

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

George Fabe, :
Superintendent of Insurance, :
State of Ohio, : Case No. 90CVH02-1068

Plaintiff, : Judge Close

v. :

The Ohio General Insurance :
Company, :

Defendant :

MOTION FOR APPROVAL OF PLAN FOR DISBURSEMENT
OF ASSETS TO GUARANTY ASSOCIATIONS
PURSUANT TO R.C. 3903.34

Now comes George Fabe, Superintendent of Insurance, State of Ohio (hereinafter "Liquidator"), in his capacity as Liquidator of The Ohio General Insurance Company and moves this Court for an Order approving the plan for Disbursement of Assets to Guaranty Associations pursuant to R.C. 3903.34, a copy of which is attached hereto as Exhibit A.

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in his capacity as Liquidator of
The Ohio General Insurance Company,
as Special Counsel to Anthony J.
Celebrezze, Jr., Attorney General
of Ohio

MEMORANDUM IN SUPPORT

On March 28, 1990, this Court ordered that sufficient cause exists for the liquidation of The Ohio General Insurance Company and, pursuant to Ohio Revised Code Chapter 3903, appointed George Fabe as Liquidator for the purpose of liquidation. R.C. 3903.34 provides, in pertinent part, that

[w]ithin 120 days of the final determination of insolvency of an insurer by a court of this state, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshalled assets, from time to time as such assets become available, to any guaranty associations or for a guaranty association having obligations because of such insolvency.

Attached hereto as Exhibit A is a proposed Plan for Disbursement of Assets to Guaranty Associations pursuant to R.C. 3903.34 that has been prepared by the Liquidator in response to this statutory requirement and in accordance with the requirements of R.C. 3903.34(B)(1) and (2). Pursuant to the further requirements of R.C. 3903.34, copies of this motion are being served upon those parties entitled to receive notice.

Having thus complied with the requirements of R.C. 3903.34 with respect to the application for approval of the proposal to disburse assets to guaranty associations, George Fabe, Liquidator of The Ohio General Insurance Company respectfully requests that this Court enter an Order approving

the Plan for Disbursement of Assets to Guaranty Associations pursuant to R.C. 3903.34 attached hereto as Exhibit A.

Respectfully submitted,

Daniel J. Massey / SEN
Daniel J. Massey
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41 South High Street
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(614) 227-1903
Attorneys for Superintendent Fabe,
in his capacity as Liquidator of
The Ohio General Insurance Company,
as Special Counsel to Anthony J.
Celebrezze, Jr., Attorney General
of Ohio

EXHIBIT A

LIQUIDATION OF THE OHIO GENERAL INSURANCE COMPANY

PLAN FOR DISBURSEMENT OF ASSETS
TO GUARANTY ASSOCIATIONS
PURSUANT TO R.C.-3903.34

George Fabe, Superintendent of Insurance of the State of Ohio, as Liquidator of The Ohio General 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 three million and 00/100 dollars (\$3,000,000.00) 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 responses to interrogatories 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 responses to 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 Journal Entry and Order Appointing Liquidator issued by the Court in this matter on March 28, 1990, Civil Action 90CVH02-1068;
- 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 Ohio General 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 may require;

K. Make such other reports as may be required by the Liquidator or the Court; 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, 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 OHIO GENERAL INSURANCE COMPANY

AGREEMENT

This agreement entered into between George Fabe, Superintendent of Insurance, State of Ohio, as Liquidator of The Ohio General 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 to:

- 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 Journal Entry and Order Appointing Liquidator issued by the Court in this matter on March 28, 1990, Civil Action 90CVH02-1068;
- 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 Ohio General 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 may require;

K. Make such other reports as may be required by the Liquidator or the Court; 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, and that this agreement shall be governed by the laws of the State of Ohio.

GEORGE FABE, LIQUIDATOR

ASSOCIATION

By: _____
Lynne C. Hengle
Chief Deputy Liquidator

By: _____
Its _____

Dated: _____

Dated: _____

PRI/4552