

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

Ann H. Womer Benjamin,
Ohio Superintendent of Insurance
in her Capacity as Liquidator of
American Druggists' Insurance Company,

Plaintiff,

v.

American Druggists' Insurance Company,

Defendant.

Case No. 86CV-03-384

Judge Charles Schneider

FILED
 COMMON PLEAS COURT
 FRANKLIN CO, OHIO
 06 SEP 18 AM 10:04
 CLERK OF COURTS

**MOTION FOR ORDER AUTHORIZING: FINAL DISTRIBUTION, RESERVE FOR
REMAINING ADMINISTRATIVE EXPENSES, HANDLING OF REMAINING ASSETS
OF THE ESTATE, AND CLOSING OF ACCOUNTS**

Plaintiff, Ann H. Womer Benjamin, Ohio Superintendent of Insurance, in her capacity as Liquidator (the "Liquidator") of American Druggists' Insurance Company ("ADIC"), hereby moves this Court for an Order as follows:

1. pursuant to R.C. 3903.45(A), 3903.42 and 3903.46(A), authorizing the final distribution of remaining ADIC assets in the total amount of Fifteen Million, Seven Hundred Fifty-Seven Thousand, Six Hundred Thirty Dollars and Eighty-Five Cents (\$15,757,630.85) pro rata to all allowed claims in this Liquidation, except for those claims identified in paragraph 2 below, in accordance with the Reports of Claims for Class 2, 3, 5, 6, 8, and 9 claims attached hereto as Exhibits A, B, C, D, E, and F, respectively (collectively, the "Reports of Claims");
2. pursuant to R.C. 3903.45(A), approving the Liquidator's determination that: (1) the payments approved for the Lost Claimants (as defined below and identified in the attached Exhibit G) are "unclaimed funds" under R.C. 3903.45(A); (2) the

“unclaimed funds” shall be included in the amount to be distributed in this final distribution; and (3) the Lost Claimants shall not be included in the final distribution.

3. pursuant to R.C. 3903.45(A), 3903.42 and 3903.46(A), approving the allocation, distribution, and final accounting of those funds remaining in the estate for funding of administrative expenses, as set forth in detail in Exhibit H attached hereto;
4. pursuant to R.C. 3903.46(A), finding that all ADIC’s remaining physical assets are uneconomic to distribute and approving the transfer of those assets to the liquidation estate of LMI Insurance Company;
5. pursuant to R.C. 3903.46, approving the Liquidator’s recommendation for final disbursement of the Collateral Balance, as defined below;
6. pursuant to R.C. 3903.46, authorizing the Liquidator or her designee to retain funds not negotiated by final distribution claimants, and, collect and hold other assets of ADIC received after the closing of this liquidation until such time as it is determined that either (1) there are sufficient funds held to reopen the liquidation and make another distribution pursuant to R.C. 3903.47, or (2) such assets are needed to defray administrative expenses for other Ohio insurance receiverships pursuant to R.C. 3903.14(A) and 3903.21(A)(4); and

7. approving the closing of the ADIC bank accounts by the Liquidator on or before December 31, 2006.

Respectfully submitted,

JIM PETRO
Attorney General State of Ohio

By Special Counsel:
KEGLER, BROWN, HILL & RITTER
A Legal Professional Association



John P. Brody (0012215)
Richard W. Schuermann, Jr. (0032546)
65 East State Street, Suite 1800
Columbus, OH 43215
(614) 462-5400
Attorneys for Ann H. Womer Benjamin,
Ohio Superintendent of Insurance, in her
Capacity as Liquidator of American
Druggists' Insurance Company

MEMORANDUM IN SUPPORT OF MOTION

On April 30, 1986, this Court issued an order placing ADIC in liquidation pursuant to Ohio Revised Code (“R.C.”) Chapter 3903 and appointing the Ohio Superintendent of Insurance as Liquidator (the “Liquidation Order”). Since the date the Liquidation Order was entered, the Liquidator has thoroughly reviewed the books and records of ADIC, has identified and collected, where reasonable, all known assets of ADIC, and has reviewed, valued, and classified all known claims of ADIC. The Liquidator has also entered into a settlement agreement with Armco, Inc. (“Armco”), pursuant to which Armco caused all of the stock in ADIC to be transferred to the Liquidator.¹

The Liquidator has made multiple distributions to claimants holding allowed claims during the life of this liquidation. On October 23, 2000, this Court approved the Liquidator’s early access and partial distribution relating to Class 1 and 2 claims of the various state guaranty associations in an amount equal to seventy-five percent (75%) of the amount reported by each guaranty association. This partial distribution to these guaranty associations was in the amount of Thirty Million, Three Hundred Ninety-Three Thousand, Seven Hundred Twenty-Three Dollars and Thirty-Three Cents (\$30,393,723.33).

On December 19, 2003, this Court approved the Liquidator’s additional distribution relating to Class 1 and 2 claims in the amount of Fourteen Million, Seven Hundred and Forty-Seven Thousand, One Hundred Ninety-Five Dollars and Ninety-Three Cents (\$14,747,195.93). At that time, one of these claims, the New York Liquidation Bureau, had yet to be determined, and the claim of Harry Rivere was inadvertently listed at zero when it was actually in the amount of Thirty Thousand Dollars (\$30,000.00). On July 23, 2004 the Court approved the Liquidator’s

¹ All of the outstanding shares of ADIC were owned by Armco Insurance Group, Inc., a wholly owned subsidiary of Armco Financial Services Corporation, a wholly owned subsidiary of Armco.

Supplemental Report of Claims and additional distribution to these two Class 2 claimants—New York Liquidation Bureau and Rivere—in the amount of Two Million, Four Hundred Forty-One Thousand, One Hundred Fifty-Five Dollars and Six Cents (\$2,441,155.06).

On June 17, 2005, this Court approved the Liquidator’s Report of Claims and distribution relating to Class 3, Class 4 (no determined claims), and Class 5 claims, including a one hundred percent (100%) distribution of Class 3 (federal claims) and Class 5 claims (general creditors), in the total amount of Sixty-Six Million, One Hundred Eighty Thousand, Four Hundred Fifty Dollars and Seventy-Five Cents (\$66,180,450.75). Finally, on January 20, 2006, this Court approved the Liquidator’s Report of Claims and distribution relating to Class 6, Class 7 (with all of Class 7 claims being zero valued), Class 8, and Class 9 (consisting of the remaining portion of Class 6 claims of state or local government that are based upon penalty or forfeiture, are not part of a pecuniary loss claim, and are statutorily relegated to Class 9), including a one hundred percent (100%) distribution to Class 6, Class 8, and Class 9 claims, in the total amount of Six Million, Five Hundred Four Thousand, Three Hundred Fifty-Three Dollars and Six Cents (\$6,504,353.06), and approved the foreclosure and/or disallowance of any contingent or future Class 6, Class 7, Class 8, and Class 9 claims and any Class 6, Class 7, Class 8, and Class 9 claims not included with the Reports of Claims and not previously disallowed or zero valued.

The specific claimants, who received these prior distributions, were identified in the motions seeking Court approval for each distribution. At this time, there remain certain of those claimants, who have not negotiated the distributions that were sent to them or whom the Liquidator has been unable to locate (the “Lost Claimants”). The Lost Claimants are identified on Exhibit G. R.C. 3903.45(A) provides:

[a]ll unclaimed funds subject to distribution remaining in the liquidator's hands when he is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, shall be distributed in accordance with section 3903.42 of the Revised Code among those claimants to whom it is possible to make immediate payment.

Since the Lost Claimants have not timely negotiated the prior distributions that were sent to them and since the Liquidator is unable to locate them, the Liquidator requests that the Court approve her determination that: (1) the payments previously approved for the Lost Claimants are “unclaimed funds” under R.C. 3903.45(A); (2) the “unclaimed funds” shall be included in the amount to be distributed in this final distribution; and (3) the Lost Claimants shall not be included in the final distribution.

After the foregoing distributions, and including the “unclaimed funds” referenced above, the Liquidator holds remaining assets of ADIC, in the total amount of Sixteen Million, one Hundred Forty-Five Thousand, Six Hundred Sixty-Nine Dollars and Fifty-Nine Cents (\$16,145,669.59) as of August 31, 2006 (the “Current Asset Balance”). At this time the Liquidator is prepared, with the approval of this Court, to make a final distribution to claimants holding allowed claims as reflected on the Reports of Claims. These allowed claims have already been approved by the court and are listed respectively by class in Exhibits A, B, C, D, E and F attached hereto. The Lost Claimants are not included on these Exhibits. There were no claims allowed in Classes 4 and 7.

In determining the amount to be disbursed to these claimants in this final distribution, the Liquidator must make three adjustments to the Current Asset Balance. First, the Liquidator must subtract from the Current Asset Balance the balance of the unused collateral that the Liquidator is still holding. This collateral was received by ADIC from policyholders, who were required to post collateral to secure contingent obligations that the policyholders had to ADIC. As of

August 31, 2006, the balance being held as collateral was Three Hundred Thirty-Three Thousand, Six Hundred Thirty-Two Dollars and Twenty-Eight Cents (\$333,632.28) (the “Collateral Balance”). Since all claims of ADIC have been finally determined, the Liquidator has determined that this Collateral Balance is no longer needed to secure the policyholders’ obligations to ADIC and thus, the collateral should be returned to the specific policyholders, who paid it to ADIC.

The Liquidator has undertaken extensive efforts to return this collateral to the appropriate policyholders, but the Collateral Balance remains as a result of the inability to finalize arrangements to return it to successors of the appropriate policyholders or the inability to find the appropriate policyholders. The Liquidator expects to be able to yet return some of this Collateral Balance, but any of the Collateral Balance that is not returned to policyholders will be disbursed pursuant to R.C. Chapter 169. In the event that the Liquidator is unable to return all of the Collateral Balance by the time she closes the ADIC bank accounts, the Liquidator requests authorization to transfer any remaining Collateral Balance to a separate account maintained by the Liquidator for one of the other currently open liquidation estates until it is all finally disbursed. Thus, in determining the amount to distribute in her final distribution to claimants, the Liquidator will subtract the Collateral Balance from the Current Asset Balance.

The second adjustment necessary to the Current Asset Balance is for administrative expenses that the Liquidator will incur following the filing of this motion. The Liquidator estimates that the administrative expenses necessary to fully conclude the administration of this Liquidation total One Hundred Fifty-Eight Thousand, Seven Hundred Seventy-Five Dollars (\$158,775.00) (the “Projected Administrative Expenses”) and a detailed explanation of those expenses is attached hereto as Exhibit H.

Third, the Liquidator believes that ADIC will receive additional investment income between August 31, 2006 and the time that the final distribution checks ultimately clear ADIC's accounts. This additional investment income is estimated to be One Hundred Four Thousand, Three Hundred Sixty-Eight Dollars and Fifty-Four Cents (\$104,368.54) (the "Projected Investment Income") and the Liquidator believes that this amount should be added to the Current Asset Balance for purposes of calculating the amount to be distributed in this final distribution.

After adding the Projected Investment Income to the Current Asset Balance and subtracting the Collateral Balance and the Projected Administrative Expenses, the Liquidator is left with the balance of Fifteen Million, Seven Hundred Fifty-Seven Thousand, Six Hundred Thirty Dollars and Eighty-Five Cents (\$15,757,630.85), which she intends to distribute pro rata to all allowed claims in this Liquidation, as explained above. This results in a final payment of 13.337% of the amount of each allowed claim in Classes 2, 3, 5, 6, 8, and 9, excluding the Lost Claimants. The amount of each claimants' final payment is reflected in Exhibits A, B, C, D, E, and F.

Since all claimants have already received 100% distribution on their claims, this final distribution will result in each claimant receiving a sum greater than the principal amount of that claimant's allowed claim. R.C. 3903.42 does not provide clear direction as to how assets are to be distributed once all allowed claims have been paid in full. The statutory direction with respect to unclaimed funds is set forth in R.C. 3903.45(A), which states that such funds must be distributed in accordance with R.C. 3903.42 and "among those claimants to whom it is possible to make immediate payment." In addition, R.C. 3903.46(A) specifically authorizes this Court, in connection with the Liquidator's application for discharge, to "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.” With little statutory direction for this specific situation and since all allowed claims have already been paid in full, the Liquidator proposes a pro rata distribution of the remaining assets, after the adjustment discussed above, to all Class 2, 3, 5, 6, 8, and 9 claimants whose claims have previously been allowed and valued, excluding the Lost Claimants.

Once this final distribution is made, it is the Liquidator’s experience that not all of the distribution checks will be negotiated by the claimants to whom they are sent. This always presents a problem in closing a liquidation estate. The Liquidator would like to close the ADIC liquidation estate and all ADIC accounts by December 31, 2006, including completion of a final accounting, a final audit and a final tax return. In the likely event that there remain funds in the ADIC account at December 31, 2006, because the claimants have not negotiated some of these final distribution checks, the Liquidator herein seeks the approval of this Court to transfer such remaining funds to a separate account maintained by the Liquidator for one of the other currently open liquidation estates until such time as it is determined that either: (1) there are sufficient funds held to reopen the liquidation and make another distribution pursuant to R.C. 3903.47, or (2) such assets are needed to defray administrative expenses for other Ohio insurance receiverships pursuant to R.C. 3903.14(A) and 3903.21(A)(4). Also, if one of the ADIC claimants who did not timely negotiate its final distribution check appears and seeks a replacement distribution and the Liquidator has not yet disbursed the remaining funds per (1) or (2) above, the Liquidator may reissue the distribution to such claimant.

Additionally, it is not uncommon for the liquidator to receive payments for the liquidated company after the liquidation is closed. These are usually comprised of unknown assets or small assets that are not sufficiently large enough to keep the liquidation open until they are received.

Absent authority to accept and hold these assets after the closing of the liquidation, the Liquidator would have to return them to the payee. The Liquidator requests approval to administer these funds in the same manner as set forth above.

The Liquidator believes that this proposed handling and use of ADIC's assets following this final distribution is consistent with the enunciated goals of R.C. Chapter 3903 and the Superintendent's duties and powers thereunder. The Liquidator is charged by R.C. Chapter 3903 to administer the estates of insolvent insurance companies and to do so in a manner that promotes the overall purposes of R.C. Chapter 3903, including enhanced efficiency and economy of liquidation. R.C. 3903.02(D)(3). There is nothing whatsoever in R.C. Chapter 3903 that suggests that this goal exists only on an estate-by-estate basis. Indeed, the Liquidator, exercising reasonable discretion in the performance of her official duties, should surely seek solutions that will enhance the efficiency and economy of the liquidation of *all* estates. *Id.*

Further, R.C. 3903.14(A) and 3903.21(A)(4) address the situation where an insurer is in such financial distress that its assets are insufficient to pay the administrative expenses necessary to operate its rehabilitation or liquidation. In those cases, the statutes provide that the Superintendent "may advance the costs so incurred out of any appropriation for the maintenance of the department of insurance. Any amounts so advanced for expenses of administration shall be repaid to the superintendent for the use of the department out of the first available money of the insurer." R.C. 3903.14(A) and 3903.21(A)(4). It is entirely consistent with this statutory authority for the Superintendent to be authorized to retain assets from a closed liquidation, which assets are not sufficient to justify reopening the liquidation, and to use those assets when necessary to meet this statutory plan for funding future insurance receiverships where there are not sufficient funds available from the insolvent insurer.

Authorizing the Liquidator as requested furthers the statutory goal of enhanced efficiency and economy of liquidation because it precludes the necessity for the Liquidator to return repeatedly to the Court in order to deal with the diminishing assets of ADIC, which are not sizable enough to justify reopening of the Liquidation case. The Liquidator therefore proposes that this Court address all of these issues by way of a single order.

In addition, during the course of a liquidation, the Liquidator often uses physical assets, such as desks and filing cabinets, that were owned by the insolvent company prior to the liquidation. This allows for substantial cost savings as the cost of acquiring new physical assets is usually much higher than the Liquidator would obtain from the sale of the company's physical assets. ADIC is no exception. Since 1986, the Liquidator has used some of ADIC's physical assets to carry out the Liquidation. All of those assets have been fully depreciated, but some of them are still in use in the Liquidation office. The Liquidator believes that she would receive virtually nothing for these assets, if she were to try to sell them and therefore wishes to, in effect, have ADIC abandon them.

A transfer of these physical assets to another liquidation estate is consistent with the provisions of R.C. Chapter 3903. Under these circumstances, it is uneconomic to liquidate and distribute the physical assets and this Court may enter an order as appropriate pursuant to R.C. 3903.46(A). Since the Liquidator can continue to use some of these assets, she is seeking authority to transfer these assets to one of the other pending liquidation estates, that of LMI Insurance Company.

Therefore, in consideration of the foregoing, the Liquidator seeks an order from this honorable Court as follows:

1. Approve the Liquidator's recommendation to make a final distribution and pursuant to R.C. 3903.45(A), 3903.42 and 3903.46(A), authorize the Liquidator to make a final distribution of remaining ADIC assets in the total amount of Fifteen Million, Seven Hundred Fifty-Seven Thousand, Six Hundred Thirty Dollars and Eighty-Five Cents (\$15,757,630.85) pro rata to all allowed claims in this Liquidation, except for those claims identified in paragraph 2 below, in accordance with the Reports of Claims for Class 2, 3, 5, 6, 8, and 9 claims attached to the Motion as Exhibits A, B, C, D, E, and F, respectively (collectively, the "Reports of Claims");

2. Approve the Liquidator's determination as to specific claimants, who were to receive distributions per prior orders of this Court, but who have not negotiated the distributions that were sent to them or whom the Liquidator has been unable to locate (the "Lost Claimants"). In addition, pursuant to R.C. 3903.45(A), order that: (1) the payments previously made by the Liquidator to the Lost Claimants as identified in Exhibit G to the Motion are hereby declared to be "unclaimed funds" under R.C. 3903.45(A); (2) the "unclaimed funds" shall be included in the amount to be distributed in this final distribution; and (3) the Lost Claimants shall not be included in the final distribution.

3. Approve the Liquidator's recommendation for the allocation, distribution, and final accounting of those funds remaining in the estate for funding of administrative expenses, as set forth in detail in Exhibit H attached to the Motion, and pursuant to R.C. 3903.45(A), 3903.42 and 3903.46(A), authorize the Liquidator to make such allocation and distribution.

4. All ADIC's remaining physical assets are hereby found to be uneconomic to distribute and pursuant to R.C. 3903.46(A), the Liquidator is hereby authorized to transfer those assets to the liquidation estate of LMI Insurance Company;

5. Pursuant to R.C. 3903.46, the Liquidator's recommendation for disbursement of the Collateral Balance, as defined in the Motion, is approved and the Liquidator or her designee are hereby authorized to transfer the Collateral Balance to a separate account maintained by the Liquidator for one of the other open liquidation estates if necessary to complete that disbursement;

6. Pursuant to R.C. 3903.46, authorize the Liquidator or her designee to retain funds not negotiated by final distribution claimants and to collect and hold other assets of ADIC received after the closing of this liquidation, which funds and assets shall be held in a separate account maintained by the Liquidator for one of the other open liquidation estates (the "Remaining Funds"). In addition, pursuant to R.C. 3903.46, authorize the Liquidator or her designee to utilize the Remaining Funds, as follows: (1) if there are Remaining Funds in an aggregate amount sufficient to justify a redistribution to claimants, the Liquidator may seek to reopen the ADIC Liquidation pursuant to R.C. 3903.47 and obtain approval for redistribution of those funds; and (2) if the Remaining Funds are not sufficient to justify a redistribution to claimants, the Liquidator may continue to hold those funds along with other assets of ADIC received after the closing of this liquidation, until funds are needed to defray administrative costs of future insurance receiverships and may at that time use the Remaining Funds for that purpose. If one of the ADIC claimants who did not timely negotiate its final distribution check appears and seeks a replacement distribution and the Liquidator has not yet disbursed the Remaining Funds per (1) or (2) above, the Liquidator may reissue the distribution to such claimant; and

7. The Liquidator is hereby authorized to close all of the ADIC bank accounts on or before December 31, 2006.

Respectfully submitted,

JIM PETRO
Attorney General State of Ohio

By Special Counsel:
KEGLER, BROWN, HILL & RITTER
A Legal Professional Association



John P. Brody (0012215)
Richard W. Schuermann, Jr. (0032546)
65 East State Street, Suite 1800
Columbus, OH 43215
(614) 462-5400
Attorneys for Ann H. Womer Benjamin,
Ohio Superintendent of Insurance, in her
Capacity as Liquidator of American
Druggists' Insurance Company