

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

J. LEE COVINGTON II, Superintendent  
of Insurance as Rehabilitator of  
Governmental Casualty  
Insurance Company

Plaintiff,

vs.

GOVERNMENTAL CASUALTY  
INSURANCE COMPANY,  
in Rehabilitation

Defendants.

CASE NO: 92 CVH 02-1110

JUDGE MICHAEL WATSON

FILED  
COMMON PLEAS COURT  
FRANKLIN CO., OHIO  
2001 DEC 18 PM 3:46  
CLERK OF COURTS-CV

**MOTION FOR LEAVE TO AMEND COMPLAINT  
TO INTERPLEAD OHIO GOVERNMENT RISK MANAGEMENT  
PLAN, OHIO FAIR PARTICIPATING PLAN, AND  
MICHIGAN PARTICIPATING PLAN AS DEFENDANTS**

Plaintiff J. Lee Covington II, Ohio Superintendent of Insurance, as Rehabilitator of Defendant Governmental Casualty Insurance Company, hereby requests leave of the Court to amend the Complaint to Interplead the Ohio Government Risk Management Plan, the Ohio Fair Participating Plan, and the Michigan Participating Plan as Defendants in this matter. The reasons for this motion are set forth in the memorandum in support of the motion which is attached hereto.

Respectfully submitted,

*Elisabeth A. Squeglia by Joyce B. Kirk, Esq.*  
Elisabeth A. Squeglia (0022005)  
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Attorneys for J. Lee Covington II,  
Superintendent of Insurance as  
Rehabilitator of Governmental Casualty  
Insurance Company, as Special  
Counsel to Betty Montgomery, Attorney  
General of Ohio

**MEMORANDUM IN SUPPORT OF MOTION**

Plaintiff J. Lee Covington II, Ohio Superintendent of Insurance (“Rehabilitator”), as Rehabilitator of Governmental Casualty Insurance Company (“GCIC”), has moved this Court for leave to amend the Complaint in the above-captioned action to interplead the Ohio Government Risk Management Plan, the Ohio Fair Participating Plan, and the Michigan Participating Plan as Defendants. The facts surrounding the motion and amended Complaint are set forth below.

On September 4, 1992, this Court entered an order approving a Rehabilitation Plan for GCIC, which Rehabilitation Plan provided that (1) all creditors would be paid in accordance with negotiated settlement agreements, (2) the rehabilitation proceeding would remain open until certain federal tax issues were resolved, and (3) upon resolution of the federal tax issues, any remaining funds in the GCIC rehabilitation estate, less expenses of maintaining and closing the

rehabilitation, would be paid to the three governmental risk pools which were reinsured by GCIC (the "Plans"). The three Defendants which the Rehabilitator seeks to interplead by amending this Complaint are the three governmental risk pools, *i.e.* the Plans, which were reinsured by GCIC.

In the intervening period since the Rehabilitation Plan was approved, all creditors have been paid pursuant to the negotiated settlement agreements, the tax issues have been resolved, and the Rehabilitator is now prepared to close the rehabilitation estate and pay the remaining funds to the Plans as set forth in the Rehabilitation Plan. However, the administration of the Plan has changed in the intervening period, making a single lump sum payment to the Plans impossible.

At the time the Rehabilitation Plan was negotiated, filed, and approved, the Plans were jointly administered and managed, and a joint claim was filed on behalf of all three Plans. Since the original claim payments were made under the Rehabilitation Plan, however, the three Plans have terminated their joint administration arrangement. At the present time the two Ohio Plans (Ohio Governmental Risk Management Plan and Ohio Fair Participating Plan) are managed by one administrator, and the Michigan Plan (Michigan Township Participating Plan) is separately managed. Accordingly, it is not possible to pay the remaining funds in the GCIC rehabilitation estate jointly to the three Plans as originally contemplated under the Rehabilitation Plan.

On June 15, 2001, this Court issued an Order requiring each of the three Plans to file a final claim setting forth the percentage of the final proceeds which should be allocated to that Plan, and establishing a claims determination and appeal process. Pursuant to that Order, each of the Plans filed a final claim, and provided the Rehabilitator with documentation in support of their claim. On October 22, 2001, the Rehabilitator issued a determination of those claims.

Subsequently, and within the time period allowed by the Court's order, the Ohio Plans filed an objection to the Rehabilitator's determination of the final claims.

At the present time, there is no dispute that the three Plans are entitled to the remaining funds, which are presently in excess of \$700,000. The only remaining issue, to the Rehabilitator's knowledge, is how the remaining funds should be allocated among the three Plans. In order to minimize the cost of the continued administration of the GCIC rehabilitation, the Rehabilitator would like to close the rehabilitation estate at the earliest possible opportunity. Therefore, the Rehabilitator requests that the Court permit the Complaint to be amended to interplead the three Plans as Defendants. If this Court grants the motion, after the Amended Complaint has been filed and served on the new Defendants, the Rehabilitator intends to file a motion with this Court for leave to deposit the remaining funds with the Court, to close the rehabilitation estate, and to dismiss the Rehabilitator and GCIC as parties to this action.

As the Rehabilitator has no further interest in how the remaining funds are allocated among the three Plans, and no information regarding how the funds should be allocated except for the information that was provided by the Plans in the context of the claims filing process, which information has been provided to each Plan, the continued participation by the Rehabilitator in this proceeding while the issue of allocation of the remaining funds among the three Plans is resolved serves no useful purpose, and will only unnecessarily increase the administrative costs of this rehabilitation. Once the rehabilitation estate is closed, and the Rehabilitator and GCIC are dismissed as parties, the Plans can proceed with their objections to the claims determination pursuant to the interpleader action without further involvement of the Rehabilitator or further expense to the rehabilitation estate.

Accordingly, the Rehabilitator respectfully asks the Court to approve the Motion for Leave to Amend the Complaint to Interplead the three Plans as parties. The proposed Amended Complaint is attached hereto as Exhibit A.

Respectfully submitted,

*Elisabeth A. Squeglia by Joyce S. Luk, Esq.*  
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Attorneys for J. Lee Covington II,  
Superintendent of Insurance as  
Rehabilitator of Governmental Casualty  
Insurance Company, as Special  
Counsel to Betty Montgomery, Attorney  
General of Ohio

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing Motion for Leave to Amend Complaint to Interplead Ohio Government Risk Management Plan, Ohio Fair Participating Plan, and Michigan Participating Plan as Defendants, and for Leave to Deposit the Remaining Proceeds of the Estate with the Court, was served upon the following by regular U. S. mail, postage prepaid, this 18<sup>th</sup> day of December, 2001.

Peter J. Krembs, Esq.  
Hermann Cahn & Schneider  
1301 East Ninth Street, Suite 500  
Cleveland, OH 44114

Gregory W. Kirstein, Esq.  
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Columbus, OH 43215

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215 South Washington Square, Suite 200  
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Inglis & Monaco  
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645 Griswold, Suite 3900  
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150 West Jefferson, Suite 2500  
Detroit, MI 48226-4115

*Elisabeth A. Squeglia Esq., Joyce B. Jenkins, Esq.*  
Elisabeth A. Squeglia

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

HAROLD T. DURYEE  
Superintendent of Insurance  
State of Ohio  
2100 Stella Court  
Columbus, Ohio 43266-0566,

Plaintiff,

vs.

GOVERNMENTAL CASUALTY  
INSURANCE COMPANY  
45659 Halyard Drive  
Plymouth, Michigan 48170

and

MICHIGAN TOWNSHIP  
PARTICIPATING PLAN  
10439 Ortonville Road  
Clarkston, Michigan 48348

and

OHIO ENVIRONMENTAL RISK  
MANAGEMENT PLAN  
c/o Hylant Administrative Services  
430 Madison Avenue, 9<sup>th</sup> Floor  
Toledo, OH 43603

and

OHIO FAIR PARTICIPATING PLAN  
c/o Hylant Administrative Services  
430 Madison Avenue, 9<sup>th</sup> Floor  
Toledo, OH 43603,

Defendants.

Case No.: 92CV02-1110

JUDGE MICHAEL WATSON

**AMENDED COMPLAINT FOR REHABILITATION OF  
GOVERNMENTAL CASUALTY INSURANCE COMPANY  
AND COMPLAINT FOR INTERPLEADER**

**COUNT ONE**

1. This Complaint is filed pursuant to R.C. 3903.12 requesting the appointment of Plaintiff Harold T. Duryee, Superintendent of Insurance for' the State of Ohio, as Rehabilitator of Defendant Governmental Casualty Insurance Company (hereinafter referred to as "GCIC") and to obtain appropriate relief to protect its policyholders, creditors, and the public. This Court has jurisdiction of this matter pursuant to R.C. 3903.04(E).

2. Plaintiff states that he is the duly appointed Superintendent of Insurance of the State of Ohio and is charged with the responsibility of executing and enforcing the insurance laws of this state. R.C. 3901.011.

3. Defendant GCIC is a domestic stock, fire and casualty company licensed in the State of Ohio. It is subject to proceedings authorized by R.C. 3903.01 to 3903.59 pursuant to R.C. 3903.03, and is an insurer as defined in R.C. 3903.01(L).

4. Plaintiff states that Defendant upon examination by Plaintiff was found to be in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, creditors, or to the public, as described in R.C. 3903.12(A). (See Affidavit of Dana Rudmose, appended hereto as Attachment A.)

5. Plaintiff further states that on February 4<sup>th</sup> 1992, Defendant OCIC (A) consented to the appointment of a Rehabilitator, and (B) waived both service of process and the holding of a formal hearing to show cause in connection in said appointment pursuant to R.C. 3903.12(t). (GCIC's Consent for Rehabilitation is appended hereto as Attachment B.)

## COUNT TWO

6. The allegations set forth in paragraphs one through five of this Complaint are hereby restated.

7. Defendants Ohio Government Risk Management Plan, Ohio Fair Participating Plan, and Michigan Participating Plan ("Interpleader Defendants") are government risk pools which were reinsured by Defendant Governmental Casualty Insurance Company.

8. At the outset of this rehabilitation proceeding, the Interpleader Defendants were jointly administered, and filed a joint claim in the rehabilitation estate of Defendant Governmental Casualty Insurance Company for losses covered under the reinsurance policies.

9. A Rehabilitation Plan was approved by this Court on September 4, 1992 and provided that: 1) all creditors of Defendant Governmental Casualty Insurance Company would be paid in accordance with negotiated settlement agreements, 2) the rehabilitation proceeding would remain open until certain tax issues were resolved, and 3) upon resolution of the federal tax issues, any remaining funds in the rehabilitation estate, after all expenses of maintaining and closing the rehabilitation were paid, would be paid to the Interpleader Defendants.

10. Upon approval of the Rehabilitation Plan, the Interpleader Defendants, as well as all other creditors of Defendant Governmental Casualty Insurance Company, were paid in accordance with the negotiated settlement agreements and the Rehabilitation Plan.

11. Since the time the Rehabilitation Plan was approved and payment under the settlement agreements made, the Interpleader Defendants have severed their joint administration relationship.

12. There is presently a dispute among the Interpleader Defendants with respect to how the remaining funds of Defendant Governmental Casualty Insurance Company should be allocated among the three Interpleader Defendants.

13. Pursuant to this Court's Order of June 15, 2001, each Interpleader Defendant submitted to the Plaintiff a final claim which set forth the percentage of the remaining funds of Defendant Governmental Casualty Insurance Company which should be allocated to that Plan, and documentation of the Interpleader Defendants' position. Plaintiff issued a determination letter allocating the remaining funds among the Interpleader Defendants on October 22, 2001. A copy of the determination letter is attached as Attachment C.

14. Interpleader Defendants Ohio Governmental Risk Management Plan and Ohio Fair Participating Plan have objected to Plaintiff's determination. A copy of the objection is attached as Attachment D.

15. Plaintiff and Defendant Governmental Casualty Insurance Company have no further interest in how the remaining funds are allocated among the Interpleader Defendants, and no information regarding how the funds should be allocated except for the information that was provided by the Interpleader Defendants in the claims filing process, which information has been provided to each Interpleader Defendant.

16. The continued participation by the Plaintiff and Defendant Governmental Casualty Insurance Company in this proceeding while the issue of allocation of the remaining funds among the Interpleader Defendants is resolved serves no useful purpose, and will only unnecessarily increase the administrative costs of this rehabilitation.

WHEREFORE, Plaintiff, pursuant to the provisions of R.C. Chapter 3903 and specifically R.C. 3903.12 and 3903.13, prays for the following:

A. A finding that sufficient cause exists for the rehabilitation of Defendant GCIC and appointment of Plaintiff as Rehabilitator.

B. An Order of Rehabilitation against Defendant GCIC.

C. An Order appointing Plaintiff Harold T. Duryee, and substituting his successor, J. Lee Covington II, Superintendent of Insurance for the State of Ohio, as Rehabilitator of Defendant GCIC and directing him to take possession of all assets, property, business and affairs of Defendant GCIC.

D. An Order vesting Plaintiff as Rehabilitator with the title to all property, contracts and rights of action of Defendant GCIC and directing that the Rehabilitator shall have all the powers of the directors, officers and managers, whose authority shall be suspended, except as they are specifically redelegated by the Rehabilitator.

E. An Order directing Plaintiff to secure all of the assets, property, books, records, accounts and other documents of Defendant GCIC.

F. An Order prohibiting the officers, directors, agents, employees, servants, representatives and the persons acting in concert with Defendant GCIC from disposing, using, transferring or concealing any property of Defendant without the express written authority of the Rehabilitator.

G. An Order prohibiting any bank, savings and loan association or other financial institution or other legal entity from disposing of, allowing to be withdrawn or concealing in any manner any property or asset of Defendant GCIC, except under the express authorization of the Rehabilitator or by further order of this Court.

H. An Order vesting Plaintiff with all other authority given him pursuant to R.C. Chapter 3903.

I. An Order including such further and other relief as this Court may deem just and proper under the circumstances.

J. An Order granting Plaintiff leave to deposit the remaining proceeds of the rehabilitation estate, after all expenses of maintaining and closing the estate have been paid, with this Court.

K. An Order that the Interpleader Defendants interplead and settle their respective claims to the remaining proceeds, or be forever barred from asserting the same.

L. An Order discharging Plaintiff and Defendant Governmental Casualty Insurance Company from all liability relative to this matter, including the accrual of any interest claimed after the proceeds are deposited with this Court.

M. An Order granting any other equitable or legal relief to which Plaintiff and Defendant Governmental Casualty Insurance Company may be entitled.

Respectfully submitted,

  
Elisabeth A. Squeglia (0022005)  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215  
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(614) 227-2390 fax

Attorneys for J. Lee Covington II,  
Superintendent of Insurance as  
Rehabilitator of Governmental Casualty  
Insurance Company, as Special  
Counsel to Betty Montgomery, Attorney  
General of Ohio



State of Ohio  
**Department of Insurance**  
2100 Stella Court Columbus, Ohio 43215-1067  
(614) 644-2658 www.state.oh.us/ins

**Bob Taft**  
Governor  
**J. Lee Covington II**  
Director

**VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED**

October 22, 2001

Peter J. Krembs, Esq.  
Hermann Cahn & Schneider  
1301 East Ninth Street, Suite 500  
Cleveland, OH 44114

Thomas G. Parachini, Esq.  
Miller Canfield Paddock & Stone  
150 West Jefferson, Suite 2500  
Detroit, MI 48226-4115

**Re: Governmental Casualty Insurance Company  
Amended Determination Letter**

Gentlemen:

The Rehabilitator of Governmental Casualty Insurance Company ("GCIC") has reviewed the final claims submitted by Ohio Government Risk Management Plan ("OGRMP"), Ohio Fair Participating Plan ("OFPP") (jointly "Ohio Plans"), and the Michigan Township Participating Plan ("MTPP" or "Michigan Plan"). Because the exact amount of the assets of the GCIC rehabilitation estate available for final distribution is not known at this time, the Rehabilitator's determination is stated as a percentage of the final distribution.

The facts which led up to this final claims determination process are as follows. OGRMP, OFPP, and MTPP filed a joint proof of claim in the rehabilitation proceeding in 1991. No documentation was provided to the Rehabilitator which separately accounted for the projected losses of each Plan. Under the terms of the Rehabilitation Plan and Settlement Agreements, a joint payment of approximately \$2 million was made to a reinsurer on behalf of all three Plans. The Rehabilitation Plan provided that any assets remaining after all claims had been paid and all federal tax and other issues resolved would be paid jointly to the three Plans, up to a maximum final payment of \$923,000. The Rehabilitation Plan provided that the final payment was to be wired to the reinsurer as "directed in a writing signed by each of the Plans." The relevant reinsurance agreement provided that the three Plans were to be indemnified by the reinsurer for losses on a collective basis, and not on a separate or individual basis.

Since the Rehabilitation Plan was approved and the initial payment made to the reinsurer, the Plans have terminated the reinsurance agreement referenced in the Rehabilitation Plan, terminated their joint administration agreement, and divided Plan assets among the three Plans. Accordingly, this final claims determination process is to allocate the remaining assets of GCIC among the three Plans.

The only document presented to the Rehabilitator which allocates losses among the three Plans is the Allocation Agreement which was entered into on October 29, 1992 among OGRMP, OFPP, and MTPP for the purpose of providing the reinsurer with a formula to allocate the indemnification proceeds

among the three Plans. While the Ohio Plans question the basis of this Allocation Agreement and the fairness of the allocation process, the Ohio Plans have not provided the Rehabilitator with sufficient documentation to support a different allocation formula. Although the Ohio Plans have presented audited financial statements prepared by Coopers & Lybrand for each of the Ohio Plans for the years ending December 31, 1991 and December 31, 1992, absent comparable audited financials for the Michigan Plan, it is not possible to verify whether the allocation formula proposed by the Ohio Plans is fair and accurate.

As the Rehabilitation Plan provided that the final payment would be made to the reinsurer, and the Allocation Agreement was used as the basis for apportioning the original proceeds paid to the reinsurer among the three Plans, it appears that the Allocation Agreement, absent other documentation to controvert the basis for the original allocation, should continue to be used as the basis for allocating the remaining GCIC assets among the three Plans. Accordingly, the Rehabilitator has determined that the remaining assets should be paid to the three Plans in the following proportion:

- |    |                                      |     |
|----|--------------------------------------|-----|
| 1. | Michigan Township Participating Plan | 83% |
| 2. | Ohio Government Risk Management Plan | 16% |
| 3. | Ohio Fair Participating Plan         | 1%  |

The order entered by Judge Watson on June 15, 2001 provides that upon receipt of the Rehabilitator's final claim determination, each Plan shall have the right to file objections to the determination with the Rehabilitator, no later than thirty (30) days from the date the notice of determination was received by the Plan. If one or more objections are filed with the Rehabilitator, the Rehabilitator will ask the court to set a consolidated hearing on such objections, and give notice of the hearing in accordance with the Civil Rules to the objecting Plan or its attorney, and to all non-objecting Plans or their attorneys, if any. All three Plans may appear and participate in such hearing, regardless of whether the Plan filed an objection to the Rehabilitator's determination of the Plan's final claim. Objections should be directed to:

Elisabeth A. Squeglia  
Special Counsel to the Rehabilitator  
Bricker & Eckler  
100 South Third Street  
Columbus, OH 43215

Because each Plan will need to understand the basis of the claim filed by the other Plans in order to appear and participate in any hearing on objections, in order to facilitate the objection and hearing process, we are hereby enclosing a copy of the final claim and documentation filed by each Plan. Each objecting party is required to serve a copy of their objection on counsel for the other party, at the address listed in the caption of this determination letter.

Very truly yours,



Douglas L. Hertlein  
Deputy Rehabilitator  
Governmental Casualty Insurance Company

Enclosure

cc: Elisabeth A. Squeglia

HERMANN CAHN & SCHNEIDER LLP

THE GALLERIA & TOWER AT ERIEVIEW  
1301 EAST NINTH STREET  
SUITE 500  
CLEVELAND, OHIO 44114-1876  
216/781-5515  
FAX 216/781-1030

NOV 24 REC'D

November 20, 2001

PETER J. KREMBS  
E-MAIL, pkrembs@hcsattys.com

Elisabeth A. Squeglia  
Special Counsel to the Rehabilitator  
Bricker & Eckler  
100 South Third Street  
Columbus, Ohio 43215

Re: Covington v. Governmental Casualty Insurance Company  
Case No. 92 CV 02-1110  
Franklin County Common Pleas

Dear Ms. Squeglia:

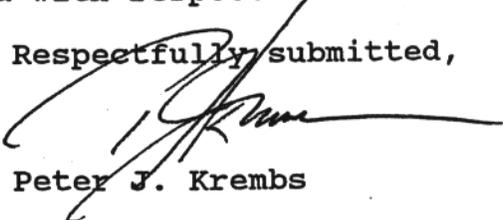
The Ohio Government Risk Management Plan and the Ohio Fair Participating Plan (collectively the "Ohio Plans") hereby file notice of their objection to the determination made by the Rehabilitator of Governmental Casualty Insurance Company ("GCIC") dated October 22, 2001.

The basis for this objection is that each of the Ohio Plans has properly established the amount of its claim against GCIC as required by Sections 3903.35 and 3903.36 of the Ohio Revised Code, whereas the Michigan Township Participating Plan has not.

Furthermore, the Ohio Plans object to being bound by the Allocation Agreement dated as of October 29, 1992 in allocating the contingent payment now at issue among the three Plans, as the Agreement does not, nor was it ever intended, to control the allocation of the contingent payment.

It is our understanding that the filing of this objection will cause the Rehabilitator to ask the court to set a hearing on this and any other objections filed with respect to this matter.

Respectfully submitted,



Peter J. Krembs

PJK:ns

cc: Thomas G. Parachini, Esq.  
Miller, Canfield, Paddock & Stone  
150 West Jefferson Street, Suite 2500  
Detroit, MI 48226-4115