

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,	:	
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	:	
Plaintiff,	:	
	:	
v.	:	Case No. 00-CV-010534
	:	
Acceleration National Insurance Company,	:	Judge Julie M. Lynch
	:	
Defendant.	:	

**MOTION TO APPROVE (1) THE LIQUIDATOR’S DISALLOWANCE AND DETERMINATION OF UNDELIVERABLE CLAIMS AND (2) FILING OF THE UNREDACTED REPORTS OF UNDELIVERABLE CLAIMS UNDER SEAL**

Plaintiff, Mary Taylor, Ohio Superintendent of Insurance, in her capacity as Liquidator (“Liquidator”) of Acceleration National Insurance Company (“ANIC”), hereby moves this Court for an Order approving the Liquidator’s determination and treatment of certain claims submitted in the ANIC liquidation as follows:

1. Approve the Liquidator’s determinations and disallowances of claims identified on Exhibit A, attached hereto. The Liquidator could not successfully deliver notice to these claimants of her determinations (hereafter referred to as the “Undeliverable Claims”) because these claimants failed to notify the Liquidator of address changes as required under Ohio Revised Code (R.C.) § 3903.22 and the Liquidator could not otherwise locate these claimants.
2. Disallow and forever bar all of the Undeliverable Claims.
3. Require that the unredacted Reports of Undeliverable Claims at Exhibit A be filed with the Franklin County Clerk of Court under seal due to the confidential nature of the claimant information contained in the Reports.

4. Discharge and fully release the ANIC Liquidation Estate; the Liquidator; the Liquidator's predecessors, successors, assigns and any and all deputy liquidators, agents, attorneys and employees of the Office of the Ohio Insurance Liquidator and the Ohio Department of Insurance, from any and all liability and responsibility related to the Undeliverable Claims, as more fully discussed in the accompanying Memorandum in Support.

Respectfully submitted,

MIKE DEWINE  
Attorney General of Ohio

By Special Counsel:  
CARLILE PATCHEN & MURPHY LLP

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## MEMORANDUM IN SUPPORT

### **I. Introduction**

The Undeliverable Claims identified on Exhibit A, attached hereto, were filed with the Liquidator as proofs of claims. The Liquidator mailed notices of the Liquidator's determination and valuation, if any, of these proofs of claims to the claimants using the address provided by the various claimants on the proof of claim forms. The Liquidator's notices were returned by the U.S. Post Office as undeliverable because the claimants apparently no longer occupy or reside at the mailing address provided on the proof of claim forms. None of these claimants provided the Liquidator with a new address as required by Ohio statutes. Additional efforts to locate new addresses for these claimants failed. As explained in more detail below, R.C. §§ 3903.39, 3903.22, 3903.45 and this Court's Orders in the ANIC Liquidation Case authorize the Liquidator in these circumstances to disallow all Undeliverable Claims.

### **II. Facts**

On February 28, 2001, this Court issued an order placing ANIC in liquidation pursuant to R.C. Chapter 3903 and appointing the Ohio Superintendent of Insurance as Liquidator. Paragraph 27 of the Liquidation Order directed the Liquidator to give notice of the Liquidation Order pursuant to R.C. § 3903.22. Beginning on or about February 28, 2001, the Liquidator posted on its website and issued to all known policyholders, claimants and creditors of ANIC a "Notice of Liquidation Order, Deadline For Filing Proofs of Claims and Continuous Hearings" and a "Claim Notice and Claim Filing Instructions." The Instructions included claim filing procedures that provided in relevant part, consistent with R.C. § 3903.22(B):

**8. CHANGE OF ADDRESS. If you move after sending in your claim form, please provide us with your new address. Failure to do so may result in your claim being barred from participating in any distribution of assets. Be sure to include both the Liquidator Number and the Claim Number with your correspondence.<sup>1</sup>**

[Emphasis in original].

In 2001, the Liquidator began to mail the standard proof of claim form utilized by the Liquidator to all known agents, employees and other creditors of ANIC. This proof of claim form also set forth specific instructions regarding the proof of claim process and the related requirements, including that the deadline (“Bar Date”) to file proofs of claims was February 28, 2002, and that anyone filing a proof of claim is to notify the Liquidator of any change in address after a proof of claim form is submitted. As a result, anyone filing a proof of claim had ample notice of their obligation and need to provide the Liquidator with any change in their mailing address.

Since issuing the proof of claim forms and other notices, the Liquidator received approximately 1073 proofs of claims. The Liquidator has reviewed, determined (allowed the claim or disallowed/denied the claim in full or in part) and classified all of these claims pursuant to R.C. § 3903.42. This Court finally resolved all timely-filed, unresolved objections to the Liquidator’s claims determinations on the proofs of claim. In preparation for closure of this estate later this year, this Court approved on December 05, 2011 the Liquidator’s reports and final recommendations under R.C. 3903.43 of all proofs of claims in Classes 4-9, as those

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<sup>1</sup> R.C. 3903.22 (B) states:

Notice to potential claimants under division (A) of this section shall require claimants to file with the liquidator their claims together with proper proof thereof under, on or before a date the liquidator shall specify in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants shall keep the liquidator informed of any changes of address. (Emphasis added).

classes are defined in R.C. 3903.42, as well as all Class 2 proofs of claims except for the Class 2 claims of insurance guaranty associations.

Among the universe of the remaining unreported proofs of claims filed in the ANIC liquidation are claims identified on Exhibit A.<sup>2</sup> Pursuant to R.C. § 3903.39<sup>3</sup> the Liquidator sent determination letters relating to all of these claims to the claimants at the addresses originally provided to the Liquidator on the proof of claim forms. These determination letters notified the claimants of (i) the Liquidator's claim determination and the reasons therefore; (ii) the Liquidator's claim valuation, if any; and (iii) the Liquidator's proposed classification of the claim. *Id.* These letters also informed each claimant that he or she had sixty (60) days to object and respond to the Liquidator's determination of their respective claim. *Id.* All of the determination letters relating to the claims on Exhibit A were returned to the Liquidator's office as undeliverable because the claimants with claims on Exhibit A failed to notify the Liquidator of address changes as required under R.C. § 3903.22 and as set forth in the above-quoted

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<sup>2</sup> The claims that were denied in whole, or the Zero Valued Undeliverable Claims, are listed as having a zero value in Exhibit A. One claim on Exhibit A was allowed (the Valued Undeliverable Claim) and is listed as having a positive value.

<sup>3</sup> R.C. § 3903.43, entitled "Review and investigation of claims," provides:

(A) The liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as he considers necessary. He may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by any person or organization, including any guaranty association or foreign guaranty association. Unresolved disputes shall be determined under section 3903.39 of the Revised Code. As soon as practicable, he shall present to the court a report of the claims against the insurer with his recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(B) The court may approve, disapprove, or modify the report on claims by the liquidator. Such reports as are not modified by the court within a period of sixty days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject thereafter to later modification or to rulings made by the court pursuant to section 3903.39 of the Revised Code. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

Instructions. For the reasons set forth below, and consistent with Orders entered in prior Liquidation Cases, all of the Undeliverable Claims should be treated as disallowed.

**III. Basis for Relief Requested**

**A. THE COURT SHOULD APPROVE THE LIQUIDATOR'S DISALLOWANCE OF THE UNDELIVERABLE CLAIMS**

R.C. § 3903.39(A), entitled "Written notice of denial of claim," in part governs proof of claim determinations and denials. The statute provides:

(A) When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or his attorney by first class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections with the liquidator. If no such filing is made, the claimant may not further object to the determination.

The Liquidator complied with the determination procedure set forth in R.C. § 3903.39(A). The Liquidator appropriately sent her determinations of all Undeliverable Claims to the claimants at the addresses the claimants provided on their proof of claim forms in accordance with R.C. § 3903.39. No objections were timely filed because each of these determination letters was returned as undeliverable. Even though the Liquidator is not obligated to do so, the Liquidator thereafter attempted unsuccessfully to locate good and proper addresses for these claimants.

All of the Undelivered Claims are properly entirely disallowed now, even though these claimants did not receive actual notice of the Liquidator's determinations and even though the Liquidator assigned value to one of the Undeliverable Claims. That is because the claimants' failure to comply with their own statutory obligations resulted in the undeliverable status of the determination letters and expiration of the 60-day objection period. Indeed, R.C. § 3903.22(B) requires, in pertinent part provides: "All claimants shall keep the liquidator informed of any changes of address." See footnote 1, supra. In addition, R. C. 3903.36 sets forth certain

minimum requirements for a proof of claim including that the claim should include “[t]he name and address of the claimant and the attorney who represents him, if any.” R.C. § 3903.36(A)(7). That statute also provides, in subsection B, that “[n]o claim need be considered or allowed if it does not contain the information in division (A) of this section which may be applicable.” The claimants with Undeliverable Claims received notice of these obligations, but they did not apprise the Liquidator of any changes in their address. Having failed to do so provides an additional basis for the Liquidator to deny their claims, without the necessity of mailing additional determination letters which would certainly only be returned again as undeliverable. Accordingly, the Liquidator is reporting her determination of the denial in full of all Undeliverable Claims on Exhibit A under R.C. § 3903.43, and the Liquidator is entitled to have these claims disallowed in their entirety.

R.C. § 3903.45(A)<sup>4</sup> requires the Liquidator to treat any funds that would have been distributed on the Undeliverable Claims as “unclaimed funds” that “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.” However, in this case, there are no distributions that would have been made to any of the claimants with Undeliverable Claims. As set forth in Exhibit A, all of the Class 2 claims are denied and valued at zero dollars. The single Undeliverable Claim that is valued is not eligible to receive any distribution because it is a Class 5 claim. The Liquidator and this Court have already determined that the assets of the ANIC Liquidation Estate are insufficient to make any distribution beyond Class 2, as that Class is

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<sup>4</sup> R.C. § 3903.45(A) provides in full:

All 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 and 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.

defined in the distribution priority statute, R.C. §3903.42. Therefore, there are no funds in this case to treat as “unclaimed funds” under R.C. § 3903.45(A).

**B. UNREDACTED REPORTS OF UNDELIVERABLE CLAIMS SHOULD BE FILED UNDER SEAL AS ARE ALL OTHER REPORTS OF CLAIMS**

The names and address of the claimants are redacted in all of the Reports of Claims that are publicly filed with this Motion pursuant to applicable law and at the request of several claimants in other liquidations who reported that they had been contacted and questioned by claims buyers, neighbors, and others in connection with their claims against liquidated insurers. The Liquidator is indeed attempting to respond to and protect claimants by redacting their contact and other private information in the Reports of Claims. The Liquidator is hereby requesting in this case, as in others, that the claimants’ names and addresses be filed under seal with the Court.

The Liquidator in this case, as in others, posted this Motion and Redacted Reports on her website at under Open Liquidations – Acceleration National Insurance Co. – Documents Tab, in the form of searchable PDFs so that claimants can search for information about their claims using their Proof of Claim (Liquidator) Number and have meaningful review of the information related to their claims. The website also explains that claimants may call the Liquidation Office if they have questions about the Reports.

**C. CONCLUSION**

For the reasons set forth above, this Court should approve this Report on Undelivered Claims and enter an Order:

(1) Approving the Liquidator’s determinations and disallowance of all claims identified on Exhibit A, attached hereto;

(2) Finding that there are no “unclaimed funds” as provided under R.C. § 3903.45(A) as a result of the disallowance of all Claims identified on Exhibit A;

(3) Requiring that the unredacted Reports of Undeliverable Claims at Exhibit A be filed with the Franklin County Clerk of Court under seal due to the confidential nature of the claimant information contained in the Reports; and

(4) Discharging and fully releasing ANIC, the ANIC Liquidation Estate, the Liquidator, the Liquidator’s predecessors, successors, assigns and any and all deputy liquidators, agents, attorneys and employees of the Office of the Ohio Insurance Liquidator and the Ohio Department of Insurance, from any and all liability and responsibility related to the Undeliverable Claims.

Respectfully submitted,

MIKE DEWINE  
Attorney General of Ohio

By Special Counsel:  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing MOTION TO APPROVE THE LIQUIDATOR'S DISALLOWANCE AND DETERMINATION OF UNDELIVERABLE CLAIMS was posted on the Liquidator's website (Open Liquidations - Acceleration National Ins. Co. - Documents Tab) substantially contemporaneous with the filing of this Motion.

/s/ Scott R. Mergenthaler  
Scott R. Mergenthaler (00122869)

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8/07/12

Proof of Claims - Undeliverable Determination Letters - Class 02

Liq#/Seq#	Claim#	Payee/Address	Determined Value
01001518	01		.00
01015172	01	2251	.00
09003904	01		.00
31001110	01	10675	.00
31009027	01	8885	.00
31015562	01	ANIC0004	.00
31015674	02	8084	.00
31015674	03		.00
Count:	8	Grand Totals:	\$ .00

**EXHIBIT A**

Proof of Claims - Undeliverable Determination Letters - Class 05

Liq#/Seq#	Claim#	Payee/Address	Determined Value
02002362	01		.00
04003618	01		.00
09000581	01		.00
17002494	01		.00
17006439	01		.00
25001598	01		.00
29001475	03	10151	944.11
29002380	01		.00
31000963	01		.00
36005253	01		.00
37001960	01		.00
45002269	01		.00
Count:	12	Grand Totals:	\$944.11

**EXHIBIT A**