



This Motion is supported by the attached Memorandum in Support and an Affidavit of Chief Deputy Liquidator Lynda G. Loomis, which is attached and incorporated by reference.

Respectfully submitted,

**MIKE DEWINE**  
**Attorney General State of Ohio**

By Special Counsel:  
CARLILE PATCHEN & MURPHY LLP

*/s/ Scott R. Mergenthaler*

\_\_\_\_\_

Dennis J. Concilla (0012254)

[dconcilla@cpmlaw.com](mailto:dconcilla@cpmlaw.com)

Carl A. Aveni, II (0070664)

[caveni@cpmlaw.com](mailto:caveni@cpmlaw.com)

Scott R. Mergenthaler (0012869)

[smergenthaler@cpmlaw.com](mailto:smergenthaler@cpmlaw.com)

366 East Broad Street

Columbus, Ohio 43215

Telephone: (614) 228-6135

Facsimile: (614) 221-0216

*Attorneys for Mary Taylor, in her capacity as  
Liquidator of LMI Insurance Company*

**MEMORANDUM IN SUPPORT**

The Liquidation Order entered in this case on May 23, 2000 and R.C. § 3903.48 grant the Ohio Superintendent of Insurance in her capacity as statutory liquidator (the “Liquidator”) of LMI Insurance Company (“LMI”) the authority to determine when company records are no longer useful and “. . . recommend to the court and the court shall direct what records should be retained for future reference and what should be destroyed.” To prepare for the final closure of LMI, the Liquidator recommends that this Court authorize her to proceed with the destruction of LMI unneeded warehoused records. Records destruction is one of the necessary, final administrative tasks of the Liquidator.

**I. Background History**

On May 23, 2000, this Court ordered LMI Insurance Company liquidated. Since then, the Liquidator has proceeded to wind-up LMI’s affairs in a comprehensive manner. Under this Court’s supervision, the Liquidator identified LMI’s creditors, collected LMI’s assets and converted them to cash, established a claims filing deadline, and adjudicated claims filed with the LMI estate. The Liquidator is preparing the final distribution to claimants in accordance with the statutory priorities. In order to close the LMI estate, the Liquidator will need to complete a number of necessary, final administrative tasks.

**A. Final Phase of Estate Administration**

During estate administration, the Liquidator pays the costs and expenses she incurs to administer the estate from the assets held in the estate’s bank accounts. These are Class 1 administrative expenses of the estate, pursuant to R.C. § 3903.42 (A). To prepare a final distribution of assets and ultimately close an estate and its bank accounts, as in all liquidations, consistent with R.C. § 3903.42, the Liquidator must make an adjustment to (a deduction from)

the available assets as of the time of the final distribution to reserve and pay for known, future administrative expenses of the estate that the Liquidator will incur or pay following the calculation of the final distribution. In LMI's estate, there are administrative expenses associated with storing its records at the Liquidator's leased warehouse. Now that the Liquidator has completed the administration of LMI's estate except for the final distribution and final administrative tasks, LMI's warehoused records are no longer needed and no longer of any value. *See* Chief Deputy Liquidator Lynda Loomis Affidavit, attached as Exhibit A and incorporated by reference, at para. 5. The Liquidator requests approval to destroy those records now to minimize administrative expense.

#### **B. LMI's Closing Plan**

The Liquidator has filed Reports on Status of the Liquidation in the LMI case from 2011 through 2013. The Liquidator established a closing plan in the LMI estate to wrap-up all policyholder level claims so that she could finally adjudicate all proofs of claim filed with the LMI estate and make a final distribution of estate assets pursuant to the priority of distribution provisions contained in R.C. § 3903.42. There were several pre-conditions to the Liquidator's ability to proceed to a final distribution of LMI's assets to allowed Class 2 claimants – resolving all outstanding claims and obtaining the federal release.

##### **i. The Liquidator Resolved All Outstanding Claims in 2014**

The claims filing deadline in LMI was May 23, 2001. In 2008, this Court established an Absolute Final Bar Date of June 30, 2009<sup>1</sup> so that the Liquidator could determine the classification, validity and value of the totality of the claims filed and the LMI estate's overall

---

<sup>1</sup> The Absolute Final Bar Date is a new date that represents the date after which the Liquidator will not receive any new proofs of claims (including late-filed claims) or allow claimants to substantiate previously unspecified or "blanket" proofs of claims. The establishment of the Absolute Final Bar Date is one of the tools available to the Liquidator for determining the classification, validity and value of the totality of the proofs of claims and the estate's overall claims liability in relation to assets so that distributions to creditors can be made and the estate closed

claims liability in relation to assets so that a final distribution to creditors could be made and the estate closed.

As previously reported, prior to liquidation, LMI wrote over a dozen different lines of business throughout the United States, including long-tail liability workers' compensation, environmental, and commercial multiple peril insurance. At the end of 2013, eleven<sup>2</sup> (11) insurance guaranty associations ("IGAs") were still actively administering, processing and/or paying LMI's covered Class 2 (policyholder) claims. During 2014, the Liquidator completed her review and adjudication of all claims pursuant to R.C. § 3903.42 and § 3903.43, including the claims of IGAs that paid or are paying policyholder level claims in LMI. Every claimant has had an opportunity to object to the Liquidator's determination of their claims pursuant to R.C. § 3903.39. All hearings on objections to the Liquidator's claims determinations were concluded by June 6, 2014, and the last of this Court's Orders confirming the Liquidator's claims determinations was issued June 11, 2014.<sup>3</sup>

The IGAs' claims and the non-IGA Class 2 claims were resolved without the Liquidator's staff needing to review LMI's warehoused records. The IGAs have no objection to the destruction of the warehoused records. *See* Loomis affidavit at para. 7.

**ii. Federal Release Received April 14, 2014 and Court Approved on June 11, 2014**

The Liquidator also needed to obtain the required release of claims from the federal government ("Federal Release"). In November, 2013, the U.S. Environmental Protection Agency alleged numerous potential environmental claims against LMI's insureds (the "Alleged

---

<sup>2</sup> The 11 IGAs with open claims as of December 31, 2013 were: California, Delaware, Florida Workers Compensation Security Fund, Georgia, Maryland, New Jersey, New Jersey Workers' Compensation Security Fund, New York, Pennsylvania, Pennsylvania Workers Compensation Security Fund and Virginia.

<sup>3</sup> The last hearing on an objection to the Liquidator's determination of proof of claim filed by one (1) claimant was held on June 6, 2014. This Court's *Order Overruling Objections to Liquidator's Determination of Specified Claims and Affirming the Liquidator's Determination* was entered on June 11, 2014.

EPA Claims”). Despite this setback, the Liquidator continued to work on her closing plan while seeking to resolve the EPA Claims.

On April 14, 2014, after resolving the Alleged EPA Claims, the Liquidator obtained the Federal Release required before a distribution could be made to the Class 2 policyholder level claims. During the process of resolving the Alleged EPA Claims, the Liquidator’s staff accessed certain pre-liquidation warehoused records regarding LMI’s insurance programs and policy provisions to support the Liquidator’s position that the Alleged EPA claims were not valid. That records review was the only time in the past year that the Liquidator needed access to the warehoused records. *See Loomis Affidavit* at para. 8. Now that the Federal Release is granted, and approved by this Court on June 11, 2014, the U.S. Department of Justice has no objection to the destruction of LMI’s records. *See Loomis affidavit* at para. 8.

### **C. LMI’s Warehoused Records**

Prior to liquidation, LMI retained many years of business records. After LMI’s liquidation, the Liquidator transferred LMI’s pre-liquidation records from various sources and locations to her leased warehouse facilities in Columbus, Ohio. The Liquidator has, among other duties, preserved these books and records of LMI.

The Liquidator added to the warehouse various records created during the LMI estate administration. These post-liquidation records were sent to the warehouse when they were no longer needed. The Liquidator has reviewed LMI’s warehoused records to determine what records to preserve and what to destroy. The records recommended for destruction do not include (1) certain pre-liquidation and post-liquidation records that the Liquidator stored at Fireproof Records Center, which will be destroyed at the closing of the LMI’s liquidation

proceeding<sup>4</sup>, and (2) a limited number of records specifically required by law to be maintained (e.g., tax returns and forms, financial statements, etc.), which will be stored at a different site post-closure pursuant to a final closing order. *See* Loomis Affidavit at para. 4, 5 and 13.

#### **D. Warehouse Lease Expires December 31, 2014**

Importantly, the Liquidator's court-approved lease of the warehouse facilities is set to expire on December 31, 2014.<sup>5</sup> The Liquidator and the Landlord agreed that not later than July 1, 2014, they would enter into discussions regarding the extension, modification or termination of the Lease, depending upon the Liquidator's needs at that time. The Liquidator informed the Landlord before July 1, 2014 that the LMI estate is closing, and that she does not intend to renew the Lease. *See* Loomis Affidavit at para. 9.

To ensure an orderly exit from the warehouse facilities when the Lease expires, the Liquidator must arrange for the destruction of the warehoused records prior to December 31, 2014.<sup>6</sup> The Liquidator anticipates that under her cost-effective plan, it will take at least two (2) weeks for her staff to stage, palletize and ship over 801 boxes of records to the secure destruction facility. *See* Loomis Affidavit at para. 10. Then, the Liquidator's staff will need to prepare the warehouse for turn-over to the Landlord in "broom clean" condition.

---

<sup>4</sup> The Liquidator has obtained a quote from Fireproof Records Center indicating that the total estimated charges for the retrieval of the 52 pallets containing 2,004 LMI boxes and their secure destruction is \$5,998.20.

<sup>5</sup> On January 29, 2013, this Court issued an Order approving the Fourth Amendment to the Lease Agreement for the warehouse facilities. The Fourth Amendment extended the Lease through December 31, 2014. The Liquidator and Landlord agreed that not later than July 1, 2014, the parties would enter into discussions regarding the extension, modification or termination of the Lease, depending upon the Liquidator's needs at the time.

<sup>6</sup> Certain limited records of closed rehabilitation and liquidation estates have been maintained at the warehouse pursuant to prior court-ordered destruction schedules. On July 29, 2014, the Liquidator obtained court-approval to destroy the records of Credit General Insurance Company stored at the Liquidator's warehouse in *Mary Taylor in her Capacity as Liquidator of Credit General Insurance Company and Credit General Indemnity Company vs. Credit General Insurance Company, et al.*, Case No. 00 CVH 009867. Therefore, by the fall of 2014, the vast majority of those records will be destroyed, leaving primarily LMI records at the warehouse.

Since the beginning of 2013, the LMI estate has been charged monthly rent as an administrative service and expense of the estate based on LMI's actual usage of the warehouse facilities for records storage.<sup>7</sup> LMI's actual usage of the warehouse facilities has been 4%.

**II. Relief from Retention and Authority to Destroy LMI Warehoused Records**

The Liquidator is set to make a final distribution of the LMI estate assets in late October 2014 or early November 2014, and then is set to close the LMI estate in December 2014. In preparation for the closing of the LMI estate, the Liquidator now requests the Court to relieve her of any obligation to retain LMI's warehoused records and to authorize her to destroy the warehoused records because it is clear that these primarily pre-liquidation records are not needed to complete the administration of the LMI estate and are no longer of any value. None of the warehoused records are needed for the LMI final distribution or closure of the LMI estate. *See Loomis Affidavit at para. 5.*

The Liquidator recommends that the warehoused records be destroyed because they are no longer needed. In furtherance of her statutory duties, the Liquidator seeks to conserve estate assets by destroying unneeded records now. By destroying the warehoused records described below, the Liquidator can save administrative expenses by turning over the warehouse space to the Landlord in "broom clean" condition in a timely fashion prior to the December 31, 2014 expiration of the Lease. The records must be destroyed at some point. The Liquidator will incur costs destroying the records now, but those costs will be less than what they would be if the Liquidator had to wait until after the LMI estate closes. *See Loomis Affidavit at para. 11.* By destroying unneeded records before the Lease expires, the estate will save storage, labor and supply costs that would be incurred if the Liquidator is required to extend the Lease past

---

<sup>7</sup> In 2014, LMI's records storage accounts for 4% of the warehouse and Credit General Insurance Company's records storage accounts for 96% of the warehouse. *See January 3, 2013 Motion for Approval of Lease Amendment.*

December 31, 2014. *See* Loomis Affidavit at para. 12. Significantly, the LMI estate is one of the two (2) remaining estates administered by the Office of the Ohio Insurance Liquidator. The other estate is Credit General Insurance Company (“CGIC”). CGIC is also scheduled to complete its final distribution of assets and close prior to this year-end 2014. When LMI closes, the Liquidator will no longer have staff to perform the work to palletize and ship the 801 boxes of records to the secure destruction facility and prepare the warehouse for turn-over to the Landlord. *See* Loomis Affidavit at para. 11. If the Liquidator is required to wait until after the December final closing of LMI to destroy these records, the Liquidator will need to reserve (deduct) from the funds available for distribution adequate funds to pay for (1) the Lease extension, (2) hiring contractors to perform the work to palletize and ship 801 boxes of records to a secure destruction facility and to prepare the warehouse for turn-over to the Landlord, (3) the preparation and filing of additional court accountings for 2015 transactions, and (4) the filing of additional tax returns and forms for the 2015 tax year. *See* Loomis Affidavit at para. 12. Destroying the warehoused records now to avoid these additional administrative costs achieves the best result on behalf of the LMI estate.

#### **A. Warehoused Records to be Destroyed**

The warehoused records the Liquidator identified as no longer needed and recommended for immediate destruction are as follows: *pre-liquidation records*<sup>8</sup> including but not limited to company records; banking, general accounting and other financial records; claims, reinsurance, and underwriting records; legal litigated records; and *post-liquidation records* that are not specifically required by law to be maintained including but not limited to asset recovery records, claims records, finance records, records of claims that have been finalized, and records regarding guaranty funds whose claims have been finalized.

---

<sup>8</sup> The term “records” includes books, records and documents in any medium.

The Liquidator has fulfilled her fiduciary duty to LMI's policyholders, creditors, and claimants by determining that the destruction of these records is in accord with R.C. § 3903.48 and will reduce the administrative expenses associated with keeping and storing the records and thereby conserve estate assets for the benefit of policyholder level claimants.

**III. CONCLUSION**

For the reasons stated, the Liquidator requests this Court for an Order authorizing the Liquidator to destroy certain records of the LMI estate described in this Motion that are no longer useful and are not required to complete the administration of the LMI estate.

Respectfully submitted,

**MIKE DEWINE**  
**Attorney General State of Ohio**

By Special Counsel:  
CARLILE PATCHEN & MURPHY LLP

*/s/ Scott R. Mergenthaler*

\_\_\_\_\_  
Dennis J. Concilla (0012254)

[dconcilla@cpmlaw.com](mailto:dconcilla@cpmlaw.com)

Carl A. Aveni, II (0070664)

[caveni@cpmlaw.com](mailto:caveni@cpmlaw.com)

Scott R. Mergenthaler (0012869)

[smergenthaler@cpmlaw.com](mailto:smergenthaler@cpmlaw.com)

366 East Broad Street

Columbus, Ohio 43215

Telephone: (614) 228-6135

Facsimile: (614) 221-0216

*Attorneys for Mary Taylor, in her capacity as  
Liquidator of LMI Insurance Company*

**CERTIFICATE OF NOTICE**

I hereby certify that a true and accurate copy of the foregoing *Plaintiff's Motion for Authority to Destroy Certain Records of LMI Insurance Company Stored at the Liquidator's Warehouse* was posted on the Liquidator's website (www.ohliq.com) under Insurance Companies – Open - LMI Insurance Company substantially contemporaneous with the filing of this *Motion*. The undersigned hereby certifies that a true and accurate copy of the foregoing *Motion* was emailed to the following on this 28<sup>th</sup> day of August, 2014:

Sharon C. Williams  
Trial Attorney  
Department of Justice  
Civil Division  
1100 L Street, N.W., Room 10016  
Washington, D.C. 20005  
[sharon.williams@usdoj.gov](mailto:sharon.williams@usdoj.gov)  
*Attorneys for the United States of America*

*/s/ Scott R. Mergenthaler*  
\_\_\_\_\_  
Scott R. Mergenthaler (0012869)



records are no longer needed or useful to the estate administration, they are transferred to the Liquidator's warehouse facilities for storage until the Liquidator obtains court approval to destroy them.

4. In the LMI estate, the Liquidator has stored over 800 boxes of LMI records in her leased warehouse facilities. The vast majority of the records are pre-liquidation records of LMI. Records generated during LMI's liquidation process were sent to the warehouse when they were no longer needed for the estate administration.

5. None of the warehoused records are needed for the LMI final distribution or closure of the LMI estate. The warehoused records are no longer of any value.

6. Pursuant to the closing plan established for the LMI estate, the Liquidator has resolved all outstanding claims in the estate and has completed LMI's estate administration except for the final distribution and final administrative tasks, which include the closing of the LMI estate.

7. The outstanding claims resolved include the claims of all insurance guaranty funds ("IGAs") that paid or are paying policyholder level claims in LMI. The IGAs' claims were resolved without the Liquidator's staff needing to review LMI's warehoused records. The Liquidator asked each IGA if it wanted copies of any claim files in the Liquidator's possession. None of the IGAs wanted to receive copies of any claim files. Through this procedure, the Liquidator confirmed that the IGAs would have no objection to the destruction of the LMI records.

8. The Liquidator's staff accessed LMI's warehoused records only one time in the last year. That time was in 2013, when the staff reviewed LMI's pre-liquidation records concerning LMI's insurance programs and policy provisions in connection with the Liquidator's negotiation of the resolution of potential environmental claims alleged against LMI insureds by the U.S. Environmental Protection Agency. In April, 2014, the U.S. EPA released all alleged claims against

the LMI estate and its insureds. Thereafter, the Liquidator and the United States of America entered into a Release Agreement, which is required before a final distribution may be made to the policyholder level class of claims. Section III. 2. of the Release Agreement between LMI and the United States provides that under the terms of the Release Agreement, LMI records may be destroyed pursuant to Court order so long as notice is given to the United States of the motion filed with the Court requesting destruction. I provided notice to the Attorney for the United States at the Department of Justice and have instructed the Liquidator's Special Counsel to also provide written notice of the filing of the motion for destruction of the LMI records stored at the Liquidator's warehouse.

9. On June 23, 2014, I informed Matthews Properties, Inc., the Landlord for the leased warehouse facilities, that because the LMI estate is scheduled to close by year-end 2014, the Liquidator will not be renewing the Lease, which is set to expire on December 31, 2014.

10. The Liquidator's records management staff developed a plan to begin the removal of warehoused records immediately following court approval of their destruction. Current staff will pull boxes from warehouse shelf locations, load pallets with the boxes and stage enough pallets for pick-up by the Liquidator's destruction vendor. With each semi-trailer pick-up, the destruction vendor will deliver additional pallets to prepare the next load. Only one semi-trailer may be loaded at a time due to limited loading dock space at the warehouse. Due to this and other space constraints, we estimate that it will take approximately two (2) weeks to clear the warehouse of the 800 boxes of LMI records. This plan is cost-effective because it uses the Liquidator's existing staff, all of whom are experienced with performing records removal at the Liquidator's warehouse, and because it is scheduled to be concluded in time to allow other tasks to be completed in order to vacate the warehouse by December 31, 2014.

11. By destroying LMI's unneeded records now, prior to the expiration of the Lease, the Liquidator will be able to use available staff to perform the work under the cost-effective plan developed by the Liquidator's records management staff. Because the Liquidator also plans to complete the administration of the Credit General Insurance Company liquidation estate before the end of 2014, the Liquidator anticipates concluding all of the insurance liquidation estates administered by the Office of the Ohio Insurance Liquidator (the "OIL Office") by the end of 2014. Consequently, the Liquidator anticipates laying off remaining staff and closing the OIL Office by the end of 2014.

12. By destroying LMI's unneeded records now, the Liquidator will avoid the need to reserve funds in the LMI estate for administrative expenses in 2015 resulting from the need to extend the warehouse lease, including storage costs based on warehouse rent estimated to be \$8,275/month (\$6,325 rent plus \$1,950 operating expenses), labor costs based on the fact that the Liquidator will need to hire consultants at an hourly or day rate to perform the work because the Liquidator will have no employees after December 2014, and supply costs consisting of pallets, ladders, carts, shrink wrap etc.). Further, the Liquidator would need to reserve funds in the LMI estate for the administrative expenses of preparing and filing additional court accountings for 2015 transactions, and filing of additional tax returns and forms for the 2015 tax year. These additional administrative expenses would reduce funds available for distribution to LMI's policyholder level claimants.

13. To the best of my knowledge and belief the following records recommended for destruction are no longer needed or of any value to the final administration of the LMI estate:

- a) Pre-liquidation records<sup>1</sup> including but not limited to company records; banking, general

---

<sup>1</sup> The term "records" includes books, records and documents in any medium.

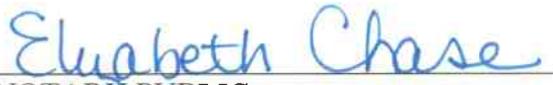
accounting and other financial records; claims, reinsurance, and underwriting records;  
legal litigated records; and

- b) Post-liquidation records that are not specifically required by law to be maintained including but not limited to asset recovery records, claims records, finance records, records of claims that have been finalized, and records regarding guaranty funds whose claims have been finalized.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Lynda G. Loomis  
Chief Deputy Liquidator

SWORN TO BEFORE ME AND SUBSCRIBED in my presence this 22 day of August,  
2014.

  
\_\_\_\_\_  
NOTARY PUBLIC

**ELIZABETH CHASE**  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES MAY 22, 2017