

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

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COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
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CLERK OF COURTS-CV

MARY JO HUDSON,  
SUPERINTENDENT OF INSURANCE,  
OHIO DEPARTMENT OF INSURANCE, IN  
HER CAPACITY AS LIQUIDATOR OF THE  
P.I.E. MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

THE P.I.E. MUTUAL INSURANCE  
COMPANY,

Defendant.

CASE NO. 97CVH12-10867

JUDGE JOHN F. BENDER

**JOURNAL ENTRY AND ORDER  
APPROVING MOTION FOR  
AUTHORITY TO DESTROY  
CERTAIN RECORDS OF THE P.I.E.  
MUTUAL INSURANCE COMPANY**

This matter came before the Court for hearing on November 6, 2009 at 9:00 a.m., on a special continuous hearing scheduled by the Court, as noticed pursuant to the continuous hearing notice procedure in this matter, upon the motion ("Motion") of Mary Jo Hudson, Ohio Superintendent of Insurance, in her capacity as the Liquidator of The P.I.E. Mutual Insurance Company ("P.I.E."), for authority to destroy certain approximately 3000 P.I.E. records created by or for P.I.E. pre-liquidation and relating to pre-liquidation matters that are no longer essential to administer the P.I.E. liquidation estate (the "Affected Records"). The vast majority of the Affected Records are confidential claim files and privileged and confidential legal files related to policyholder claims and litigation that were settled or closed prior to the liquidation. Prior to the hearing Mr. Thomas F. McManamon, Jr. submitted a faxed letter to the Court respectfully requesting that no records be destroyed at this time. At the hearing Mr. Dan Snouffer appeared and made the same request orally. No other party objected to the Motion either prior to or at the hearing.

Upon consideration of the Liquidator's Motion and Memorandum in Support and matters presented at the hearing, the Court hereby GRANTS the Liquidator's Motion and further ORDERES, ADJUDGES AND DECREES that:

Messrs. McManamon and Snouffer ("Requestors") may, up to and including December 30, 2009, appear and examine the Affected Records (also referred to as "Confidential Information" in the attached Exhibit A) at their sole expense and in the manner in which they are stored at Fireproof Records Center with no requirement that the Liquidator organize the records in any way, subject to the following requirements. The Affected Records are stored at Fireproof Records Center on pallets in square foot storage. The cost for the retrieval of a box containing an Affected Records for review is \$2.80. There is an additional charge of \$1.00 for every request over 10 boxes. If the Affected Records can be copied without redaction, then Fireproof Records Center charges \$.20 per page to copy any information they store, including the Affected Records. It is probable that all of the Affected Records will require redaction. If redaction is required, Fireproof Records center charges \$19.00/hour for document preparation, plus \$25.00/hour for redaction, plus \$.55 page for scanning of documents and \$25.00 for each CD of documents. In order to inspect the Affected Records, Mr. McManamon or Mr. Snouffer (the "Requesting Parties") must (a) give the Liquidator reasonable notice of their intent to do so; (b) inspect at reasonable times acceptable to the Liquidator and Fireproof by scheduling a time prior to December 30, 2009 to review the records at Fireproof Records Center with the Liquidation Office Warehouse Coordinator, who will be present during all records review; (c) pay in addition to the Fireproof Records Center charges set forth above a standard administrative charge of \$25.00 per hour/per person for any time spent by Liquidation Office staff related to the Requesting Parties' records review, plus actual expenses incurred by the Liquidation Office,; and (d) agree to a confidentiality and non-

disclosure agreement substantially in the form of Exhibit A hereto, whereby the Requesting Parties expressly acknowledge and agree that the Affected Records contain confidential information and personal information of claimants and others and the Requesting Parties agree that they will not examine or copy personal medical or related personal information and records or legally privileged records and information of any claimants, plaintiffs, P.I.E. or other persons (the "Confidential Information"), and that they shall keep such Confidential Information confidential in accordance with the Gramm-Leach-Bliley Act of 1999, Health Insurance Portability and Accessibility Act ("HIPAA"), or any other similar applicable rules, and state laws.

IT IS FURTHER ORDERED that the Requesting Parties shall keep the Affected Records and the information contained therein confidential, and that the Liquidator is and shall be absolved of any further responsibility and immune from any liability regarding the Affected Records and confidential information obtained by the Requesting Parties from the Affected Records.

IT IS FURTHER ORDERED that the Liquidator is hereby authorized and directed to destroy the Affected Records at any time after January 4, without further order of the Court, whether or not they have been inspected pursuant to the provisions of this order.

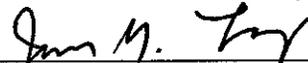


Judge John F. Bender

Respectfully Submitted,

RICHARD CORDRAY  
Attorney General, State of Ohio

By Special Counsel:  
CALFEE, HALTER & GRISWOLD LLP

By:  \_\_\_\_\_

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*Attorneys for Mary Jo Hudson, Ohio Superintendent  
of Insurance, in her capacity as Liquidator of The  
P.I.E. Mutual Insurance Company*

## EXHIBIT A

### CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

In connection with its inspection of the books and records of The P.I.E. Mutual Insurance Company (in Liquidation) (hereinafter referred to as "P.I.E."), \_\_\_\_\_ (hereinafter referred to as "Requestor") hereby expressly acknowledge and agree as follows:

- 1) "Confidential Information" as used herein means all documents that are the subject of the Liquidator's Motion for Authority to Destroy Certain Records of the P.I.E. Mutual Insurance Company" filed on October 28, 2009 and is deemed to include but may not be limited to (i) all legal files of P.I.E. and records obtained from Jacobson, Maynard, Tuschman & Kalur and other law firms or lawyers; and (ii) all third-party personal identifying and other information.
- 2) Except as required by applicable law, Requestor will not at any time reveal, communicate, disclose, provide, transmit, disseminate, divulge or make known or knowingly permit to be revealed, communicated, disclosed, provided, transmitted, disseminated, divulged or made known, any Confidential Information, to any one other than Requestor without the prior written consent of the Chief Deputy Liquidator of P.I.E. ("Liquidator") Requestor will take reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information. Requestor will segregate Confidential Information from the confidential materials of third parties to prevent commingling or disclosure. Requestor acknowledges that claims files and other materials may contain personal information of claimants and others and the parties to this agreement agree that they shall keep such personal information confidential in accordance with the Gramm-Leach-Bliley Act of 1999, Health Insurance Portability and Accessibility Act ("HIPAA"), or any other similar applicable rules and state privacy laws.
- 3). To the extent Requestor is required or requests that Requestor be able to provide any Confidential Information to any person or entity other than the Requestor, Requestor shall obtain advance written consent of the Chief Deputy Liquidator. Any auditor, expert, consultant or other person given Confidential Information shall be given a copy of this Agreement for signature prior to being given access to any Confidential Information.
- 4) The Liquidator and P.I.E. are reserving all rights and shall not be deemed to have waived or consented to the disclosure, inadvertent or not, of any attorney client communication or work product privileged information ("Privileged Information"), and in the event such a disclosure or production occurs, inadvertent or otherwise, Requestor acknowledges and agrees that such Privileged Information will not be used, disclosed, shared, or distributed, and shall be returned to the Requestor. The parties also acknowledge that any inadvertent and/or unintentional disclosure of any Privileged Information made or occurring during or in conjunction with Requestor's inspection of books and records shall in no manner or instance be deemed a waiver of any privilege or claim of confidentiality of the P.I.E. or the Liquidator. Upon written demand of any Requestor, Requestor shall return any Privileged Information.
- 5) If the Requestor is requested or required by civil or criminal statute, subpoena, or other valid process of law, to disclose any portion of the Confidential Information, the Requestor shall refrain from disclosing such information unless and until it has provided the Chief Deputy Liquidator of P.I.E. with notice of the existence of such subpoena, demand or other process; the

## EXHIBIT A

nature and extent of the Confidential Information required to be disclosed and an opportunity to respond or intervene.

- 6) All Confidential Information will remain P.I.E.'s and the Liquidator's exclusive property to be destroyed beginning no later than January 4, 2009.
- 7) Requestor will notify Liquidator immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement.
- 8) Any failure by Liquidator to enforce Requestor's strict performance of any provision of this Agreement will not constitute a waiver of the Liquidator's or P.I.E.'s right to subsequently enforce such provision or any other provision of this Agreement.
- 9) If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision. Further, all terms and conditions of this Agreement will be deemed enforceable to the fullest extent punishable under applicable law, and, when necessary, the Franklin County, Ohio Common Pleas Court is requested to reform any and all terms or conditions to give them such effect.
- 10) This Agreement arises out and was approved by the Court in *Superintendent of Insurance v. The P.I.E. Mutual Insurance Company*, Franklin County, Ohio Common Pleas Court Case No. 97CVH12-10867. This Agreement will be governed by the laws of the State of Ohio without reference to its choice of law rules. Exclusive jurisdiction over and venue of any suit or dispute arising out of or relating to this Agreement or disclosure and use of the Confidential Information shall be in the Franklin County, Ohio Common Pleas Court.
- 11) The conclusion of the Requestor's inspection of Confidential Information shall not relieve the parties to this Agreement of the obligations imposed by this Agreement.

**EXHIBIT A**

18) Notice to the Liquidator or requests for advance written consent to disclose Confidential Information shall be sent to the attention of:

Lynda G. Loomis  
Chief deputy Liquidator  
Office of the Ohio Insurance Liquidator  
50 West Town Street, Suite 350  
Columbus, Ohio 43215

Accepted and agreed this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**REQUESTOR**

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(print or type)

Title: \_\_\_\_\_