

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

MARY TAYLOR, Ohio Superintendent of Insurance, in her capacity as Liquidator of Acceleration National Insurance Company,	:	
	:	
	:	Case No. 00-CV-010534
	:	
Plaintiff,	:	
	:	Judge Julie M. Lynch
v.	:	
	:	
Acceleration National Insurance Company,	:	
	:	
Defendant.	:	

**PLAINTIFF’S APPLICATION FOR ORDER TERMINATING THE LIQUIDATION PROCEEDINGS OF ACCELERATION NATIONAL INSURANCE COMPANY**

Plaintiff, Mary Taylor, Ohio Superintendent of Insurance in her capacity as Liquidator of Acceleration National Insurance Company (“ANIC”), respectfully requests a Final Closing Order pursuant to R.C. 3903.46(A) and related sections granting this Application, discharging the Liquidator and making other provisions to close this liquidation estate. A Memorandum in Support is attached.

Respectfully submitted,

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Attorney General State of Ohio  
By Special Counsel:  
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**MEMORANDUM IN SUPPORT**

On October 15, 2012, this Court entered an Order granting the Liquidator's Amended Motion and Application For Order Approving Liquidator's Final Report of Class 1, 3 and 5 Claims and Corrected Final Report of Class 2 Claims, Reserve and Payment of Administrative Expenses and Authorizing Final Distribution of Assets of Acceleration National Insurance Company (the "Liquidator's Motion"). Immediately thereafter, the Liquidator completed her final distribution of all ANIC assets to allowed claimants in Classes 1 and 2 (as defined in R.C. 3903.42) on their allowed proofs of claims.

Now that the final distribution is complete, the Liquidator requests a Final Closing Order discharging the Liquidator, dissolving ANIC and making other standard provisions to close the ANIC liquidation estate and terminate this case pursuant to R.C. 3903.46(A) and related sections. R.C. 3903.46(A) provides:

When all assets justifying the expense of collection and distribution have been collected and distributed under sections 3903.01 to 3903.59 of the Revised Code, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are uneconomic to distribute, as may be appropriate.

**I. Unclaimed Funds**

All of the final distribution checks were negotiated. None were returned to the Liquidator as undeliverable. Therefore, there are no unclaimed funds to distribute under R.C. 3903.35 or R.C. 3903.46(A). Funds, if any, which are received after the termination of this case will be returned to sender.

## **II. Discharge, Dissolution and Closure**

The Liquidator has reviewed the remaining books and records of the ANIC liquidation estate and determined that all matters involving the estate have substantially been finalized, other than several ministerial functions set forth below which cannot be performed until after the closing of the liquidation takes place.

### **A. Final Accounting and Final Auditor's Report**

Primary post-closure ministerial functions include the preparation of a final accounting and a final independent auditor's report of the estate, in the form of previous periodic accountings and auditor's reports submitted to this Court. This final accounting for the period ending December 31, 2012 will be filed upon its completion in the first quarter of 2013. The final auditor's report will be filed with the Court upon its completion in or around September 2013.

### **B. 2012 Tax Return**

Because the final distribution and final closing of the estate will take place in 2012, a final ANIC 2012 tax return will be prepared and filed with the Internal Revenue Service ("IRS") post-closing in 2013.

### **C. Disposition of Insurer's Records**

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.

The Liquidator has already destroyed many ANIC paper and electronic records pursuant to prior orders of this Court, including the orders entered in this case on May 1, 2009 and May

15, 2012. In July, the Liquidator internally implemented a revised document retention schedule for all open estates under which the vast majority of records are destroyed at or within one year of closure of the estate, unless required by law to be retained for a longer period of time. The Liquidator now requests, consistent with the revised schedule, that this Court relieve her of any obligation she may have to retain and authorize her to immediately destroy: (1) any and all remaining pre-liquidation books, records and documents in any medium; and (2) all post-liquidation books, records and documents in any medium, that are not required to be maintained pursuant to applicable federal and state records retention requirements. This will result in the destruction immediately of all remaining ANIC and Liquidator/Liquidation staff records, including but not limited to all proofs of claims and all work papers of the Liquidator and her staff, except for certain, limited tax and accounting records.

The Liquidator strives to use secure methods of destruction. The Liquidator has an internal procedure requiring shredding as the manner of destruction of all paper records that contain personally identifiable information. The vast majority of remaining paper records in this case will be destroyed by one or more contracted third parties, in this case Omaha Paper and Fireproof Records Center. These vendors assure the Liquidator that they destroy paper records by shredding or incineration, and provide the Liquidator with a certificate of destruction. The Liquidator deletes or otherwise removes electronic records from her own servers and systems. In this case, the Liquidator does not have any computers from ANIC or dedicated solely to ANIC; therefore, the Liquidator will not make provisions in this case for the secure destruction of computers. The Liquidator has backup tapes from ANIC's pre-liquidation computer systems that she will securely destroy at closing.

Under paragraph 2 of the Federal Release Agreement between the Chief Deputy Liquidator and the United States of America that this Court approved on March 14, 2012:

. . . the United States or its duly authorized representative shall have the right, prior to the destruction of Acceleration's records in accordance with the orders of the Court, during normal business hours, on a date and at a location agreed upon by the Parties, to inspect, and if it wishes, to copy at its own expense, such documents, books, and records of the estate, and of the Chief Deputy Liquidator, as shall be reasonably necessary to determine the existence and amount of claims the United States may have against the Acceleration estate, or to determine the Chief Deputy Liquidator's compliance with the terms of this Release Agreement. No documents, books, or records of the estate or Chief Deputy Liquidator may be destroyed unless notice is given to the United States of any motion filed with the Court requesting approval of the destruction.

Service of this Application on the United States Department of Justice is notice to the United States of this application and notice that all of the remaining books or records of the ANIC estate and the Chief Deputy Liquidator, other than limited tax and accounting records, will be destroyed on or about November 30, 2012, and that the United States must advise the Chief Deputy Liquidator in writing on or before 5:00 p.m. Eastern Time on November 23, 2012 if the United States wishes, to inspect or copy at its own expense, any documents, books, and records of the estate or of the Chief Deputy Liquidator.

**D. Dissolution of ANIC**

Pursuant to R.C. 3903.20, the corporate entity of ANIC is dissolved by operation of law once the Liquidator is discharged under R.C. 3903.46(A).

**E. Closing ANIC Bank Accounts**

Once an estate is closed and the corporate entity of ANIC dissolved, ANIC cannot hold bank accounts. This is true of all closed estates. The Liquidator therefore closes the bank accounts upon closure of the estate and administers and accounts for the administrative reserve pursuant to the long standing Administrative Operating Procedure updated and approved most in

this case on January 26, 2011 (the “updated AOP”). The updated AOP was filed beginning on December 16, 2010 in all active cases that were not in the process of closing. The process set forth in the updated AOP for Closed Estates has been in place since the early 1990s. The updated AOP does not contradict the prior AOP filed in this case. Accordingly, in this liquidation, the Liquidator requests authority to immediately close the ANIC bank accounts, whereupon any remaining reserve funds will be prepaid to the LMI Liquidation Estate in exchange for the LMI Estate’s assumption and administration of the remaining administrative expense obligations of the ANIC Estate. As referenced in the Liquidator’s Motion, the payment and receipt of remaining reserve funds will be accounted for in the LMI periodic accountings, but the expenditure of it is not separately tracked, accounted for or reported pursuant to the practice set forth in the updated AOP.

### **III. Conclusion**

For the reasons set forth above, the Liquidator respectfully requests that this Court enter an Order:

1. Pursuant to R.C. 3903.46(A), finding that the Liquidator shall return to sender any funds received after the termination of this case.
2. Pursuant to R.C. 3903.46(A), authorizing the Liquidator or her designee to retain limited authority for the following purposes: (a) filing a final accounting with the Court; (b) filing a final audit report with the Court; (c) executing the ANIC 2012 tax return and filing the return with the Internal Revenue Service in the manner provided by law; and (d) taking all related actions as authorized or as deemed necessary and appropriate by the Liquidator to close the ANIC liquidation estate and carry out various sections of R.C. Chapter 3903 and prior orders of this Court.
3. Pursuant to R.C. 3903.46(A) and related sections, authorizing the Liquidator to immediately close ANIC’s bank accounts, whereupon any remaining reserve funds will be prepaid to the LMI Liquidation Estate pursuant to the updated AOP approved by this Court in this Case on January 26, 2011. The payment and receipt of remaining reserve funds will be accounted for in the LMI periodic accountings, but the expenditure of it is not separately tracked, accounted for or reported pursuant to the practice set forth in the updated AOP.

4. Pursuant to 3903.20, that the corporate entity of Acceleration National Insurance Company is hereby dissolved.
5. Pursuant to R.C. 3903.46(A) and 3903.48, finding that the Chief Deputy Liquidator complied with the notice provisions of the Federal Release Agreement and approving and authorizing the destruction on or after November 30, 2012 of the pre-liquidation and post-liquidation books, records and documents of ANIC, the Liquidator or anyone else as follows: (a) remaining pre-liquidation books and records in any medium, shall be immediately destroyed; (b) all remaining post-liquidation books and records in any medium that are not specifically required by law to be maintained shall be immediately destroyed, and (c) finding that the Liquidator has no duty or obligation to preserve any books, records or documents in any medium or anything else related to ANIC as possible discovery, evidence or other production in any future litigation, bankruptcy, investigation or contested matter.
6. Pursuant to R.C. 3903.46(A), finding that ANIC's remaining physical assets are uneconomic to liquidate or distribute, and approving and authorizing the Liquidator to abandon such physical assets.
7. Pursuant to R.C. 3903.46(A), ordering the abandonment of uncollected claims.
8. Pursuant to R.C. 3903.46(A) and R.C. 3903.07, discharging the Liquidator and providing protections afforded under R.C. 9.86, 9.87, 109.36 to 109.366 [109.36.6] to the Liquidator, her predecessors and successors, any and all former and current deputy liquidators, any former and current employees of the Ohio Department of Insurance, any former or current employee appointed by the Superintendent as Liquidator, and any former or current employee who serves under the Liquidator.
9. Pursuant to R.C. 3903.46(A) and related statutes, releasing the Liquidator, her predecessors, successors and any and all current and former deputy rehabilitators, current and former deputy liquidators, current and former agents or employees of the Liquidator or the Office of the Ohio Insurance Liquidator and current and former employees of the Ohio Department of Insurance, of all claims and liability of any nature whatsoever and whenever incurred (including but not limited to costs, expenses and attorneys' fees) relating to, involving or arising out of any and all actions, decisions, conduct, transactions, or events that were alleged or that could have been alleged in the ANIC liquidation proceedings or in any other litigation that in any way relates to or involves ANIC, the ANIC rehabilitation or liquidation proceedings, or any proceedings related to ANIC or the ANIC rehabilitation or liquidation proceedings.
10. Finding that all other matters regarding the liquidation of ANIC have been finalized in accordance with the Orders of this Court, and effective immediately, the ANIC liquidation estate is closed and this case is terminated.

Respectfully submitted,

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Liquidator of Acceleration National Insurance  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing APPLICATION FOR ORDER TERMINATING THE LIQUIDATION PROCEEDINGS OF ACCELERATION NATIONAL INSURANCE COMPANY was served upon the following via Regular U.S. Mail, postage prepaid, and by email to [sharon.williams@usdoj.gov](mailto:sharon.williams@usdoj.gov), on this 14<sup>th</sup> day of November, 2012:

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