

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 LMI Insurance
Company,

Plaintiff,

v.

LMI Insurance Company,

Defendant.

Case No. 00CVH03-2439

Judge Schneider

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
07 JUL 31 PM 2:20
CLERK OF COURTS

**MOTION OF THE LIQUIDATOR FOR APPROVAL TO MODIFY THE MAILING
PROCESS FOR DETERMINATION LETTERS**

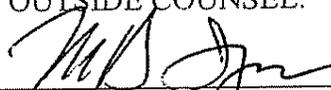
Plaintiff, Mary Jo Hudson, Superintendent of Insurance, Ohio Department of Insurance, in her capacity as Liquidator (the "Liquidator") of LMI Insurance Company ("LMI"), moves this Court for an Order approving the Liquidator's modification of the current mailing process for sending determination letters to claimants who filed proofs of claim in the LMI liquidation estate. The Liquidator's current process involves the use of both certified and first class mail. The Liquidator seeks to now only utilize first class mail, as specifically authorized and provided

for by Ohio Revised Code (“R.C.”) 3903.39(A). The reasons for this Motion are more fully set forth in the attached Memorandum in Support.

Respectfully submitted,

MARC DANN
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MEMORANDUM IN SUPPORT

The Liquidator brings this Motion to request that the Court approve changing the mailing process for sending determination letters to claimants who filed proofs of claim in the LMI liquidation estate. The proposed modification in this mailing process, which strictly conforms to R.C. 3903.39(A), is described below.

On May 23, 2000, this Court issued an order declaring to be insolvent and placing LMI in liquidation pursuant to R.C. Chapter 3903 and appointing the Ohio Superintendent of Insurance as the Liquidator (the “Liquidation Order”). R.C. Section 3903.21 and the Liquidation Order, in pertinent part, direct the Liquidator to take possession of and liquidate all property and assets of LMI, and to collect all debts and monies due LMI. The Liquidator must likewise determine the

value of claims made through the proof of claim (“POC”) process as set forth in R.C. Sections 3903.35-.42.

After a claimant has submitted a POC, it is reviewed by the Liquidator’s staff and a determination is made as to both its value and class pursuant to R.C. Section 3903.42. Upon that decision, a determination letter is generated and sent by mail to the claimant, as required by R. C. Section 3903.39(A). This statute specifically provides in pertinent part that: “...written notice of the determination shall be given to the claimant or his attorney by first class mail...”

Previously, in an abundance of caution and beyond what the statute requires, the Liquidator has sent these determination letters by certified mail to claimants and/or to their attorneys. Then if the certified mail delivery was not successful, such as being returned as “refused” or the card was returned “unsigned”, the determination letter was then re-sent first class mail. The use of certified mail for sending determination letters was initiated as a practice by the liquidator in the 1990’s, and the Liquidator for LMI followed it so that the process was consistent for all liquidation estates.

It has since been determined that the certified mail is not really more effective than first class mail. The extra administrative cost and time of certified mailings does not provide the value once thought in terms of record keeping, and may deplete estate assets better used elsewhere. Because R. C. Section 3903.39(A) provides for and requires only that determination letters be sent by first class mail, and considering the practicalities and costs involved, the Liquidator now believes that it is appropriate to send determination letters solely by first class mail. Furthermore, because first class mail letters are considered received if not returned,¹ or if they

¹ See *Federal Nat Mortg Ass'n v Doyle*, 1998 WL 700663, at *2 (Ohio App 6th Dist) (“The notice sent by ‘first class mail’ was never returned to appellee as undeliverable. Accordingly, the record contains un rebutted evidence that appellee did indeed send notice to appellant by ordinary mail.” See *Cantrell v Celotex Corp* (1995), 105 Ohio App 3d 90, 94, 663 N E 2d 708 (pursuant to the “mailbox rule,” a rebuttable presumption exists that a letter mailed to the correct address is presumed to be received in due course), and *Grant v Ivy* (198), 69 Ohio App 2d 40, 429 N E 2d 1188 (when ordinary mail is not returned, a

are returned as undeliverable,² the Liquidator will still be able to keep accurate records of these mailings. To further assist in maintaining the accuracy and verification of the mailing of determination letters, the Liquidator also intends to obtain a verification of mailing from the post office for all determination letters that she sends by first class mail going forward. Sending determination letters by first class mail is authorized and consistent with the R. C. Section 3903.39(A) and related sections of the liquidation statutes under R.C. Chapter 3903, and limits the expenditure of staff resources and funds, which leads to maximizing the estate's assets. Therefore, the Liquidator respectfully requests, for the aforementioned reasons, that the Court approve the Liquidator's modification of the mailing process for determination letters sent to claimants who filed proofs of claim in LMI to only utilize first class mail, as specifically authorized and provided for pursuant to R. C. Section 3903.39(A).

Respectfully submitted,

MARC DANN
ATTORNEY GENERAL, STATE OF OHIO

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rebuttable presumption of proper service arises)

² Claimants are instructed in the POC form to advise the Liquidator of any change of address. In the event a determination letter is returned, the Liquidator's staff makes some standard attempts to find a new address, and will still continue to do so with this revised procedure.