. Covington brings this action on behalf of the shareholders, creditors, and policyholders of CGIC and CGIND.
2. CGIC is an insurance company domiciled in Ohio and admitted to do business in other states.
3. CGIND is an insurance company domiciled in Ohio and admitted to do business in other states. CGIND is a wholly-owned subsidiary of CGIC.
4. CGIC was 100% owned by PRS Insurance Group, Inc. ("PRS"), a Delaware holding company previously known as the Phoenix Insurance Group, Inc.
5. Robert Lucia ("Mr. Lucia") is an individual who resided in Cuyahoga County, Ohio at all material times, but who may now claim to be a resident of Florida.
6. Gregory A. Fazekash ("Mr. Fazekash") is an individual who resides in Summit County, Ohio.
7. John Boyko ("Mr. Boyko") is an individual who resides in Cuyahoga County, Ohio.
8. The venue of this action is proper in this Court pursuant to Ohio Revised Code Section 3903.04(E).

BACKGROUND INFORMATION

9. Beginning in 1991 and continuing at all pertinent times thereafter, Mr. Lucia directly or indirectly owned and controlled Credit General, and served as a director and as the President of CGIC and CGIND. During the same period, Mr. Lucia directly or indirectly owned and controlled PRS, its subsidiaries and other entities that were affiliated with PRS.
10. At all times pertinent to their individual liability, Messrs. Fazekash and Boyko served as directors and/or officers of Credit General. Mr. Fazekash was the Treasurer and a vice president and director of CGIC and CGIND. Mr. Boyko was the Treasurer of CGIC and was a vice president and director of CGIC and CGIND.
11. By virtue of the positions they held with CGIC and CGIND, Defendants owed Credit General duties of care and loyalty.
12. During the past ten years each of the Defendants has spent a substantial amount of time outside of the State of Ohio.

DIVERSION OF FUNDS

13. During the period that Mr. Lucia served as the owner, director and officer of Credit General, he maintained bank accounts under his personal control at Independence Bank and Fahey Bank (the "Outside Accounts"). None of these accounts was held in the name or under the tax identification numbers of Credit General.
14. During this same period of time, Mr. Lucia, in breach of the duties of care and loyalty that he owed to Credit General, diverted checks belonging to Credit General into the Outside Accounts. Although the precise amounts so diverted are presently not known, Plaintiff reasonably estimates that the amount so diverted exceeded \$30 million.

15. Mr. Lucia eventually returned a portion of the funds diverted into the Outside Accounts to Credit General, or used a portion of the funds to pay obligations owed by Credit General. A substantial portion of the diverted funds, however, was never returned to Credit General or used for the benefit of Credit General, but rather was used to pay Mr. Lucia's personal expenses, including the construction and mortgages on his homes, private school and college tuition for his children, expenses of his daughter's wedding and other personal expenditures. A substantial portion of the diverted funds was also used to pay the expenses of, or otherwise to benefit, other entities owned and/or controlled by Mr. Lucia, for which Credit General received no benefit.
16. Messrs. Fazekash and Boyko were aware of Mr. Lucia's improper diversions of funds, and in breach of their duties of care and loyalty to Credit General did not take sufficient steps to prevent the diversions from continuing.

COMMINGLING OF ASSETS

17. A number of companies insured by Credit General were required, by virtue of the terms of their contracts with Credit General, to maintain certain funds and other assets in one or more "collateral accounts" to secure their obligations under those contracts. Credit General promised each such company that it would segregate the funds so deposited and would use them only to satisfy the obligations of that company and for no other purpose.
18. Defendants were aware of these collateral accounts and the terms under which they were maintained by Credit General. Despite such knowledge, Defendants, in violation of their duties of care and loyalty, caused Credit General to commingle the funds and other assets held in these collateral accounts, and to use and deplete these funds and other assets for

purposes not permitted by the applicable contracts. As a result, there are substantial deficits in many of the collateral accounts.

IMPROPER RECORDKEEPING AND REPORTING

19. The Defendants knew or should have known that Mr. Lucia was diverting funds from Credit General and later using some of those funds to pay expenses of Credit General off the books, and that Credit General was commingling the collateral accounts and using the funds and other assets in those accounts for improper purposes without properly recording or reporting such commingling and use of funds. They thus knew or should have known that the books, records and financial reports of Credit General would not accurately reflect its true financial condition, but rather would cause Credit General to appear to be far more solvent than it actually was. They further knew that Credit General was not properly capitalized and/or did not carry sufficient reserves as required by law. They further knew or should have known that if Credit General had accurately reported its true financial condition to the Ohio Department of Insurance, the Department likely would have taken action to place Credit General in supervision, rehabilitation or liquidation far sooner than was actually the case.
20. Despite what the Defendants knew or should have known as previously alleged, they concealed this knowledge from Credit General's auditors, and from the Ohio Department of Insurance.
21. If the true financial condition of Credit General had been reported accurately to the Department of Insurance, the Department would have taken steps to supervise, rehabilitate or liquidate Credit General far sooner, as a result of which the present insolvency of Credit General could have been prevented entirely, or at least arrested at an

earlier stage, leaving more assets available to pay the claims of policyholders and other creditors.

COUNT I - BREACH OF FIDUCIARY DUTY

22. Plaintiff hereby restates the preceding allegations as if fully rewritten herein.
23. Mr. Lucia breached his duties of care and loyalty to Credit General by (a) diverting its funds to himself and to other entities that he controlled, (b) causing and/or allowing Credit General to commingle and misspend funds and other assets deposited into collateral accounts, (c) causing and/or allowing Credit General to fail accurately to record and report its true financial condition, and (d) allowing Credit General to operate with insufficient reserves and capital.
24. Messrs. Fazekash and Boyko breached their duties of care and loyalty to Credit General by (a) assisting Mr. Lucia in diverting its funds to himself and to other entities that he controlled and failing to disclose the diversion to Credit General's auditors, and/or to take actions to prevent the diversions, (b) causing and/or allowing Credit General to commingle and misspend funds and other assets deposited into collateral accounts, (c) causing and/or allowing Credit General to fail accurately to record and report its true financial condition, and (d) allowing Credit General to operate with insufficient reserves and capital..
25. As a direct and proximate result of these breaches, Credit General and its creditors and policyholders were injured, and Plaintiff is entitled to recover damages for this injury in an amount to be proven at trial, which Plaintiff reasonably believes will be in excess of \$25,000.00.

COUNT II

NEGLIGENCE AND GROSS NEGLIGENCE

26. Plaintiff hereby restates the preceding allegations as if fully rewritten herein.
27. Defendants, were negligent in the performance of their duties and responsibilities in the positions they held with Credit General.
28. Mr. Lucia's negligence includes, but is not limited to, (a) diverting Credit General's funds to himself and to other entities that he controlled, (b) causing and/or allowing Credit General to commingle and misspend funds and other assets deposited into collateral accounts, (c) causing and/or allowing Credit General to fail accurately to record and report its true financial condition, and (d) allowing Credit General to operate with insufficient reserves and capital..
29. The negligence of the remaining Defendants includes, but is not limited to, (a) assisting Mr. Lucia in diverting Credit General's funds to himself and to other entities that he controlled and failing to report the diversion to Credit General's auditors and/or to take actions to prevent the diversions, (b) causing and/or allowing Credit General to commingle and misspend funds and other assets deposited into collateral accounts, (c) causing and/or allowing Credit General to fail accurately to record and report its true financial condition, and (d) allowing Credit General to operate with insufficient reserves and capital..
30. All of the foregoing acts, in addition to constituting negligence, constitute gross negligence and a reckless disregard for any injury to Credit General.
31. As a direct and proximate result of these acts of negligence, gross negligence and recklessness, Credit General and its creditors and policyholders were injured, and

Plaintiff is entitled to recover damages for this injury in an amount to be proven at trial, which Plaintiff reasonably believes will be in excess of \$25,000.00.

COUNT III - CONVERSION

32. Plaintiff hereby restates the preceding allegations as if fully rewritten herein.
33. Mr. Lucia wrongfully exercised dominion and control over the property of Credit General, including the checks made payable to Credit General that Mr. Lucia diverted by depositing them or causing them to be deposited in the Outside Accounts.
34. CGIC received the diverted checks either directly or through Mr. Lucia acting as its agent.
35. As a direct and proximate result of this conversion, Credit General and its creditors and policyholders were injured, and Plaintiff is entitled to recover damages against Mr. Lucia for this injury in an amount to be proven at trial, which Plaintiff reasonably believes will be in excess of \$25,000.00.

COUNT IV - UNJUST ENRICHMENT BASED ON QUASI-CONTRACT

36. Plaintiff hereby restates the preceding allegations as if fully rewritten herein.
37. By virtue of Mr. Lucia's improper diversion of funds owned by Credit General to the Outside Accounts, and his subsequent use of a portion of those funds for his own benefit, Mr. Lucia has received certain benefits and has thereby been unjustly enriched. Mr. Lucia should not in equity and good conscience be permitted to retain the value of the benefits in question.
38. A contract is implied in law under which Mr. Lucia is required to pay Plaintiff the value of the benefits he received by virtue of diverting the funds represented by the checks payable to Credit General that he caused to be deposited to the Outside Accounts.

39. As a direct and proximate result of this unjust enrichment and breach of an implied contract, Credit General and its creditors and policyholders were injured, and Plaintiff is entitled to recover damages from Mr. Lucia for this injury in an amount to be proven at trial, which Plaintiff reasonably believes will be in excess of \$25,000.00.

COUNT V - PREFERENTIAL TRANSFERS

40. Plaintiff hereby restates the preceding allegations as if fully rewritten herein.
41. Plaintiff filed its complaint seeking to place CGIC in rehabilitation on or about November 6, 2000, and an order placing CGIC in rehabilitation was entered on the same day. The Order under which CGIC was placed in liquidation was entered while CGIC was already subject to this rehabilitation order.
42. On and after November 6, 1999, CGIC transferred certain of its property (the "Preferential Transfers") to or for the benefit of one or more creditors, for or on account of antecedent debts of those creditors, the effect of which may be to enable the creditors to obtain a greater percentage of their debts than other creditors of the same class will receive.
43. At the time the Preferential Transfers that occurred prior to July 6, 2000 were made, CGIC was insolvent, or the creditor receiving the transfer or to be benefitted thereby or its agent had reasonable cause to believe that CGIC was insolvent or was about to become insolvent, or the creditors receiving the transfer was an officer of CGIC or an employee, attorney or other person of comparable influence to an officer. All of the remaining Preferential Transfers were made within four months before the filing of the complaint for rehabilitation.

44. Defendants Lucia and Boyko directed and/or knowingly participated in these Preferential Transfers while acting on behalf of Credit General when they had reasonable cause to believe that CGIC was or was about to become insolvent. As a result, each of them is personally liable to the Plaintiff for the amount of the property so transferred.
45. Defendant Lucia received some of the Preferential Transfers, and Plaintiff is entitled to a judgment avoiding those Preferential Transfers and holding Mr. Lucia personally liable to the Plaintiff for the amount he so received in an amount to be proven at trial, which Plaintiff reasonably believes will be in excess of \$25,000.00.
46. Defendant Boyko may also have received some of the Preferential Transfers. If so, and to the extent that he did, Plaintiff is entitled to a judgment avoiding those Preferential Transfers and holding Mr. Boyko personally liable to the Plaintiff for the amount he received in an amount to be proven at trial, which Plaintiff reasonably believes will be in excess of \$25,000.00.
47. The total amount of Preferential Transfers alleged herein, including both those received by the Defendants and those received by others, is presently unknown, but will be proven at trial. Plaintiff is entitled to a judgment against Defendants Lucia and Boyko for damages in an amount to be proven at trial, which Plaintiff reasonably believes will be in excess of \$25,000.00.

COUNT VI - FRAUDULENT TRANSFERS UNDER R.C. 3903.26

48. Plaintiff hereby restates the preceding allegations as if fully rewritten herein.
49. Mr. Lucia's diversions of the funds of CGIC to the Outside Accounts and the diversion or transfer of other assets of CGIC to Mr. Lucia or for his benefit (collectively the "Lucia Fraudulent Transfers") were made without fair consideration and/or with actual intent to

hinder, delay or defraud either existing or future creditors. Some of the Lucia Fraudulent Transfers occurred on or after November 6, 1999. Accordingly, Plaintiff is entitled to a judgment avoiding these Lucia Fraudulent Transfers and directing Mr. Lucia to restore the diverted funds to the Plaintiff pursuant to Ohio Rev. Code Section 3903.26.

COUNT VII- FRAUDULENT TRANSFERS UNDER R.C. CHAPTER 1336

50. Plaintiff hereby restates the preceding allegations as if fully rewritten herein.
51. Plaintiff does not believe that Mr. Lucia's diversions of CGIC checks to the Outside Accounts were undertaken by or on behalf of CGIC. To the extent that the Court finds that they were, however, then the transfer of such checks to the Outside Accounts were fraudulent as to creditors whose claims arose before the transfers occurred because CGIC was insolvent at the time of the transfers, and did not receive a reasonably equivalent value in exchange for the checks.
52. Plaintiff also does not believe that Mr. Lucia's diversions of CGIC checks to the Outside Accounts were made with respect to an antecedent debt that CGIC owed to Mr. Lucia. To the extent that the Court finds that they were, however, then the transfer of such checks to the Outside Accounts were fraudulent as to creditors whose claims arose before the transfers occurred because Mr. Lucia was an "insider" of CGIC as defined in R.C. 1336.01(G), CGIC was insolvent at the time of the diversions, and Mr. Lucia had reasonable cause to believe CGIC was insolvent.
53. If the Court finds that Mr. Lucia's diversions of CGIC checks to the Outside Accounts were undertaken by or on behalf of CGIC, then the transfers of these checks were fraudulent as to all creditors of CGIC because:

- a. The transfers occurred with actual intent to hinder, delay, or defraud one or more creditors of CGIC, or
 - b. CGIC did not receive and reasonably equivalent value for the transfers, and
 - i. CGIC was engaged or was about to engage in a business or transaction for which the remaining assets of CGIC were unreasonably small in relation to the business or transaction, or
 - ii. CGIC intended to incur, or believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.
54. To the extent that the transfers of CGIC checks to Mr. Lucia and their subsequent deposit in the Outside Accounts constitute fraudulent transfers under Chapter 1336 of the Revised Code, Plaintiff is entitled to a judgment awarding it damages against Mr. Lucia in the amount so transferred, which amount will be proven at trial and will likely be in excess of \$25,000.00.

COUNT VIII - CIVIL CONSPIRACY

55. Plaintiff hereby restates the preceding allegations as if fully rewritten herein.
56. The Defendants have combined maliciously to injure Credit General and its creditors and policyholders in its person or property, in a way not competent by any of the Defendants acting alone.
57. As a proximate result of this malicious combination, Credit General and its creditors and policyholders have suffered the injuries previously alleged. Plaintiff is entitled to recover an amount to be proven at trial, which Plaintiff reasonably believes will be in excess of \$25,000.00.

COUNT IX - PUNITIVE DAMAGES

58. Plaintiff hereby restates the preceding allegations as if fully rewritten herein.

59. The Defendants undertook the above-described actions and omissions with actual malice, including a conscious disregard for the rights of other persons which had a great probability of causing substantial harm. As a result, Plaintiff is entitled to recover punitive damages and reasonable attorneys fees from the Defendants in amounts to be proven at trial.

WHEREFORE, having fully stated its Complaint, Plaintiff demands judgment as follows:

1. Awarding compensatory damages against the Defendants in an amount in excess of \$25,000.00 as to be proven at trial;
2. Avoiding the preferential and fraudulent transfers alleged above and ordering the Defendants to return the funds so transferred or damages in an amount equal to the value of such funds;
3. Recognition of a constructive trust on all funds that the Mr. Lucia caused to be diverted from Credit General, and imposition of an order directing Mr. Lucia to account for those funds and to pay over to Plaintiff all amounts that such an accounting demonstrates are owing to the Plaintiff;
4. Imposition of an equitable lien in favor of the Plaintiff on all real and personal property that the Mr. Lucia acquired (including by paying down loans secured by the property) or improved using funds that he diverted from Credit General;
5. Awarding punitive damages against Defendants in an amount in excess of \$25,000.00 as to be proven at trial;
6. Awarding Plaintiff his costs, interest and attorney fees incurred in this action as allowed by law; and
7. Awarding such other relief as the Court deems just, equitable and appropriate.

Respectfully submitted,

Betty D. Montgomery
Attorney General of Ohio

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