COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

J. LEE COVINGTON, II **SUPERINTENDENT** **OHIO DEPARTMENT OF INSURANCE,** **IN HIS CAPACITY AS** **LIQUIDATOR OF CREDIT GENERAL** **INSURANCE COMPANY AND CREDIT** **GENERAL INDEMNITY COMPANY** **1366 Dublin Road** **Columbus, OH 43215-1093** **Plaintiff,** **vs.** **GRANT THORNTON LLP** **c/o Edward J. Vonderbrink, Statutory Agent** **625 Eden Park Drive** **Suite 900** **Cincinnati, Ohio 45202,** **Defendant.**	01 CVH 10-10711 **Case No.** _____ **Category "H" Case** **COMPLAINT**

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
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CLERK OF COURTS

J. Lee Covington, II, the Superintendent of the Ohio Department of Insurance, as Liquidator of Credit General Insurance Company and Credit General Indemnity Company, states for his Complaint against the Defendant as follows:

1. J. Lee Covington, II ("Mr. Covington") is the Superintendent of the Ohio Department of Insurance (the "Superintendent"). Mr. Covington serves as the Liquidator of Credit General Insurance Company ("CGIC") and Credit General Indemnity Company ("CGIND") (collectively referred to as "Credit General") pursuant to Court Orders entered on December 22, 2000 and January 5, 2001 in the case of *J. Lee Covington, II v. Credit General Insurance Company, et al.*, Franklin County Common Pleas Case No.

00CVH-11-9867. As the Liquidator, Mr. Covington has all those powers enumerated in said Court Orders and those found in Ohio Revised Code Chapter 3903. Mr. Covington brings this action on behalf of the shareholders, creditors, and policyholders of CGIC and CGIND.

2. CGIC and CGIND are insurance companies domiciled in Ohio and admitted to do business in other states. CGIND is a wholly-owned subsidiary of CGIC.

3. Defendant Grant Thornton LLP is a partnership duly authorized to conduct business in Ohio, with its principal place of business in Ohio at 625 Eden Park Drive, Suite 900, Cincinnati, Ohio.

4. The venue of this action is proper in this Court pursuant to Ohio Revised Code Section 3903.04(E).

5. At all pertinent times, Credit General was subject to the requirements of Sections 3929.011 and 3929.012 of the Ohio Revised Code with respect to minimum paid-in capital and surplus and minimum reserves.

6. At all pertinent times, Credit General was subject to the requirements of Section 3901-1-50 of the Ohio Administrative Code ("OAC"), a regulation duly promulgated by the Superintendent pursuant to the statutory powers cited therein. OAC Section 3901-1-50(C) provides in pertinent part:

> All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report ... with the superintendent ....

7. Credit General retained the Defendant to conduct the annual audit required by OAC Section 3901-1-50(C) for 1996, 1997, 1998 and 1999. Defendant prepared the audited financial reports for Credit General for 1996, 1997 and 1998 and submitted them to the Superintendent. Defendant performed work on Credit General's audited financial report

for 1999, but declined to complete that audit or to provide an audited financial report for that year.

8. As Credit General's auditor, Defendant was required to and did represent to the Superintendent that it was aware of the provisions of the insurance code and the rules and regulations of the Ohio Department of Insurance that relate to the accounting and financial matters, and that it would express its opinion on the financial statements of Credit General in the terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Department.

9. Pursuant to the statutes, regulations and common law of Ohio, Defendant owed certain duties of care to Credit General in performing its function as auditor. Among these duties were the following:

> -A duty to conduct the examination of Credit General's financial statements in accordance with generally accepted auditing standards, giving consideration to such other standards illustrated in the "Financial Condition Examiner's Handbook" promulgated by the National Association of Insurance Commissioners as the Defendant deemed necessary.
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> -A duty to notify the Board of Directors of Credit General within five business days of any determination by the Defendant that Credit General had materially misstated its financial condition as reported to the Superintendent as of the balance sheet date currently under examination, or that Credit General did not meet the minimum capital and surplus requirement of the Revised Code as of that date. In the event that Credit General did not, within five business days thereafter, provide Defendant with evidence that this information had been furnished to the Superintendent, Defendant had a duty to provide this notice directly to the Superintendent within five business days after the first five-day period expired.
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> -A duty to take such action as prescribed in volume one, section AU five hundred sixty one of the Professional Standards of the American Institute of Certified Public Accountants, as amended, if Defendant, subsequent to the date of the audited financial report, became aware of facts which might have affected its report.
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> -A duty to investigate and identify to Credit General any significant deficiencies in Credit General's internal control structure noted by Defendant during the audit.

10. In connection with each annual audited financial report for Credit General, Defendant was required to and did certify to the Superintendent that it understood that the audited financial reports would be filed with the Superintendent and that the Superintendent would be relying on the information in it in the monitoring and regulation of the financial position of Credit General. Defendant did in fact have such an understanding at all pertinent times.

11. During the course of its service as Credit General's auditor, Defendant repeatedly breached its duties of care. Without limitation, these breaches included the following:

a. Defendant breached its duties of care when it failed to detect and/or report that Credit General had substantial unpaid losses in the form of self-insured reserves existing under certain of Credit General's workers compensation policies that were not secured by admissible assets.

b. Defendant breached its duties of care when it failed to detect and/or report that Credit General was claiming credit for millions of dollars of reinsurance that did not meet the legal requirements for reinsurance issued by reinsurers not licensed in the State of Ohio.

c. Defendant breached its duties of care when it failed to detect and/or report that Credit General had not accurately reported the premiums and related expenses applicable to the unexpired portion of large deductible workers compensation policies.

d. Defendant breached its duties of care when it failed to detect and/or report that Credit General had failed to submit its management, cost sharing and consolidated tax sharing agreements as required by Ohio law.

e. Defendant breached its duties of care when it failed to detect and/or report certain retroactive reinsurance agreements.

f. Defendant breached its duties of care when it failed to detect and/or report that Robert Lucia, the President of Credit General, was diverting millions of dollars in premiums owed and paid to Credit General from Credit General into private accounts he controlled and used to pay claims off the books of Credit General and for certain personal expenses.

g. Defendant breached its duties of care when it failed to detect and/or report that Credit General had numerous deficiencies in its internal controls.

12. Credit General's audited financial reports for 1996, 1997 and 1998 portrayed a company that was solvent and that met all statutory requirements for paid-in capital, surplus and minimum reserves. The reports, however, were not accurate. Credit General was in fact statutorily insolvent as of and after December 31, 1997, and possibly earlier.

13. If Defendant had properly performed its duties of care, Credit General's true financial condition would have been reported to the Superintendent no later than June 1, 1998, and in all likelihood would have been reported much earlier, resulting in assumption of control of Credit General by the Superintendent through appropriate rehabilitation or liquidation proceedings. As a proximate result of Defendant's breaches of its duties of care, however, Credit General's insolvency went undetected and progressively deepened.

14. As a proximate result of Defendant's breaches of its duties of care, Credit General and its policyholders, creditors and shareholder suffered injuries entitling the Plaintiff to recover damages in an amount to be proven at trial that will exceed $25,000.00, exclusive of interest and costs.

WHEREFORE, Plaintiff, having fully stated his claims against the Defendant, respectfully requests that judgment be entered in his favor and against the Defendant for damages in an amount in excess of $25,000.00 to be proven at trial, together with such interest as is allowed by law; that the Court award Credit General its costs in this matter, including (if reasonable and if allowed by law) its attorney fees; and that the Court grant such further relief as it deems just.

Betty D. Montgomery
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