

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

MARY TAYLOR,
SUPERINTENDENT OF INSURANCE,
OHIO DEPARTMENT OF INSURANCE,
IN HER CAPACITY AS LIQUIDATOR OF
ACCELERATION NATIONAL
INSURANCE COMPANY,

CASE NO. 00-CV-010534

Plaintiff,

v.

JUDGE LYNCH

ACCELERATION NATIONAL
INSURANCE COMPANY,

Defendant.

PLAINTIFF'S MOTION FOR AUTHORITY TO DESTROY CERTAIN RECORDS

Mary Taylor, Ohio Superintendent of Insurance, in her capacity as Liquidator (the "Liquidator") of Acceleration National Insurance Company, in Liquidation ("ANIC") hereby moves this Court for an Order authorizing the Liquidator to destroy certain categories of ANIC records that are identified in the memorandum in Support of this Motion. Many of these records have not been used during the course of the ANIC liquidation. These records will not be used to administer the remainder of the ANIC liquidation estate, which the Liquidator expects to close this year.

The Liquidator further seeks authority to destroy a small number of records of the Liquidator related to ANIC claims that are stored on the same pallets as the above-referenced ANIC records. These documents have not been used since at least 2009 and will not be used to administer the remainder of the ANIC liquidation estate, yet the estate

continues to incur the cost of storing them. These Liquidator records are otherwise scheduled to be destroyed at the time the estate is closed.

The destruction of these records is in accord with and the Ohio Liquidation Statutes, including O.R.C. § 3903.48. The records are no longer useful. Destruction of the records will reduce the administrative expenses associated with keeping and storing the records and thereby conserve estate assets for the benefit of a final distribution of assets to policyholders and claimants. This Motion is supported by the attached Memorandum in Support.

Respectfully submitted,

MIKE DEWINE
Attorney General of Ohio

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Acceleration Insurance Company*

MEMORANDUM IN SUPPORT

On February 28, 2001, Acceleration National Insurance Company (“ANIC”) was ordered liquidated under Ohio Revised Code Chapter 3903. Throughout the ANIC liquidation, the Liquidator has, among other duties, thoroughly reviewed the books and records of ANIC, and identified and collected, where reasonable, all known assets of ANIC. The Liquidator has also reviewed, classified, valued, reported and partially paid all allowed claims against the ANIC estate. *See* O.R.C. §§ 3903.42, 3903.43. The Liquidator is preparing to close the ANIC estate in 2012.

The Liquidation Order and O.R.C. § 3903.48 authorize the Liquidator to determine when company records are no longer useful to the liquidation and, in those circumstances, recommend to this Court that the records be destroyed. O.R.C. § 3903.48 provides:

Whenever it shall appear to the superintendent of insurance that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he may recommend to the court and the court shall direct what records should be retained for future reference and what should be destroyed.

Prior to liquidation, ANIC rented warehouse space from Cintas Document Management, *fla* Andrews Records Management Inc. and United Van Lines (collectively, “Cintas”) to store historical company records. The Liquidator maintained these records in the manner ANIC kept them until 2009. In 2009, the Liquidator consolidated warehouse facilities utilized by ANIC and various other estates to reduce overhead expenses to the estates. At that time, the Liquidator terminated the contract with Cintas. The Liquidator moved the ANIC records that she thought she might need to access prior to closing the estate to a warehouse space near the Liquidation Office. The Liquidator also moved ANIC records that she knew she would not need to access again, in part because they were not related to any pending dispute or proof of claim, to Fireproof Records Center to store on

pallets until the estate is closed, whereupon the records would be destroyed at the time the estate is closed.

In preparation for the closing of the ANIC estate in the coming months, the Liquidator is now requesting the Court to authorize the destruction of certain categories of ANIC records. The first category is 279 boxes currently stored at the Liquidator's warehouse that, in actuality, have, to date, not been used in the administration of the ANIC liquidation estate and will not be useful in the remaining administration of the ANIC liquidation estate. *See e.g.* O.R.C. § 3903.48, *supra*. The records in these 279 boxes are identified as follows:

1. 202 pre-liquidation boxes generally identified on Exhibit A as, treasury, accounting, stock and other miscellaneous corporate records, which have never been used during the ANIC liquidation proceeding.
2. 77 pre-liquidation boxes which are not identified on an inventory or Exhibit because ANIC and the Liquidator did not deem the documents or an inventory of the documents useful to the takeover of ANIC and the administration of the ANIC liquidation estate.

The Liquidator recommends pursuant to O.R.C. § 3903.48, *supra*, that records of ANIC in the second category of records described above should be destroyed.

The second category of records is ANIC records currently stored for destruction on ten (10) pallets at Fireproof Records Center. A pallet contains approximately 30 boxes.

The records on the pallets are identified as follows:

1. ANIC closed claim files (stored on pallets 106, 107, 108, 109, 110, 111, 112, 113 and 114).
2. ANIC pre-liquidation policies (stored on pallet 153).
3. Copies of original claims files and miscellaneous papers (stored on pallets 106, 107, 110 111 and 114).
4. ANIC pre-liquidation underwriting files (stored on pallet 153).

The second category of records does not involve a pending dispute. All claims and proofs of claims (except two IGA proofs of claim not involving the records stored at Fireproof) in this liquidation have been finally and fully resolved, determined, reported and approved by this Court pursuant to O.R.C. § 3903.43. The Liquidator has also already made two interim distributions on allowed claims. Therefore, there can be no future dispute or issue about claims at these final stages of this liquidation. The Liquidator recommends pursuant to O.R.C. § 3903.48, *supra*, that records of ANIC in the second category of records described above should be destroyed.

The third category of records the Liquidator moves to immediately destroy is the minimal records of the Liquidator's claims staff. The third category of records stored for destruction are on the same ten (10) pallets at Fireproof Records Center as the ANIC records in the second category. They include, for example, copies of post-liquidation reports over the course of the liquidation of claims payments submitted by the various insurance guaranty associations (IGAs) that paid policyholder claims as a result of ANIC's liquidation. These reports are used by the Liquidator primarily to determine the value of the IGAs' resulting proofs of claims in the liquidation case. These copies are not necessary to the remaining administration or closure of the ANIC estate because the same documents are maintained electronically and because the Liquidator, the IGAs and this Court have finalized and approved the IGAs' proofs of claims in this case, except for the two IGAs noted above. The documents stored at Fireproof are not necessary or relevant to resolution of the two remaining IGA proofs of claims.

The Liquidator has fulfilled her fiduciary duty to policyholders, creditors, and claimants by determining that the documents are no longer of value as they are not required to administer the remainder of the ANIC liquidation estate and the documents can

be destroyed. The ongoing expense of retaining such documents should not be the responsibility of the estate in these circumstances. Furthermore, the records must be destroyed at closing anyway. By doing so now, the ANIC estate ceases to incur continued storage costs. There is no charge to the estate for the planned destruction of the 279 boxes at the Liquidator's warehouse (the first category) and a charge of \$1,207.00 for the destruction of the records at Fireproof Records Center (the second and third category).

For the reasons stated above, the Liquidator moves this Court for an order pursuant to the Liquidation Order and O.R.C. § 3903.48, that authorizes and directs the immediate destruction of the 279 boxes of ANIC records currently stored in the Liquidator's warehouse and 10 pallets of records currently stored at Fireproof Records Center identified in this Motion that the Liquidator has selected for destruction because these records are no longer useful to administering the ANIC liquidation estate.

Respectfully submitted,

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