

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

MARY TAYLOR, Ohio Superintendent of Insurance, in her capacity as Liquidator of LMI Insurance Company,	:	
	:	
	:	Case No. 00-CV-002431
	:	
Plaintiff,	:	Judge Charles A. Schneider
	:	
v.	:	
	:	
LMI Insurance Company,	:	
	:	
Defendant.	:	

MOTION OF THE LIQUIDATOR FOR APPROVAL OF THE RELEASE AGREEMENT ENTERED INTO BETWEEN LMI INSURANCE COMPANY, IN LIQUIDATION AND THE UNITED STATES

Plaintiff Mary Taylor, Superintendent of Insurance, State of Ohio, in her capacity as Liquidator (“the Liquidator”) of LMI Insurance Company, in Liquidation (“LMI”), requests that this Court enter an Order approving the Release Agreement entered into by and between LMI and the United States (“Release Agreement”). A copy of the Release Agreement is attached and incorporated by reference as Exhibit 1. A Memorandum in Support is attached and incorporated by reference.

MIKE DEWINE
Attorney General State of Ohio

By Special Counsel:
CARLILE PATCHEN & MURPHY LLP

/s/ Scott R. Mergenthaler _____

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*Attorneys for Mary Taylor, in her capacity as
Liquidator of LMI Insurance Company*

MEMORANDUM IN SUPPORT

Plaintiff Mary Taylor, Superintendent of Insurance, State of Ohio, in her capacity as Liquidator (“the Liquidator”) of LMI Insurance Company (“LMI”) requests that this Court enter an Order approving the Release Agreement entered into by and between LMI and the United States. A copy of the Release Agreement is attached hereto as Exhibit 1. The Release Agreement releases and discharges the Liquidator and the estate of LMI from and any all liability under 31 U.S.C. § 3713(b) in connection with the LMI liquidation, subject to the terms and conditions contained therein.

On May 23, 2000, this Court issued an order placing LMI in liquidation pursuant to Chapter 3903 of the Ohio Revised Code and appointing the Ohio Superintendent of Insurance as its Liquidator. Since then, the Liquidator has reviewed the books and records of LMI, has identified and collected, where reasonable, all known assets of LMI, and has reviewed, valued and classified all but a couple remaining timely proofs of claims filed against the LMI estate.¹

Ohio Revised Code § 3903.42 governs the priority of the distribution of claims from an insurer’s estate. Under the statute,

The priority of distribution of claims from the insurer’s estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment.

Among the various classes of claims established under R.C. § 3903.42, “Class 3” claims are limited to claims of the federal government. *See* OHIO REV. CODE ANN. § 3903.42(C) (2009). In the case of the estate of LMI, there were no proofs of claim filed by the federal government, but

¹ The Liquidator is in the process of finally determining the remaining thirteen (13) proofs of claim, twelve of which are claims of various insurance guaranty associations (“IGAs”) that became statutorily obligated upon LMI’s liquidation to administer, process and pay LMI’s covered Class 2 (policyholder) claims. The thirteenth claim was previously determined and the Liquidator is in the process of resolving the claimant’s objection to the Liquidator’s determination of the claim.

the federal government asserted potential claims against LMI's insureds, which the Liquidator resolved through the federal release process.

To facilitate closure of the LMI estate, the Liquidator of LMI has entered into a Release Agreement with the United States, a copy of which is attached as Exhibit 1. The release is expressly conditioned upon the approval of this Court. Because the Release Agreement provides for a release of the Liquidator and the LMI estate from any and all liability under 31 U.S.C. § 3713(b), subject to the terms and conditions therein, the Liquidator requests this Court's approval of the Release Agreement.

Therefore, the Liquidator of LMI requests that this Court enter an Order approving the Release Agreement entered into by and between LMI Insurance Company in Liquidation and the United States.

Respectfully submitted,

MIKE DEWINE
Attorney General State of Ohio

By Special Counsel:
CARLILE PATCHEN & MURPHY LLP

/s/ Scott R. Mergenthaler

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*Attorneys for Mary Taylor, in her capacity as
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CERTIFICATE OF NOTICE

The undersigned hereby certifies that a true and accurate copy of the foregoing *Motion of the Liquidator for Approval of the Release Agreement Entered into between LMI Insurance Company, in Liquidation and the United States* was served upon the following via Regular U.S. Mail, postage prepaid, and was also sent via email to sharon.williams@usdoj.gov, on this 21st day of April, 2014:

Sharon C. Williams
Trial Attorney
Department of Justice
Civil Division
1100 L Street, N.W., Room 10016
Washington, D.C. 20005
Attorneys for The United States of America

The undersigned hereby certifies that a true and accurate copy of the foregoing *Motion* was posted on the Liquidator's website (www.ohliq.com) under Insurance Companies → Open → LMI Insurance Company → Public Documents substantially contemporaneous with the filing of this Motion.

/s/ Scott R. Mergenthaler
Scott R. Mergenthaler (0012869)

RELEASE AGREEMENT

This Release Agreement is being entered into by the United States and Lynda G. Loomis, Chief Deputy Liquidator (“Deputy Liquidator”) of LMI Insurance Company (“LMI”).

I. PARTIES

The parties to this Release Agreement are the United States and the Deputy Liquidator (collectively, the “Parties”).

II. RECITALS

1. The Parties do not intend this Release Agreement to release any possible claims the United States may have or may acquire against anyone for tax, fraud (including, but not limited to, securities and pension benefit fraud), criminal liabilities, or reimbursement liabilities and penalties arising under 42 U.S.C. § 1395y(b).
2. Except for the express terms of this Release Agreement, the Parties do not intend to create, enhance, diminish, defeat or otherwise affect such claims, if any, as the United States may have against the Deputy Liquidator or the LMI estate.
3. The Parties understand that this Release Agreement may be subject to the approval of the Court, which is supervising the liquidation of LMI.
4. The United States enters into this Release Agreement in reliance upon the representations of the Deputy Liquidator contained in her affidavit dated July 29, 2011, attached as Exhibit A to this Release Agreement (“Affidavit”).

III. AGREEMENT

1. Except only for possible federal tax, fraud (including, but not limited to, securities and pension benefit fraud), criminal liabilities, or reimbursement liabilities and penalties arising under 42 U.S.C. § 1395y(b), the United States hereby releases and discharges the Deputy Liquidator and the estate of LMI from any and all liability under 31 U.S.C. § 3713(b) in connection with the LMI liquidation.

2. Under the terms of this Release Agreement, the United States or its duly authorized representative shall have the right, prior to the destruction of LMI's records in accordance with the orders of the Court of Common Pleas of Franklin County, Ohio ("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 Deputy Liquidator, as shall be reasonably necessary to determine the existence and amount of claims the United States may have against the LMI estate, or to determine the Deputy Liquidator's compliance with the terms of this Release Agreement. No documents, books, or records of the estate or Deputy Liquidator may be destroyed unless notice is given to the United States of any motion filed with the Court requesting approval of additional destruction. If the Deputy Liquidator does not request approval from the Court, she must obtain prior written authorization from the United States before destruction of any documents, books, or records of the estate or Deputy Liquidator.

3. Except for the express undertakings of the Deputy Liquidator and the United States in this Release Agreement, nothing in this Release Agreement shall be construed

(a) to establish or perfect any claims, substantive rights, or procedural rights of the United States;

(b) to limit, restrict, diminish, or defeat any claims, substantive rights, or procedural rights of the United States;

(c) to establish or perfect any objections or defenses, substantive rights, or procedural rights of the Deputy Liquidator; or

(d) to limit, restrict, diminish, or defeat any defenses, substantive rights, or procedural rights of the Deputy Liquidator.

4. The Parties agree that this Release Agreement shall not be effective unless and until it is approved by the Court, if approval is required, and the time for appeals of any such approval has expired. The Parties further agree to cooperate with each other in seeking prompt approval of this Release Agreement from the Court, including, but not limited to, making the necessary witnesses available for testimony considered necessary or appropriate to provide the Court with an adequate record upon which to approve this Release Agreement.

Dated: 4/14/14

SCCW
By: Sharon C. Williams
Trial Attorney
Civil Division
Department of Justice
Attorney for the United States

Dated: April 11, 2014

Lynda G. Loomis
By: Lynda G. Loomis
Chief Deputy Liquidator
LMI Insurance Company,
in Liquidation

Exhibit A

Office of the Ohio Insurance Liquidator

**LMI Insurance Company
(In Liquidation)**

50 W. Town Street, 3rd Floor, Ste. 350
Columbus, Ohio 43215-4197

Telephone: 614-487-9200
Facsimile: 614-487-9418

AFFIDAVIT OF CHIEF DEPUTY LIQUIDATOR

July 29, 2011

I, Lynda G. Loomis, in my capacity as Chief Deputy Liquidator of LMI Insurance Company, having been so appointed by the Superintendent of the Ohio Department of Insurance in her capacity as Liquidator of LMI Insurance Company, upon personal knowledge and information known to me or supplied to me by others upon whom I rely in my capacity as Chief Deputy Liquidator, make the following statement under oath:

1. LMI Insurance Company (referred to as "LMI" or "the company") was an Ohio domiciled insurance company incorporated on September 11, 1895, that was licensed to and wrote property and casualty insurance in Ohio. LMI was organized on September 11, 1895, as The Lumbermens Mutual Insurance Company of Mansfield, Ohio. The title was shortened to The Lumbermens Mutual Insurance Company in 1942. On October 26, 1986, the company was converted to a stock company and was purchased by Prudential Property and Casualty Insurance Company and its name was changed to Prudential-LMI Commercial Insurance Company. On December 18, 1992, the company was sold to Vik Brothers Insurance Inc. and its name was changed to its current name, LMI Insurance Company. On April 30, 1997, Vik Brothers Insurance Inc. was purchased by Highlands Insurance Group, and LMI was placed in run-off. Highlands managed the business of LMI and its other subsidiaries under the banner Highlands Insurance Group or Company.
2. Due to its insolvency, on May 23, 2000, LMI was ordered into liquidation by the Court of Common Pleas of Franklin County, Ohio, and the Ohio Superintendent of Insurance was appointed as its Liquidator.
3. Through court-approved agreements, LMI's business written or in force was novated to the following insurers as of the effective dates noted: (a) Northwestern National Casualty assumed all LMI business in force, written or renewed on or after 11:59 pm December 31, 1996 in the States of Pennsylvania, Maryland, Virginia, North Carolina, South Carolina and Georgia; (b) Highlands Insurance Company assumed all LMI business in force, written or renewed on and after January 1, 1997 in New York, New Jersey and Connecticut; (c) Pacific National Insurance Company assumed all LMI business in force, written or renewed on and after January 1, 1996 in CA; and (d) Northwestern National Casualty assumed all LMI business in force, written or renewed on and after January 1, 1997, which were not otherwise reinsured.

4. LMI's federal tax identification number is 34-0368340. There are no outstanding IRS claims against LMI.
5. LMI was authorized to transact insurance business, operating under Ohio Revised Code Chapter 3929.
6. According to the Liquidator's records, LMI wrote fire, allied lines, homeowners multiple peril, commercial multiple peril, inland marine, earthquake, workers' compensation, other liability occurrence, products liability occurrence, private passenger auto liability, commercial auto liability, auto physical damage, fidelity, glass, burglary and theft, and boiler and machinery lines of business, and engaged in reinsurance.
7. At the time of its liquidation, LMI had one subsidiary, the Lumbermans Financial Corporation ("LFC") (federal tax identification number 34-0309070), which was a premium finance company. The total assets of this subsidiary at the time of LMI's liquidation were \$394,879. In July 2000, LFC's assets were consolidated with LMI and LFC's bank accounts were closed upon transfer of assets to LMI. LMI and LFC filed a single LMI consolidated federal tax return (Form 1120 [REDACTED] the year ended December 31, 2000.
8. Prior to its liquidation, LMI was part of an insurance holding company system. LMI's stock was wholly-owned by Northwestern National Holding Company (NNHC), which was a wholly owned subsidiary of American Reliance, Inc. (ARI). LMI's ultimate parent was Highlands Insurance Group, Inc. (HIGI) (federal tax identification number 74-1296673, which was an insurance holding company domiciled in the State of Delaware.
9. Prior to its liquidation, LMI's federal income tax return was consolidated with the following companies: Aberdeen Insurance Company, American Professionals Insurance Company, American Reliance, Inc., American Reliance Realty, Certified Finance Corporation, Highlands Casualty Company, Highlands Claims & Safety Services, Inc., Highlands Insurance Company, Highlands Insurance Group, Inc., Highlands Lloyds, Highlands Services Corporation, Highlands Underwriters Insurance Agency, Inc., Highlands Underwriters Insurance Company, Insurance Management Corporation, Lumbermans Financial Corporation, NN Insurance Company, Northwestern National Casualty Company, Northwestern National Holding Company, Inc., Pacific Automobile Insurance Company, Pacific Automobile Insurance Company, Pacific National Insurance Company, SICO, Inc., State Capital Insurance Company, Statesman Insurance Company, TIMECO, Inc., Underwriters Special Risk, Inc., and Underwriters Special Risk of LA, Inc.
10. LMI was licensed to do business in the States of Ohio, Arizona, Arkansas, California, Delaware, Florida, Georgia, Michigan, New Jersey, New York, North Carolina, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming and the District of Columbia.
11. Prior to its liquidation, LMI's main administrative office was located at 1000 Lennox Drive, Lawrenceville, NJ 08648-0426. The primary location of LMI's books and records

was 10370 Richmond Ave., Houston TX 77042-4123. LMI's statutory home office was 2545 Farmers Dr., No. 300, Columbus, OH 43235.

12. LMI's records reflect that at various points in time, the precise time frames of which are unknown to me, LMI had office locations and/or claims management locations at the following addresses:

1000 Lennox Drive, Lawrenceville, NJ 08648-0426

10370 Richmond Ave., Houston TX 77042-4123

2545 Farmers Dr., No. 300, Columbus, OH 43235

4011 West Chase Blvd., Raleigh, NC 27607

18650 West Corporate Drive, Brookfield WI 53045-6344

13. On May 23, 2000, LMI was found to be insolvent and ordered into liquidation proceedings pursuant to Ohio Revised Code Chapter 3903, under the jurisdiction of the Court of Common Pleas of Franklin County, Ohio, in Case No. 00 CVH03-2431. A copy of the LMI Liquidation Order is attached as Exhibit A and hereby incorporated by reference into this Affidavit.
14. The LMI Liquidator issued proof of claim forms ("POCs") to the following federal agencies, none of which were returned for filing in the LMI liquidation proceeding to the names and addresses on Exhibit C.
15. Based upon a review of LMI's pre-liquidation records and records in the LMI liquidation proceeding, the Liquidator has identified the following claims with potential federal government involvement:
- a) Claim number 9421623 (aka 94Z21623) – The United States of America is listed as a claimant on this housing discrimination claim involving the US Department of Housing and Urban Development. The LMI insured is Otis Terrace Apartments located in California. A housing discrimination complaint was filed November 1, 1993 against the LMI insured. The claim was resolved through a Compromise Agreement and Settlement reached on November 21, 1996 based on an agreement that the apartment owner install a play area dedicated to children.
 - b) Claim number 98A20080 – The US EPA Region IX is listed as a claimant. The LMI insured, US Prefinished Metal Corp., received a "Potentially Responsible Party" letter dated May 8, 1998. The claim arises in relation to a US EPA Super Fund site referred to as the Operating Industries Site located near Monterey, California. An additional De Minimis Party Letter was received by the LMI insured on June 23, 1998. LMI provided coverage from 1975 to 1978. The US EPA advised the site was in operation from 1948 to 1984, and the claim itself involved roughly 4,000 De Minimis polluters

and an unreferenced number of major polluters. There is no indication as to how, or if, the overall Super Fund claim has been resolved.

- c) Claim number LQ0006 – The US Environmental Protection Agency is listed as a claimant. The LMI insured, Central Brass Manufacturing, received a “Potentially Responsible Party” letter from the US EPA dated March 1, 1994. The claim arises in relation to a Hazardous Waste site known as “Jack’s Creek/Sitkin Smelting Superfund Site located in Pennsylvania. The LMI insured carried primary coverage through Great American Insurance, with LMI providing Blanket Excess coverage for losses exceeding \$500,000. There are no indications in the file that the primary coverage with Great American has been exhausted.
- d) Claim number AW00795 – The Federal Reserve Bank of New York is listed as a claimant on this New Jersey worker’s compensation claim. The LMI insured name is DOT Electric. A review of the LMI records do not give an indication as to why the Federal Reserve Bank of New York would be a claimant. The date of loss is March 23, 1993.
- e) Claim number 92Z22185 – The Department of Justice is listed as a claimant and the US Postal Service is listed as a co-defendant claimant. The LMI insured is Dutchmaid Cleaners, located in Los Angeles, California. The claim involves a lawsuit filed against the LMI insured to recover the cost of cleanup of contaminates found in the soil. The LMI insured occupied a space next to a neighborhood Post Office. The US Postal Service was named in a cross claim as a codefendant. The claim was settled prior to the LMI liquidation, with a contribution payment also being made by the US Postal Service. The date of loss is listed as October 20, 1984 in the LMI records.
- f) Claim number LQ0437 - The Department of the Army Picatinny Arsenal and the Veterans Administration are both listed as claimants on this environmental claim arising from a lawsuit filed by the US Environmental Protection Agency against several defendants in reference to the “Combe Fill South Landfill Superfund Site” located near Chester, New Jersey. LMI was initially involved on behalf of West Amwell Township. However, a coverage investigation by the LMI Liquidator and the New Jersey Insurance Guaranty Fund indicates West Amwell Township was never insured by LMI. Therefore all claims were denied due to lack of coverage.
- g) Claim number 94Z06859 – The United States of America is listed as a claimant. The LMI insured is Summit at High Point, located in New York. On March 16, 1993 the claimant, Joseph Tuozzo, fell at the LMI insured property injuring his head and back. The underlying claim was settled through the New York Liquidation Bureau on behalf of LMI. The claimant, Joseph Tuozzo, subsequently died of causes unrelated to the fall, leaving a large Federal Tax Lien. Settlement of the claim required an appointment of a Surrogate Court to administer distribution of the deceased estate funds. All liens on Mr. Tuozzo’s estate appear to have been properly addressed through the Surrogate Court.

- h) Claim number AL19301 – The US EPA is listed as a claimant. The alleged LMI insured was Busy Bee cleaners. On December 16, 1997 Busy Bee Cleaners received a request for information form letter from the US EPA in reference to the release of TCE's and other contaminates into the municipal water wells in the city of Vienna, West Virginia. During the course of coverage investigation it was determined the LMI policy in question contains a provision excluding coverage for pollution. According to the claim notes, the owner of Busy Bee Cleaners settled any potential exposure with the US EPA for \$1,000.
 - i) Claim number AL11127 – The US Coast Guard is listed as a claimant. The LMI insured was Robert Zieniuk of Medford Lakes, New Jersey. Heating oil leaked from a tank on Mr. Zieniuk's property into a nearby lake. The claim ultimately was settled for policy limits, which included a \$49,896.94 payment made pre-liquidation to the US Coast Guard to cover actual costs of clean up.
 - j) Claim number AL18077 – US Legal Support is listed as a claimant on this New York general liability claim. The LMI insured is Power Concrete. The date of loss is listed as October 19, 1995. Upon investigation by the LMI Liquidator, it was determined US Legal Support is a private entity providing deposition transcription services and is not associated with the Federal Government.
 - k) Claim number AL15068 - US Legal Support is listed as a claimant on this New Jersey general liability claim. The LMI insured is Power Concrete. The date of loss is November 16, 1995. Upon investigation by the LMI Liquidator, it was determined US Legal Support is a private entity providing deposition transcription services and is not associated with the Federal Government.
 - l) Liquidator Proof of Claim No. 29026607, issued to Department of Treasury, B/235, Trenton, NJ 08625. There is no associated claim file, and no information has been received pertaining to a claim on this proof of claim form.
 - m) Liquidator Proof of Claim No. 99004756, issued to DC Dept. of Employment Services, Office of the Chief Financial Officer, 500 C St NW Room 637-B, Washington DC 20001. There is no associated claim file and no information has been received pertaining to a claim on this proof of claim form.
16. The only environmental claims involving or potentially involving the LMI Liquidator are listed in paragraph 15, above.
17. There are no open ancillary receiverships for LMI.
18. As of the date of this affidavit, there are special deposits in the following states: Georgia is holding \$129,485.57, and Virginia is holding \$706,462.55.
19. The claims list for LMI has been downloaded into a CD, a copy of which is provided with this Affidavit as Exhibit D, and hereby incorporated by reference into this Affidavit. The enclosed CD contains an excel spreadsheet listing of all Proofs of Claim issued by the Liquidator to persons who might have held a claim against LMI. Column A contains

the Liquidator Number assigned to the POC issued, Column B contains the sequence number for the claim; Column C indicates the date that the POC was returned for filing in the LMI estate (where it is blank, it means the POC was not returned and, thus, there is no claim); Columns D and E contain name information; Column F, G, H, I, J and K contain address information.

- 20. A copy of the most recent Liquidator's financial statement and a copy of the last tax return for LMI are attached hereto as Exhibits E and F and hereby incorporated by reference into this Affidavit.

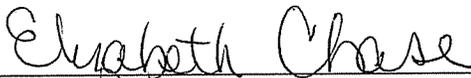
The information contained in this affidavit is accurate and complete to the best of my knowledge.



 Lynda G. Loomis
 Chief Deputy Liquidator
 LMI Insurance Company, In Liquidation

State of Ohio)
County of Franklin) SS

Lynda G. Loomis, Chief Deputy Liquidator, personally appeared before me and subscribed the foregoing Affidavit in my presence on this 29th day of July, 2011.



 Notary Public

ELIZABETH CHASE
 NOTARY PUBLIC, STATE OF OHIO
 MY COMMISSION EXPIRES MAY 22, 2012