

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

GEORGE FABE,  
Superintendent of Insurance  
State of Ohio,

Plaintiff,

vs.

THE AMERICAN DRUGGISTS'  
INSURANCE COMPANY

Defendant.

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Case No. 86CV-03-1381

JUDGE WEST

FILED  
CLERK OF COURTS  
1987 MAR 18 PM 4:18

JOURNAL ENTRY AND  
ORDER APPROVING PLAN FOR  
DISBURSEMENT OF ASSETS  
PURSUANT TO R.C. 3903.34

This matter came on before this Court upon the Liquidator's "Motion for Approval of Plan for Disbursement of Assets Pursuant to R.C. 3903.34" and the objections of the Ohio Insurance Guaranty Fund, the Illinois Insurance Guaranty Fund, the Alabama Insurance Guaranty Association and the New Jersey Property Liability Insurance Guaranty Association to the Liquidator's motion.

On August 29, 1986, the Liquidator filed a "Motion for Approval of Plan for Disbursement of Assets Pursuant to R.C. 3903.34" with this Court. The motion was filed in compliance with the directive of R.C. 3903.34 that the Liquidator seek this Court's approval of a plan to disburse assets out of marshalled assets, from time to time as such assets become available, to any guaranty association having obligations because of the insolvency of The American Druggists' Insurance Company ("ADIC"). The Plan

provides guaranty associations with early access to marshalled assets of the liquidation estate.

Pursuant to the requirement of R.C. 3903.34, the Liquidator sent copies of the Motion and the proposed agreement to be signed by each guaranty association seeking early access under the Plan and notice of the date set for hearing of the motion, to each of the guaranty associations and superintendents or commissioners of insurance specified in Exhibit A attached to the Affidavit of Deputy Liquidator James M. Young filed with this Court on August 29, 1986.

On October 6, 1986, the Ohio Insurance Guaranty Association ("OIGA") filed objections to the proposed Plan for Disbursement of Assets. The OIGA raised the following three objections to the Plan:

1. The Fifteen Million Dollar (\$15,000,000) reserve set forth in paragraph I of the Plan was too high.
2. Allocated and unallocated claims handling expenses are treated differently for purposes of early access.
3. Reimbursement for a claim paid by a guaranty association is conditioned on the filing of a proof of claim by the claimant or the insured.

The Liquidator and the Guaranty Associations have filed briefs and affidavits in support of their respective positions on the objections raised by the Guaranty Associations. The Court is advised that the parties have agreed to a resolution of the objections raised by the Guaranty Associations. The parties have submitted an "Amended Plan for Disbursement of Assets Pursuant to R.C. 3903.34" which reflects the resolutions reached by the parties. The Amended Plan is attached hereto as Exhibit "A". The

Liquidator and the Guaranty Associations now seek this Court's approval of the Amended Plan for Disbursement of Assets Pursuant to R.C. 3903.34.

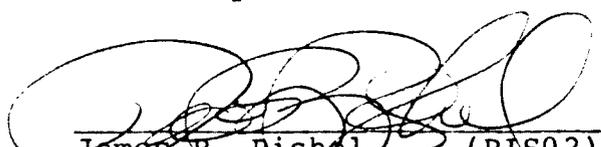
Upon consideration of the parties' request, this Court finds that within one hundred twenty (120) days of the entry of this Court's Order of Liquidation, the Liquidator made application to this Court for approval of a proposal to disburse assets out of marshalled assets to guaranty associations having objections because of the insolvency of The American Druggists' Insurance Company. This Court further finds that the Liquidator gave notice of his application to Guaranty Associations and superintendents and commissioners of insurance pursuant to the provisions of R.C. 3903.34(E). This Court further finds that the "Amended Plan for Disbursement of Assets Pursuant to R.C. 3903.34" complies with Division (B)(1) and (2) of R.C. 3903.34.

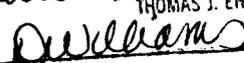
WHEREFORE, this Court finds the parties' request to be well taken and hereby approves the Amended Plan for Disbursement of Assets Pursuant to R.C. 3903.34.

  
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JUDGE WEST

Approved:

ANTHONY J. CELEBREZZE, JR.  
Attorney General of Ohio

  
James R. Rishel (RIS02)  
GURLEY, RISHEL, MYERS  
& KOPECH  
17 South High Street  
Suite 707  
Columbus, Ohio 43215  
(614) 221-0717  
Attorney for Liquidator

THE STATE OF OHIO Franklin County, ss	} I THOMAS J. ENRIGHT, Clerk OF THE COURT OF COMMON PLEAS, WITHIN AND FOR SAID COUNTY.
I HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL NOW ON FILE IN MY OFFICE. WITNESS MY HAND AND SEAL OF SAID COURT THIS	
March 18 18	18 DAY
By 	THOMAS J. ENRIGHT, Clerk Civil Deputy

*J. Scott Jamieson (signature)*  
J. Scott Jamieson (JAM06) 3/8/87

VORYS, SATER, SEYMOUR  
& PEASE  
52 East Gay Street  
Columbus, Ohio 43216  
(614) 464-6578  
Attorney for the  
Guaranty Associations

EXHIBIT A

LIQUIDATION OF  
THE AMERICAN DRUGGISTS' INSURANCE COMPANY

AMENDED PLAN FOR DISBURSEMENT OF ASSETS  
PURSUANT TO R.C. 3903.34

George Fabe, Superintendent of Insurance of the State of Ohio, as Liquidator of The American Druggists' Insurance Company, hereby submits the following Plan for Disbursement of Assets to Guaranty Associations pursuant to R.C. 3903.34:

I. The Liquidator shall make cash disbursements out of marshalled assets, from time to time as such assets become available, to appropriate state insurance guaranty associations (hereinafter referred to as "associations") in amounts calculated according to this plan at such times as the amount calculated in paragraph II-L below exceeds seven million five hundred thousand dollars (\$7,500,000.00) or such other amount as determined by the Liquidator, which would produce a reasonable and appropriate distribution. After the Liquidator has ample and sufficient time to evaluate, ascertain and determine the amount of assets, required reserves, potential claims and liabilities under this Plan, he shall make a calculation under this Plan, and shall continue to make such calculations under this Plan at least annually thereafter.

II. The Liquidator shall make the following calculations and determinations based upon the best information available to him:

A. The total amount of liquid assets available. The Liquidator shall not be required to increase liquid assets for purposes of this plan by making forced or quick sales that result in obtaining less than market value for assets. Liquid assets shall not include real estate, book value of a subsidiary, deposits held by other states, any assets over which he does not have complete control, or any assets which are subject to potential claims of other persons.

B. The amount of reserves necessary pursuant to R.C. 3903.42(A) for the payment of expenses of administration of the liquidation, including, but not limited to, the following:

1. The actual and necessary costs of preserving or recovering the assets of the insurer;

2. Compensation for all services rendered in the liquidation;

3. Any necessary filing fees;

4. The fees and mileage payable to witnesses;

5. Reasonable attorney's fees.

C. The amount of reserves necessary to pay the associations their estimated reasonable expenses in handling claims. The Liquidator may require the associations to submit their estimates of expenses under oath, in the form of interrogations or otherwise.

D. The amount of reserves necessary for the payment of claims of secured creditors, to the extent of the value of the security held.

E. The amount of reserves, if any, necessary to pay debts due to employees for services performed to the extent that they do not exceed one thousand dollars and represent payment for services performed within one year before filing of the complaint for liquidation, pursuant to R.C. 3903.42(B).

F. The amount of liquid assets available for disbursement to all claimants entitled to priority under R.C. 3903.42(C). This amount shall be determined by subtracting the amounts determined in paragraphs B, C, D and E above from the amount determined in paragraph A above.

G. The estimated value of non-liquid assets which the Liquidator reasonably expects will be converted to cash during the liquidation.

H. The estimated total amount of claims and claims handling expenses which are covered by state insurance guaranty association acts. The Liquidator may require the associations to submit their estimates of total covered claims and claims handling expenses paid under oath, in the form of interrogatories or otherwise.

I. The estimated total amount of claims which are entitled to priority under R.C. 3903.42(C) but are not covered by state insurance guaranty association acts. This amount shall include non-covered claims, deductible amounts and amounts which exceed the coverage of such acts.

J. The amount of payments which will probably be made on non-covered claims determined in paragraph I above. This amount shall be determined by:

1. adding the amount of liquid assets available for disbursement on all priority R.C. 3903.42(C) disbursements under this plan plus the estimated value of non-liquid assets which will be converted to cash during the liquidation (paragraph G above), and then

2. multiplying such sum by the ratio of the amount determined in paragraph I above to the sum of the amounts determined in paragraphs H and I above.

K. The amount of liquid assets which must be placed in reserve for payments on non-covered claims determined in paragraph I above. This amount shall be determined by subtracting the estimated value of non-liquid assets (paragraph G above) from the amount determined in paragraph J above.

L. The amount of liquid assets available for disbursement to all associations. This amount shall be determined by subtracting the amount determined in paragraph K above from the amount determined in paragraph F above.

M. The amount of liquid assets to be paid to each association. This amount shall be determined by:

1. adding the amount determined in paragraph L above to the cumulative amount previously disbursed to all associations pursuant to this plan.

2. multiplying such sum by the ratio of the estimated claim of such association (for payment of covered claims) to the estimated claims of all associations (for payment of covered claims) based upon estimates from paragraph H above, and

3. subtracting the amounts previously paid to such association pursuant to this plan from the amount determined in (2).

III. Any payment to be made under the provisions of this Plan shall be conditioned upon the association agreeing, executing and returning to the Liquidator, the Agreement attached hereto as Exhibit "1" which includes the following provisions to the associations:

A. Submit to the exclusive jurisdiction of the Court of Common Pleas, Franklin County, Ohio (hereinafter referred to as the "Court") solely with respect to any claim, issue or dispute involving, arising out of or relating to this agreement, or to the Plan for Disbursement of Assets to Guaranty Associations Pursuant to R.C. 3903.34, and to irrevocably appoint the Superintendent of Insurance of the State of Ohio as its agent for service of process in any such matter, service of process being deemed complete upon the service of process upon the Superintendent of the State of Ohio and the mailing, by ordinary United States Mail, of a copy of such process to the guaranty association.

B. Respond in good faith the requests for information submitted to it by the Liquidator;

C. Abide by the terms and conditions of the Order of Liquidator and Injunction issued by the Court of Common Pleas, Franklin County, Ohio (hereinafter referred to as the "Court") in this matter on April 30, 1986, Civil Action 86CV-03-1381;

D. Establish and maintain a separate ledger account for the receipt of any payment herein;

E. Utilize any payment received under this plan only for the payment of claims in connection with the liquidation of The American Druggists' Insurance Company;

F. Permit the Liquidator to examine its books and records before final distribution;

G. Update on a periodic basis any information previously submitted to the Liquidator or filed with the Court;

H. Promptly return to the Liquidator, upon his request, any assets together with income earned on the assets previously disbursed, which may be required to pay claims of secured creditors and claims which are of an equal or higher priority of distribution established in R.C. 3903.42;

I. Reimburse the Liquidator for any amount paid in excess of an amount it is ultimately determined the payee is entitled to receive upon final account having been filed by the Liquidator and approved by the Court;

J. Make a full report to the Liquidator accounting for all assets ~~disbursed to the~~ association, ~~all~~ disbursements made therefrom, any interest earned by the association on such assets and any other matter as the Liquidator or the Court of Common Pleas, Franklin County, Ohio may require;

K. Make such other reports as may be required by the Liquidator or the Court of Common Pleas, Franklin County, Ohio; and

L. Agree that any action at law, suit in equity or judicial proceeding for the enforcement of this agreement shall be instituted or resolved in the Court of Common Pleas, Franklin County, Ohio, and that this agreement shall be governed by the laws of the State of Ohio.

IV. Disbursements made to the association shall be in amounts estimated by the Liquidator to at least be equal to the claim payments made or to be made by the association for which such association could assert as a claim against the Liquidator, provided, however, that if the assets available from time to time do not equal or exceed the amount of such claim payments made or to be made by the association, then disbursements shall be in the amount of available assets pursuant to the provisions of this plan.

LIQUIDATION OF  
THE AMERICAN DRUGGISTS' INSURANCE COMPANY

AGREEMENT

This agreement entered into between George Fabe, Superintendent of Insurance, State of Ohio, Liquidator of The American Druggists' Insurance Company (hereinafter referred to as "Liquidator") and \_\_\_\_\_ (hereinafter referred to as "association") pursuant to the provisions of R.C. 3903.34. It is hereby agreed between the parties that in order for the association to receive and the Liquidator to release the distribution of assets pursuant to the Plan adopted under R.C. 3903.34, the association agrees as follows:

- A. Submit to the exclusive jurisdiction of the Court of Common Pleas, Franklin County, Ohio (hereinafter referred to as the "Court") solely with respect to any claim, issue or dispute involving, arising out of or relating to this agreement, or to the Plan for Disbursement of Assets to Guaranty Associations Pursuant to R.C. 3903.34, and to irrevocably appoint the Superintendent of Insurance of the State of Ohio as its agent for service of process in any such matter, service of process being deemed complete upon the service of process upon the Superintendent of the State of Ohio and the mailing, by ordinary United States Mail, of a copy of such process to the guaranty association.
- B. Respond in good faith the requests for information submitted to it by the Liquidator;
- C. Abide by the terms and conditions of the Order of Liquidator and Injunction issued by the Court of Common Pleas, Franklin County, Ohio (hereinafter referred to as the "Court") in this matter on April 30, 1986, Civil Action 86CV-03-1381;
- D. Establish and maintain a separate ledger account for the receipt of any payment herein;
- E. Utilize any payment received under this plan only for the payment of claims in connection with the liquidation of The American Druggists' Insurance Company;
- F. Permit the Liquidator to examine its books and records before final distribution;

G. Update on a periodic basis any information previously submitted to the Liquidator or filed with the Court;

H. Promptly return to the Liquidator, upon his request, any assets together with income earned on the assets previously disbursed, which may be required to pay claims of secured creditors and claims which are of an equal or higher priority of distribution established in R.C. 3903.42;

I. Reimburse the Liquidator for any amount paid in excess of an amount it is ultimately determined the payee is entitled to receive upon final account having been filed by the Liquidator and approved by the Court;

J. Make a full report to the Liquidator accounting for all assets disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets and any other matter as the Liquidator or the Court of Common Pleas, Franklin County, Ohio may require;

K. Make such other reports as may be required by the Liquidator or the Court of Common Pleas, Franklin County, Ohio; and

L. Agree that any action at law, suit in equity or judicial proceeding for the enforcement of this agreement shall be instituted or resolved in the Court of Common Pleas, Franklin County, Ohio, and that this agreement shall be governed by the laws of the State of Ohio.

GEORGE FABE, LIQUIDATOR

ASSOCIATION

By: \_\_\_\_\_  
Michael F. Motil  
Deputy Liquidator

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_