

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

Mary Taylor, Ohio Superintendent of Insurance, in her Capacity as Liquidator of Credit General Insurance Company and Credit General Indemnity Company,	:	
	:	
Plaintiff,	:	Case No. 00 CVH 11-9867
	:	
v.	:	Judge Mark Serrott
	:	
Credit General Insurance Company, et al.,	:	
	:	
Defendants.	:	
	:	
	:	

**PLAINTIFF’S MOTION FOR AUTHORITY TO DESTROY CERTAIN RECORDS
OF CREDIT GENERAL INSURANCE COMPANY STORED AT
THE LIQUIDATOR’S WAREHOUSE**

Mary Taylor, Ohio Superintendent of Insurance, in her capacity as Liquidator (the “Liquidator”) of Credit General Insurance Company, in Liquidation (“CGIC”), requests this Court for an Order authorizing the Liquidator to destroy certain warehoused records no longer needed for the administration of the CGIC liquidation estate and that are no longer of any value. The Liquidator is in the final phase of administering CGIC’s liquidation. The warehoused records will not be used to execute the final distribution in this case, set to occur in October 2014, nor for any other purpose through the closing of the estate, set to occur by this year-end 2014. The Liquidator’s recommended records destruction is in accord with R.C. § 3903.48 and will reduce administrative expenses associated with storing these unneeded records and potentially leave more money for distribution to the policyholder level claimants in the CGIC estate. Destroying the records now will avoid the need to reserve funds for the administrative expense of extending the expiring warehouse lease and hiring people to securely destroy the

warehoused records in early 2015. The requested destruction conserves estate assets for the benefit of policyholders and claimants.

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:

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*Attorney for Mary Taylor, in her capacity as Liquidator of
Credit General Insurance Company*

MEMORANDUM IN SUPPORT

The Liquidation Order entered in this case on January 5, 2001 and R.C. § 3903.48 grant the Ohio Superintendent of Insurance in her capacity as statutory liquidator (the “Liquidator”) of Credit General Insurance Company (“CGIC”) 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 CGIC, the Liquidator recommends that this Court authorize her to proceed with the destruction of CGIC unneeded warehoused records. Records destruction is one of the necessary, final administrative tasks of the Liquidator.

I. Background History

On January 5, 2001, this Court ordered Credit General Insurance Company liquidated. Since then, the Liquidator has proceeded to wind-up CGIC’s affairs in a comprehensive manner. Under this Court’s supervision, the Liquidator identified CGIC’s creditors, collected CGIC’s assets and converted them to cash, established a claims filing deadline, and adjudicated claims filed with the CGIC estate. The Liquidator is preparing the final distribution to claimants in accordance with the statutory priorities. In order to close the CGIC 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 CGIC's estate, the administrative expenses associated with storing its records at the Liquidator's leased warehouse are significant. Now that the Liquidator has completed the administration of CGIC's estate except for the final distribution and final administrative tasks, CGIC'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. CGIC's Closing Plan Was Established in 2012

As previously reported, in 2012, the Liquidator established a closing plan in the CGIC estate to wrap-up all policyholder level claims so that she could finally adjudicate all proofs of claim filed with the CGIC estate and make a final distribution of estate assets pursuant to the priority of distribution provisions contained in R.C. § 3903.42. The Liquidator's stated goal was to complete the final distribution by year-end 2013. However, CGIC's final distribution was prevented by a delay in the Liquidator obtaining the required release of claims from the federal government ("Federal Release") due to numerous potential environmental claims alleged against CGIC's insureds by the U.S. Environmental Protection Agency (the "Alleged EPA Claims"). Despite this setback, the Liquidator worked to complete the majority of her closing plan while seeking to resolve the EPA Claims.

C. Liquidator Resolved Outstanding Claims in 2013

The claims filing deadline in CGIC was January 31, 2002. In 2008, this Court established an Absolute Final Bar Date of March 31, 2009¹ so that the Liquidator could determine the classification, validity and value of the totality of the claims filed and the CGIC estate's overall claims liability in relation to assets so that a final distribution to creditors could be made and the estate closed.

By the end of 2013, the Liquidator completed her review and adjudication of claims, except for those of the federal government, pursuant to R.C. § 3903.42 and § 3903.43. 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 August 17, 2012, and the last of this Court's Orders confirming the claims determinations was issued November 16, 2012.² There were no claimant objections to any of the Liquidator's claims determinations in 2013.

The Liquidator also resolved the claims of all insurance guaranty funds ("IGAs") that paid or are paying policyholder level claims in CGIC.³ The IGAs' claims were resolved without the Liquidator's staff needing to review CGIC's warehoused records. The IGAs have no objection to the destruction of the warehoused records. *See* Loomis affidavit at para. 7.

D. Federal Release Received June 19, 2014 and Court Approved on July 2, 2014

On June 19, 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

¹ 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

² The last evidentiary hearing on objections to the Liquidator's determination of proofs of claim filed by four (4) claimants was held on August 17, 2012. This Court's *Entry Overruling Objections to Liquidator's Determination of Specified Claims and Affirming the Liquidator's Determination* was entered on November 16, 2012.

³ See the Liquidator's *Reports on Status of Liquidation* filed in this case on January 30, 2014, June 6, 2013, May 7, 2012, and June 24, 2011, regarding background on the IGAs' claims.

claims. During the process of resolving the Alleged EPA Claims, the Liquidator's staff accessed certain pre-liquidation warehoused records regarding CGIC'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 since 2012 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 July 2, 2014, the U.S. Department of Justice has no objection to the destruction of CGIC's records. *See* Loomis affidavit at para. 8.

E. CGIC's Warehoused Records

Prior to liquidation, CGIC retained many years of business records. After CGIC's liquidation, the Liquidator transferred CGIC'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 CGIC.

The Liquidator added to the warehouse various records created during the CGIC estate administration. These post-liquidation records were sent to the warehouse when they were no longer needed. The Liquidator has reviewed CGIC's warehoused records to determine what records to preserve and what to destroy. The records recommended for destruction do not include 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.

F. Warehouse Lease Expires December 31, 2014

Importantly, the Liquidator's court-approved lease of the warehouse facilities is set to expire on December 31, 2014.⁴ The Liquidator and the Landlord agreed that not later than July

⁴ On January 22, 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

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 CGIC 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, 2014.⁵ The Liquidator anticipates that under her cost-effective plan, it will take at least two (2) months for her staff to stage, palletize and ship over 14,500 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.

Since the beginning of 2013, the CGIC estate has been charged monthly rent as an administrative service and expense of the estate based on CGIC's actual usage of the warehouse facilities for records storage.⁶ CGIC's actual usage of the warehouse facilities has been 96%.

II. Relief from Retention and Authority to Destroy CGIC Warehoused Records

The Liquidator is set to make a final distribution of the CGIC estate assets in October 2014, and then is set to close the CGIC estate in December 2014. In preparation for the closing of the CGIC estate, the Liquidator now requests the Court to relieve her of any obligation to retain CGIC'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 CGIC estate and are no longer of any value. None of the warehoused

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.

⁵ Certain limited records of closed rehabilitation and liquidation estates have been maintained at the warehouse pursuant to prior court-ordered destruction schedules. By Fall of 2014, the vast majority of those records will be destroyed, leaving primarily CGIC records at the warehouse.

⁶ CGIC's records storage accounts for 96% of the warehouse and LMI Insurance Company's records storage accounts for 4% of the warehouse. *See* January 2, 2013 *Motion for Approval of Lease Amendment*.

records are needed for the CGIC final distribution or closure of the CGIC 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 CGIC 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 December 31, 2014. *See* Loomis Affidavit at para. 12. Significantly, the CGIC estate is one of the two (2) remaining estates administered by the Office of the Ohio Insurance Liquidator. The other estate is LMI Insurance Company (“LMI”). LMI 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 over 14,500 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 CGIC 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 over 14,500 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 CGIC 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*⁷ including but not limited to company and subsidiary records; banking, accounting, investments and other financial records; bonds, claims, underwriting and premium records; legal litigated and legal transactional records; and human resources records for which applicable retention requirements have expired; and *post-liquidation records* that are not specifically required by law to be maintained including but not limited to asset recovery records, finance records, legal and consultant work-product related to concluded litigation and settled reinsurance, records of claims that have been finalized⁸, records regarding guaranty funds whose claims have been finalized.

The Liquidator has fulfilled her fiduciary duty to CGIC'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 CGIC estate described in this Motion that are no longer useful and are not required to complete the administration of the CGIC estate.

⁷ The term "records" includes books, records and documents in any medium.

⁸ In fact, all claims filed against the CGIC estate were determined and finalized in 2013, except for the claim of the federal government, which is now released.

Respectfully submitted,

MIKE DEWINE
Attorney General State of Ohio

By Special Counsel:

/s Valoria C. Hoover _____

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*Attorney for Mary Taylor, in her capacity as Liquidator of
Credit General Insurance Company*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing *Plaintiff's Motion for Authority to Destroy Certain Records of Credit General Insurance Company Stored at the Liquidator's Warehouse* was posted on the Liquidator's website (www.ohliq.com) 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 persons on the attached *Credit General Insurance Company Courtesy Copy E-Mail List* and was served upon the following via ordinary mail on this 9th day of July, 2014:

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/s/ Valoria C. Hoover
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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

Mary Taylor, Ohio Superintendent of	:	
Insurance, in her Capacity as Liquidator of	:	
Credit General Insurance Company and	:	
Credit General Indemnity Company,	:	
	:	
Plaintiff,	:	Case No. 00 CVH 11-9867
	:	
v.	:	Judge Mark Serrott
	:	
Credit General Insurance Company, et al.,	:	
	:	
Defendants.	:	
	:	
	:	

AFFIDAVIT

STATE OF OHIO)
) **SS:**
COUNTY OF FRANKLIN)

Affiant, Lynda G. Loomis, being duly sworn in accordance with law, deposes and states as follows:

1. My name is Lynda G. Loomis and I am Chief Deputy Liquidator of Credit General Insurance Company as appointed by Mary Taylor, Superintendent of the Ohio Department of Insurance.

2. In my capacity as Chief Deputy Liquidator, I supervise those employees of the Liquidator who have custody of and are responsible for maintaining the documents of the Credit General Insurance Company (“CGIC”) liquidation estate.

3. As part of the routine administration of liquidation estates, the Liquidator stores records that were placed in storage by the insolvent company prior to liquidation, records that were onsite at the company at the time of its liquidation that were subsequently moved to the

Liquidator's leased warehouse facilities, and records that were generated, gathered or received as part of the liquidation process. As the liquidation proceeds, an analysis is done as to whether or not the records are needed and/or useful in the administration of the liquidation estate. When the 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 CGIC estate, the Liquidator has stored over 14,500 boxes of CGIC records in her leased warehouse facilities. The vast majority of the records are pre-liquidation business records of CGIC and its subsidiary, Credit General Indemnity Company ("Indemnity"). The Indemnity liquidation proceeding was closed in 2013 and its records ordered destroyed by the Court. However, many of the warehoused records were joint CGIC-Indemnity records and it was not economically feasible to separate the Indemnity records for destruction. Records generated during CGIC'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 CGIC final distribution or closure of the CGIC estate. The warehoused records are no longer of any value.

6. Pursuant to the closing plan established in 2012 for the CGIC estate, the Liquidator has resolved all outstanding claims in the estate and has completed CGIC's estate administration except for the final distribution and final administrative tasks, which include the closing of the CGIC estate.

7. The outstanding claims resolved included the claims of all insurance guaranty funds ("IGAs") that paid or are paying policyholder level claims in CGIC. The IGAs' claims were resolved without the Liquidator's staff needing to review CGIC's warehoused records. The

Liquidator asked each IGA if it wanted copies of any claim files in the Liquidator's possession. The Liquidator completed shipping copies of files to the seven (7) IGAs that requested copies. The other IGAs advised the Liquidator that they did not want 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 CGIC records.

8. The Liquidator's staff accessed CGIC's warehoused records only one time since 2012. That time was in 2013, when the staff reviewed CGIC's pre-liquidation records concerning CGIC's insurance programs and policy provisions in connection with the Liquidator's negotiation of the resolution of potential environmental claims alleged against CGIC insureds by the U.S. Environmental Protection Agency. In June, 2014, the U.S. EPA released all alleged claims against the CGIC 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 CGIC and the United States provides that under the terms of the Release Agreement, CGIC 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.

9. On June 23, 2014, I informed Matthews Properties, Inc., the Landlord for the leased warehouse facilities, that because the CGIC 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 eight (8) weeks to clear the warehouse of the 14,500+ boxes of CGIC 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 completed in time to allow other tasks to be completed in order to vacate the warehouse by December 31, 2014.

11. By destroying CGIC'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 LMI Insurance Company liquidation estate before the end of 2014, the Liquidator anticipates concluding all of the estates administered by the Office of the Ohio Insurance Liquidator (the "OIL Office"). Consequently, the Liquidator anticipates laying off remaining staff and closing the OIL Office by the end of 2014.

12. By destroying CGIC's unneeded records now, the Liquidator will avoid the need to reserve funds in the CGIC 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 CGIC

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 CGIC'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 CGIC estate:

- a) Pre-liquidation records¹ including but not limited to company and subsidiary records; banking, accounting, investments and other financial records; bonds, claims, underwriting and premium records; legal litigated and legal transactional records; and human resources records for which applicable retention requirements have expired; and
- b) Post-liquidation records that are not specifically required by law to be maintained including but not limited to asset recovery records, finance records, legal and consultant work-product related to concluded litigation and settled reinsurance, records of claims that have been finalized, 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 9 day of July, 2014.



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

¹ The term "records" includes books, records and documents in any medium.