

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

MARY JO HUDSON,
SUPERINTENDENT OF INSURANCE,
OHIO DEPARTMENT OF INSURANCE, IN
HER CAPACITY AS LIQUIDATOR OF THE
P.I.E. MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

THE P.I.E. MUTUAL INSURANCE
COMPANY,

Defendant.

) CASE NO. 97CVH12-10867
)
) JUDGE JOHN F. BENDER
) **MOTION AND ACCOMPANYING**
) **MEMORANDUM FOR AN ORDER**
) **SETTING AN AUGUST 14, 2009 AT**
) **9:00 A.M. PRELIMINARY HEARING**
) **DATE FOR THE OBJECTION TO**
) **THE CLAIM OF RICHARD J. NASCA,**
) **M.D., DENIED IN WHOLE OR PART**
) **BY THE LIQUIDATOR, SETTING AN**
) **AUGUST 10, 2009 BAR DATE FOR**
) **WRITTEN RESPONSES TO THE**
) **LIQUIDATOR'S DETERMINATION**
) **OF RICHARD J. NASCA, M.D.'S**
) **CLAIM AND CONFIRMING THE**
) **LIQUIDATOR'S DETERMINATION**
) **OF THE CLAIM IF NO TIMELY**
) **RESPONSE OR APPEARANCE AT**
) **THE AUGUST 14, 2009**
) **PRELIMINARY HEARING IS MADE**
)

Plaintiff, in her capacity as the Court appointed Liquidator ("Liquidator") of the P.I.E. Mutual Insurance Company ("P.I.E."), hereby moves this Court for the entry of an order (a) setting a preliminary hearing date for August 14, 2009 at 9:00 a.m. ("status conference hearing") regarding the Liquidator's objection to the claim of Richard J. Nasca, M.D., denied in whole or part by the Liquidator; (b) requiring if Richard J. Nasca, M.D. requests that his

objection be heard at the status conference hearing that he file a written response to the Liquidator's determination of his claim by August 10, 2009; (c) confirming the Liquidator's determination of Richard J. Nasca's claim if Richard J. Nasca, M.D. fails to timely respond by August 10, 2009 or appear at the status conference hearing; and (d) approving the attached Notice regarding the status conference hearing. The reasons for this motion are more fully set forth in the attached Memorandum in Support.

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MEMORANDUM IN SUPPORT

A. Necessity of a Scheduled Hearing

ORC § 3903.39 provides, in pertinent part, that:

(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....

(B) Whenever objections are filed with the liquidator and the liquidator does not alter his denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing in accordance with the Civil Rules to the claimant or his attorney and to any other persons directly affected, not less than ten nor more than thirty days before the date of the hearing. The matter may be heard by the court or by a court appointed referee who shall submit findings of fact along with his recommendation.

In the case at hand, Richard J. Nasca, M.D. ("Dr. Nasca") has objected to the Liquidator's classification of part of his claim as a Class 5 claim, necessitating a hearing by the Court or a court-appointed referee under section 3903.39, as provided above. Therefore, the Liquidator moves this Court to hear Dr. Nasca's objection at a status conference hearing on August 14, 2009 at 9:00 a.m.

B. Objection of Dr. Nasca

Dr. Nasca filed, in the above-captioned liquidation proceeding, Claim No. 19020331 for reimbursement of the replacement policy claim deductible he incurred for the insurance policy he obtained to replace his P.I.E. policy, when it was automatically cancelled by operation of law following the entry of this Court's order of liquidation pursuant to ORC § 3903.19(A)(1).

On March 29, 1999, Dr. Nasca filed Claim No. 19020331 for reimbursement of the replacement policy claims deductible he incurred for the insurance policy he obtained to replace his P.I.E. policy. On April 13, 1999, the Liquidator informed Dr. Nasca that his claim for

reimbursement of the replacement policy deductible under his insurance policy did not constitute a valid claim in the P.I.E. liquidation, because his P.I.E. policy was cancelled pursuant to court order and by operation of law once P.I.E. was placed in rehabilitation and then eventually in liquidation.

Subsequently, the Liquidator reviewed Dr. Nasca's Claim No. 19020331, and on March 12, 2009, provided Dr. Nasca a class only determination of his claim. Therein, the Liquidator informed Dr. Nasca that his claim was classified as a Class 5 (fifth level priority) claim of a general creditor.

Thereafter, by correspondence dated April 1, 2009, Dr. Nasca submitted a written objection to the Liquidator's determination of his claim asserting that he opposed the Liquidator's determination. The Liquidator's May 7, 2009 response to Dr. Nasca's objection explained that the Liquidator's determination of his claim was properly classified.

On May 29, 2009, Dr. Nasca submitted an additional letter asserting the same objection, that he opposed the Liquidator's determination of his claim as a Class 5 claim. The Liquidator's July 1, 2009 response to Dr. Nasca's May 29, 2009 objection, explained, among other things, that his claim for the new policy deductible was properly classified as a Class 5 claim. The Liquidator further explained that she was neither valuing nor denying Class 5 claims at this time because there will be no assets available to distribute at that class level. The Liquidator also requested that Dr. Nasca withdraw his objection to the Liquidator's determination related to Claim No. 19020331. To date, Dr. Nasca has not withdrawn his objection.

On July 20, 2009, Dr. Nasca submitted a response to the Liquidator's July 1, 2009 letter, objecting to the Liquidator's determination of Claim No. 19020331. The Liquidator responded

to Dr. Nasca's letter, by letter dated July 23, 2009, and again the Liquidator explained that Dr. Nasca's Claim No. 19020331 was properly classified as a Class 5 claim.

The Liquidator's classification of Dr. Nasca's claim for reimbursement of the replacement policy claims deductible as a Class 5 claim was proper pursuant to the priority for distribution of claims as set forth in ORC § 3903.42, which provides, in pertinent part, that:

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

...

(B) Class 2. All claims under policies for losses incurred, including third party claims, all claims of contracted providers against a medicaid health insuring corporation for covered health care services provided to medicaid recipients, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property that are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. . . . Claims under nonassessable policies for unearned premium or other premium refunds.

...

(E) Class 5. Claims of general creditors.

Based on the foregoing, Dr. Nasca's claim is not a claim for loss "under" an insurance policy and therefore it cannot be classified as Class 2 claim. Dr. Nasca has not had any loss covered by an insurance policy. Instead if he has any claim at all, it is for breach of contract for the statutory cancellation of the policy. His separate claim for return of unearned premium has been allowed as a Class 2 Claim in the amount of \$1,349.00 and is not the subject of this objection.

Dr. Nasca has failed to withdraw his objection to the Liquidator's determination related to Claim No. 19020331, therefore, the Liquidator respectfully requests the Court to enter an order confirming that the Liquidator's determination of Claim No. 19020331 is final.

C. Relief Requested

To date, Dr. Nasca's objection has not been withdrawn. In her correspondence with Dr. Nasca, the Liquidator noted that if his objection was not withdrawn, the matter would be set for hearing. Accordingly, the Liquidator respectfully requests that the Court hear and deny the above-captioned objection to the Liquidator's classification of Dr. Nasca's claim.

D. Bar Date for Written Responses and Appearance at Status Conference Hearing

In order to put Dr. Nasca on notice of the legal and factual reasons for his objection to the Liquidator's determination and to afford him a reasonable time to prepare for the hearing on such objection, the Liquidator asks this Court to issue an order requiring Dr. Nasca to file with the Court a written response detailing the legal and factual basis for his objection by August 10, 2009 if he desires to have his objection be heard at the August 14, 2009 status conference hearing. The Liquidator further moves that this Court issue an order confirming the Liquidator's determination of the claim of Dr. Nasca if he fails to file a written response by the August 10, 2009 deadline.

In order to achieve finality regarding the determination of the above-referenced claim, the Liquidator requests that this Court issue an Order confirming the Liquidator's determination of the claim of Dr. Nasca if he fails to, either individually or through his attorney, (a) file a written response detailing the legal and factual basis for his objection to the Liquidator's determination by August 10, 2009 and (b) attend the August 14, 2009 status conference hearing.

E. Notice of Hearing

ORC § 3903.39(B) provides, in pertinent part that:

(B) Whenever objections are filed with the liquidator and the liquidator does not alter his denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing in accordance with the Civil Rules to the claimant or his attorney and to any other persons directly affected, not less than ten nor more than thirty days before the date of the hearing.

Attached hereto as Exhibit A is a proposed form of notice of hearing (the "Notice") that the Liquidator asks the Court to approve. The Notice puts Dr. Nasca on notice of (a) the August 14, 2009 9:00 a.m. status conference hearing date; (b) the need to file a written response regarding his objection to the Liquidator's determination by August 10, 2009 and (c) the fact that the Court will confirm the Liquidator's determination of the claim of his claim if he fails to appear, either individually or through counsel, at the August 14, 2009 status conference hearing. The Notice, once approved, will be mailed to Dr. Nasca.

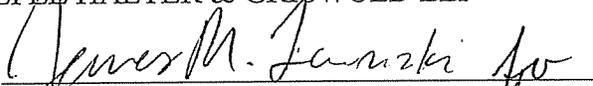
F. Conclusion

For the reasons stated above, the Liquidator moves this Court for an Order (a) setting August 14, 2009 at 9:00 a.m. as the status conference hearing date regarding the above-referenced claim; (b) requiring Dr. Nasca to file with the Court a written response detailing the legal and factual basis for his objection by August 10, 2009 if he desires to have his objection be heard at the August 14, 2009 status conference hearing or have the Liquidator's determination confirmed; (c) indicating that the Liquidator's determination of Dr. Nasca's claim if he fails to appear, individually or through counsel, at the August 14, 2009 status conference hearing will be confirmed and (d) an Order approving the attached Notice.

Respectfully submitted,

RICHARD CORDRAY
Attorney General of Ohio

By Special Counsel:
CALFEE HALTER & GRISWOLD LLP

By: 

James M. Lawniczak (0041836)

Tijara N. A. Patton (0081912)

1400 KeyBank Center

800 Superior Avenue

Cleveland, Ohio 44114

Telephone: (216) 622-8200

Facsimile: (216) 241-0816

Email: jlawniczak@calfee.com
tpatton@calfee.com

*Attorneys for Mary Jo Hudson, in her capacity as
Liquidator of The P.I.E. Mutual Insurance
Company*

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of July, 2009 a copy of the foregoing Motion and Accompanying Memorandum for an Order Setting a August 14, 2009 at 9:00 a.m. Preliminary Hearing Date for the Objection to the Claim of Richard J. Nasca, M.D., Denied in Whole or Part by the Liquidator, Setting a August 10, 2009 Bar Date for Written Responses to the Liquidator's Determination of Richard J. Nasca, M.D.'s Claim and Confirming the Liquidator's Determination of the Claim If No Timely Response or Appearance at the August 14, 2009 Preliminary Hearing Is Made was served via first-class mail, postage prepaid, upon:

Richard J. Nasca, M.D.
1912 Verrazzano Drive
Wilmington, NC 28405

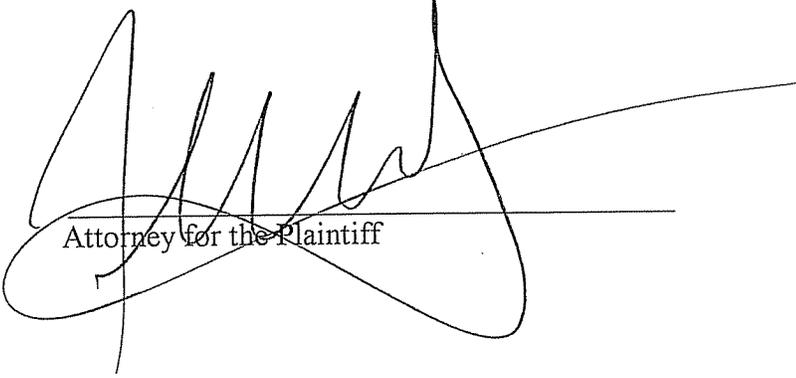

Attorney for the Plaintiff

EXHIBIT A

NOTICE OF (1) AUGUST 14, 2009 AT 9:00 A.M. PRELIMINARY HEARING DATE,
(2) THE ESTABLISHMENT OF AN AUGUST 10, 2009 BAR DATE FOR THE FILING OF
WRITTEN RESPONSES TO THE LIQUIDATOR'S DETERMINATION AND
(3) CONFIRMATION OF RICHARD J. NASCA, M.D.'S CLAIM NOT PURSUED BY
ATTENDANCE AT THE AUGUST 14, 2009 PRELIMINARY HEARING

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

MARY JO HUDSON,) CASE NO. 97CVH12-10867
SUPERINTENDENT OF INSURANCE,)
OHIO DEPARTMENT OF INSURANCE, IN)
HER CAPACITY AS LIQUIDATOR OF THE) JUDGE JOHN F. BENDER
P.I.E. MUTUAL INSURANCE COMPANY,)
)
Plaintiff,) **NOTICE**
)
v.)
)
THE P.I.E. MUTUAL INSURANCE)
COMPANY,)
)
Defendant.)

NOTICE OF (1) AUGUST 14, 2009 AT 9:00 A.M. PRELIMINARY HEARING DATE,
(2) THE ESTABLISHMENT OF A AUGUST 10, 2009 BAR DATE FOR THE FILING OF
WRITTEN RESPONSES TO THE LIQUIDATOR'S DETERMINATION AND
(3) CONFIRMATION OF RICHARD J. NASCA, M.D.'S CLAIM NOT PURSUED BY THE
ATTENDANCE AT THE AUGUST 14, 2009 PRELIMINARY HEARING

TO THE PARTIES ON THE ATTACHED SERVICE LIST:

PLEASE TAKE NOTICE THAT on July ____, 2009, the Liquidator filed a Motion and Accompanying Memorandum for an Order Setting a August 14, 2009 at 9:00 a.m. Preliminary Hearing Date for the Objection to the Claim of Richard J. Nasca, M.D., Denied in Whole or Part by the Liquidator, Setting a August 10, 2009 Bar Date for Written Responses to the Liquidator's Determination of Richard J. Nasca, M.D.'s Claim and Confirming the Liquidator's Determination of the Claim If No Timely Response or Appearance at the August 14, 2009 Preliminary Hearing Is Made.

PLEASE TAKE FURTHER NOTICE THAT a preliminary hearing ("status conference hearing") on the objection to the claim of Richard J. Nasca, N.D. denied in whole or part by the Liquidator will be held on August 14, 2009 commencing at 9:00 a.m., before the Honorable John F. Bender in courtroom 7B, 369 South High Street, Columbus, Ohio.

PLEASE TAKE FURTHER NOTICE THAT in order to have your claim heard at the August 14, 2009 status conference hearing, you must file a written response specifically stating the legal and or factual basis for your objection to the denial of the claim, in whole or part, by the Liquidator. The written response must be filed with this Court on or before the August 10, 2009 response deadline, and served on outside counsel for the Liquidator at the address listed below. The Liquidator's determination of Richard J. Nasca's claim will be confirmed if no timely written response is filed by the August 10, 2009 written response bar date.

PLEASE TAKE FURTHER NOTICE THAT if you do not further prosecute your action by appearing, either individually, or through counsel, at the August 14, 2009 status conference hearing as well as at any subsequent hearing, the Liquidator's determination of your claim will be confirmed.

SERVICE LIST

Richard J. Nasca, M.D.
1912 Verrazzano Drive
Wilmington, NC 28405