

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

COMMISSIONER OF INSURANCE  
OF THE STATE OF MICHIGAN,

Case No. 97-86662-CR

Plaintiff,

HON. WILLIAM E. COLLETTE

v

IN LIQUIDATION

LINCOLN MUTUAL CASUALTY COMPANY,  
A Michigan domestic insurance company

Defendant.

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Christopher L. Kerr (P57131)  
Assistant Attorney General  
Attorney for Plaintiff, as Liquidator  
for Lincoln Mutual Casualty Company  
Michigan Department of Attorney General  
Corporate Oversight Division  
P.O. Box 30755  
Lansing, Michigan 48909  
(517) 373-1160

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**LIQUIDATOR'S VERIFIED MOTION TO TERMINATE LIQUIDATION,  
APPROVE THE ACTIONS OF THE LIQUIDATOR, DISCHARGE THE  
LIQUIDATOR, CLOSE THE CASE, AND FOR RELATED RELIEF**

Annette E. Flood, Director of the Michigan Department of Insurance and  
Financial Services and Court-appointed and statutory Liquidator (the "Liquidator")  
for Lincoln Mutual Casualty Company ("Lincoln Mutual"), by and through her  
attorneys, Bill Schuette, Attorney General of the State of Michigan, and  
Christopher L. Kerr, Assistant Attorney General, in support of her Verified Motion  
to terminate this Liquidation, approve the actions of the Liquidator, discharge the

Liquidator, close the case, and for related relief (the “Verified Motion”), states as follows:

**HEARING**

1. This Verified Motion is scheduled for hearing on **Tuesday, December 23, 2014, at 10:00 a.m.** or as soon thereafter as counsel may be heard.

**BACKGROUND**

2. On August 29, 1997, this Court entered an Order of Liquidation appointing then-Acting Commissioner of Insurance Dominic D’Annunzio as Liquidator for Lincoln Mutual and James E. Gerber as the Special Deputy Liquidator.

3. Since the inception of the Liquidation of Lincoln Mutual, the former Insurance Bureau has gone through several reorganizations, and each successor Insurance Commissioner/Director has served as the company’s Liquidator while in office. Under Executive Order 2000-04, former Governor Engler established the Michigan Office of Financial and Insurance Services (“OFIS”) as successor to the Michigan Insurance Bureau, with the OFIS Commissioner assuming the duties previously delegated to the Commissioner of Insurance. Under Executive Order 2008-02, former Governor Granholm reorganized OFIS and changed its name to the Office of Financial and Insurance Regulation (“OFIR”). Under Executive Order 2013-1 effective March 18, 2013, Governor Snyder renamed OFIR the Department of Insurance and Financial Services (“DIFS”) and transferred all the authority, powers, duties, functions, and responsibilities of the former Commissioner of OFIR to the newly-created position of the Director of DIFS. Governor Snyder duly

appointed Annette E. Flood as the Director of DIFS effective November 1, 2013, making her the Liquidator of Lincoln Mutual as of that date.

4. As related more fully in the Annual Reports filed with this Court, the liquidation of Lincoln Mutual has been successfully accomplished through:

- a. Implementation of the Proof of Claim form filing process;
- b. Creation and implementation of the Proof of Claim adjudication process through final conclusion;
- c. Marshaling all available assets of Lincoln Mutual and converting them to cash;
- d. Diligent tax planning and preparation;
- e. Commutation of all reinsurance contracts; and
- f. Settlement of various disputes and litigation.

5. Once these activities had been completed, on March 17, 2014, the Liquidator filed a Petition with this Court for an Order: (a) approving the Liquidator's claim recommendations, pursuant to MCL 500.8143(2); (b) ratifying the Liquidator's priority of distribution of claims filed against the Lincoln Mutual Liquidation Estate, consistent with MCL 500.8142; and (c) authorizing the Liquidator to make a final distribution of Estate assets to certain creditors, pursuant to MCL 500.8144.

6. On March 19, 2014, the Court granted the Liquidator's Petition and entered an Order that, *inter alia*: (a) ratified and approved the Liquidator's claim handling/adjudication procedures; (b) ratified and approved the Liquidator's priority of distribution of claims in accordance with MCL 500.8142; (c) approved the

Liquidator's final claim report and recommendations; and (d) authorized the Liquidator to make a final distribution of Liquidation Estate assets.

7. Pursuant to this Court's March 19, 2014 Order, the Liquidator and Special Deputy Liquidator made the following final distributions from the assets of the Lincoln Mutual Liquidation Estate: (a) a distribution to the Michigan Property and Casualty Guaranty Association ("MPCGA") in the amount of \$2,150,493, representing a payment of 100% on its Class 1 administrative expense claim; and (b) distributions to the MPCGA in the amount of \$5,759,781 and to Citizens Insurance Co. in the amount of \$1,709, representing a pro-rata 58.60% payment on the total allowed amount of their respective Class 2 claims.

8. After these final distributions to creditors and payment of ongoing Class 1 administrative costs and expenses associated with closing the Estate, the Lincoln Mutual Liquidation Estate currently possesses assets (in the form of cash reserves) in the total amount of \$52,469.79. (Exhibit A.)

9. Accordingly, by this Verified Motion, the Liquidator seeks generally to terminate this liquidation, close the case, and discharge the Liquidator. More specifically, and among other things, the Liquidator seeks an Order from the Court providing the following relief:

- a. Approval of all actions taken or not taken by the Liquidator;
- b. Because any further distribution to creditors would be uneconomic, approval of the Liquidator's plan to promptly and irrevocably escheat the \$52,469.79 of remaining Liquidation Estate assets to the State of Michigan for deposit into the general fund;
- c. Discharge of and release of all claims against the Liquidator;

- d. Implementation and enforcement of a bar order;
- e. Permitting the destruction of records; and
- f. Terminating this liquidation and closing the case.

**REQUEST FOR COURT APPROVAL OF ALL ACTIONS  
TAKEN OR NOT TAKEN BY THE COMMISSIONER/DIRECTOR AS  
THE LIQUIDATOR OF LINCOLN MUTUAL**

10. In general, the Liquidator and Special Deputy Liquidator of Lincoln Mutual have, from the inception of the receivership, taken possession of Lincoln Mutual's assets, marshaled assets, compromised claims, mitigated liabilities, sought and received recovery from various individuals and entities, and administered the business of the receivership as provided in the Insurance Code of 1956 ("Insurance Code"), MCL 500.100 – 500.8302. The Liquidator and Special Deputy Liquidator have taken all of these actions under this Court's general supervision.

11. Further, the Liquidator has complied with this Court's directives in this matter.

12. In addition, throughout the course of this receivership, the Liquidator sought Court approval of all material transactions.

13. Consequently, the Liquidator seeks an Order approving all actions taken or not taken by the Liquidator and her (or his) deputy liquidators, representatives, agents, accountants, attorneys, successors, predecessors, officers, directors, and assigns throughout the liquidation, and providing that such actions taken or not taken have been properly executed and have met the requirements of

Chapter 81 of the Insurance Code and the laws of the state of Michigan in general, as ascertained by and reviewed by this Court through the date of the order.

**DISPOSITION OF REMAINING ESTATE ASSETS**

14. As previously indicated, the Lincoln Mutual Liquidation Estate currently possesses assets (in the form of cash reserves) in the total amount of \$52,469.79. (Exhibit A.) Moreover, the Liquidator has marshaled all available assets of Lincoln Mutual and does not anticipate the recovery of any additional assets.

15. An additional distribution to creditors of the Estate's remaining assets is not economically justified because such a distribution would be costly, time-consuming, and in any event, would exhaust some if not all of the Estate's limited remaining assets. The expenses and delay associated with an additional distribution would include staff time to process and pay the distribution, other administrative overhead, preparing and filing the approval petition, attending the hearing, and securing an approval order, all while keeping the Liquidation Estate open to accomplish these tasks. In addition, if the Estate remains open on or after January 1, 2015, the Liquidator must pay an accountant to prepare an additional tax return for the 2015 tax year.

16. MCL 500.8146(1) provides that in connection with an application for discharge, "[t]he 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 considered appropriate."

17. For the reasons stated above, it would be uneconomic to make an additional distribution of the Estate's limited remaining assets. Accordingly, the Liquidator requests this Court's approval to instead promptly and irrevocably escheat the \$52,469.79 of remaining Liquidation Estate assets to the State of Michigan for deposit into the general fund.

18. Any additional distribution, if made, would be paid predominantly to the MPCGA as a Class 2 creditor. The Liquidator and Special Deputy Liquidator have advised the MPCGA that they do not intend to distribute the Estate's minimal remaining assets, and the Liquidator's counsel further provided the MPCGA's counsel a copy of this Verified Motion before it was filed. The MPCGA is therefore aware of this proposal and does not object to the Liquidator escheating the \$52,469.79 of remaining Liquidation Estate assets to the State of Michigan.

19. In the unlikely event that the Liquidator recovers additional Lincoln Mutual assets after the closing of this Estate, the Liquidator similarly requests approval, after consultation with and barring objection by the MPCGA, to escheat these additional assets to the State of Michigan for deposit into the general fund.

**REQUEST FOR DISCHARGE OF LIQUIDATOR AND  
RELEASE OF ALL CLAIMS AGAINST THE COMMISSIONER/DIRECTOR  
AS THE LIQUIDATOR OF LINCOLN MUTUAL**

20. MCL 500.8146(1) provides that "[i]f all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge."

21. As explained above, the Liquidator has marshaled all available assets of Lincoln Mutual and distributed those assets to the extent economically justified.

Accordingly, the DIFS Director, as Liquidator of Lincoln Mutual, further seeks an order that the Liquidator and her (or his) deputy liquidators, representatives, agents, accountants, attorneys, successors, predecessors, officers, directors, and assigns are fully, finally, and unconditionally discharged and released from any duties, obligations, claims, and liabilities relating to or arising out of the liquidation of Lincoln Mutual.

**REQUEST FOR BAR ORDER FOR ALL CLAIMS  
AGAINST THE LIQUIDATOR**

22. The Liquidator also requests an order that all claims and causes of action against the Liquidator and her (or his) deputy liquidators, representatives, agents, accountants, attorneys, successors, predecessors, officers, directors, and assigns for any and all actions taken or not taken throughout the liquidation of Lincoln Mutual shall be completely and forever barred, and that from and after entry of the order terminating the liquidation, these parties shall have no further responsibility, obligations, or liability under Chapter 81 of the Insurance Code or the laws of the State of Michigan with respect to any matter relating to or arising out of the liquidation.

**REQUEST FOR APPROVAL OF RECORD DESTRUCTION**

23. The Liquidator recommends and seeks authority to destroy Lincoln Mutual receivership estate documents on a rolling, yearly basis, such that every year all documents more than seven (7) years old will be destroyed without further request to the Court by the Liquidator and without further review or order of this Court.

**REQUEST FOR FINAL ORDER CLOSING ESTATE**

24. The Liquidator seeks a final order terminating the liquidation of Lincoln Mutual and closing this case.

25. The Liquidator also requests that no further reports be required of the Liquidator to any person or entity, including but not limited to reports to this Court and reports to OFIR.

26. By operation of law, the corporate existence of Lincoln Mutual will be dissolved effective on the date of the order discharging the Liquidator. MCL 500.8120. The order sought by the Liquidator expressly so provides.

**AUTHORIZATION OF SERVICE**

27. Prior to filing, the Liquidator's counsel provided a copy of this Verified Motion to counsel for the MPCGA, the party having the strongest potential interest in the relief sought. The MPCGA approved the content of this Verified Motion before filing, and as the attached Proof of Service reflects, a copy of the filed Verified Motion was also personally served via U.S. First Class Mail on the MPCGA's counsel. The Liquidator intends to serve any Order resulting from this Verified Motion on the MPCGA's counsel in the same manner.

28. Due to the difficulty and prohibitive cost associated with identifying and providing personalized notice of this Verified Motion (together with any resulting Order) to other parties that may have a remote or potential interest in Lincoln Mutual's liquidation, the Liquidator requests that the Court authorize, approve, and/or ratify the Liquidator's service of this Verified Motion, the Notice of Hearing, and any resulting Order:

- (a) Via U.S. First Class Mail on counsel for the MPCGA only; and
- (b) On any other potentially interested parties by posting electronic copies on the DIFS website, [www.michigan.gov/difs](http://www.michigan.gov/difs), under the section “Who We Regulate,” the subsection “Receiverships,” and the sub-subsection “Lincoln Mutual.”

Service in this manner is reasonably calculated to give interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

### **VERIFICATION**

29. This Motion is verified below by James E. Gerber, the Special Deputy Liquidator for Lincoln Mutual.

### **RELIEF REQUESTED**

WHEREFORE, the Director of DIFS, acting solely in her capacity as the Court-appointed and statutory Liquidator of Lincoln Mutual, respectfully requests entry of a final order:

- a. Granting the Liquidator’s Verified Motion;
- b. Approving all actions taken or not taken by the Liquidator;
- c. Authorizing the Liquidator to promptly and irrevocably escheat the \$52,469.79 of remaining Liquidation Estate assets to the State of Michigan for deposit into the general fund;
- d. Discharging the Liquidator and the Liquidator’s agents;
- e. Unconditionally releasing the Liquidator and the Liquidator’s past and present agents;
- f. Forever barring all claims against the Liquidator and the Liquidator’s past and present agents;
- g. Authorizing record destruction;
- h. Terminating the liquidation, dissolving Lincoln Mutual, and closing the case;

- i. Authorizing, ratifying, and/or approving the Liquidator's service of this Verified Motion and any resulting Order by personal service on the MPCGA only and by posting electronic copies on the DIFS website; and
- j. Granting such other and further relief as the law or equity require.

Respectfully submitted,

Bill Schuette  
Attorney General



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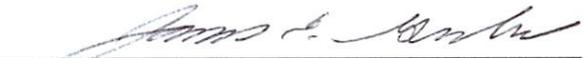
Christopher L. Kerr (P57131)  
Assistant Attorney General  
Attorneys for Plaintiff, as Liquidator  
for Lincoln Mutual Casualty Co.  
Corporate Oversight Division  
P.O. Box 30755  
Lansing, Michigan 48909  
(517) 373-1160

Dated: December 17, 2014

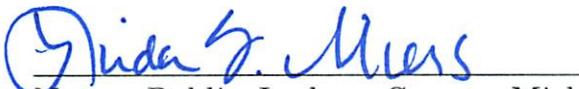
VERIFICATION

STATE OF MICHIGAN )  
 )ss.  
COUNTY OF INGHAM )

James Gerber, court-appointed Special Deputy to the statutory Liquidator of Lincoln Mutual, being first duly sworn, deposes and says that he makes this Verification on the Liquidator's behalf; that he has read the foregoing Verified Motion to Terminate Liquidation, Approve the Actions of the Liquidator, Discharge the Liquidator, Close the Case, and for Related Relief; that he executes this Verified Motion for and on behalf of the Liquidator, and that he is duly authorized to do so; and that the matters contained in the Verified Motion are true to his personal knowledge and/or are true to the best of his information and belief.

  
James E. Gerber  
Special Deputy Liquidator

Subscribed and sworn to before me,  
a Notary Public in and for said county,  
this 17<sup>th</sup> day of December, 2014

  
Notary Public, Ingham County, Michigan  
*Jackson County, MI, acting in Ingham County*  
My commission expires: 12-28-2016

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**American Fellowship Mutual Insurance Co**  
**For the Period From Jan 1, 2014 to Dec 03, 2014**  
**1845-00 - Restricted Cash-Lincoln Mutual**

<b>Date</b>	<b>Reference</b>	<b>Payee</b>	<b>Memo</b>	<b>Payment Amt</b>	<b>Receipt Amt</b>	<b>Balance</b>
4/23/14	Deposit	Lincoln Mutual Insur			71,281.57	71,281.57
4/29/14	900393	STATE OF MI		1,443.16		69,838.41
4/30/14	900394	Logan & Associates		1,709.00		68,129.41
5/8/14	900397	STATE OF MI		3,307.45		64,821.96
5/14/14	900405	STATE OF MI		64,821.96		0.00
5/14/14	900405V	STATE OF MI	Void	-64,821.96		64,821.96
6/10/14	900417	Carl R Sirk		5.14		64,816.82
6/30/14	AJ 02	Taxes		192.00		64,624.82
6/30/14	SJ 16	Postage		6.26		64,618.56
9/4/14	900465	STATE OF MI		5,657.33		58,961.23
11/13/14	900500	STATE OF MI		5,524.35		53,436.88
12/3/14	900509	STATE OF MI		967.09		52,469.79
				<b>18,811.78</b>	<b>71,281.57</b>	<b>52,469.79</b>