

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

MARY JO HUDSON,)
SUPERINTENDANT OF)
INSURANCE, OHIO DEPARTMENT)
OF INSURANCE, IN HER)
CAPACITY AS REHABILITATOR)
OF THE GUARANTEE TITLE AND)
TRUST COMPANY,)

Plaintiff,)

v.)

THE GUARANTEE TITLE AND)
TRUST COMPANY)

Defendant)

Case No. 08 CVH 07 10725

JUDGE GUY L. REECE, II

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
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CLERK OF COURTS

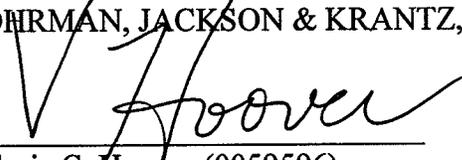
**MOTION OF REHABILITATOR FOR FINAL
ORDER AND JUDGMENT OF LIQUIDATION AND APPOINTMENT OF
LIQUIDATOR FOR THE GUARANTEE TITLE AND TRUST COMPANY**

Plaintiff, Mary Jo Hudson, in her capacity as Rehabilitator of The Guarantee Title and Trust Company ("Plaintiff"), respectfully requests that this Court enter a Final Order and Judgment of Liquidation and Appointment of Liquidator pursuant to R.C. § 3903.16(A). This motion is supported by the attached Memorandum in Support.

Respectfully submitted,

NANCY H. ROGERS
Attorney General State of Ohio

By Outside Counsel:
KOHLMAN, JACKSON & KRANTZ, LLP

A handwritten signature in black ink, appearing to read "V Hoover", is written over a horizontal line.

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Insurance, in her Capacity as Rehabilitator
of The Guarantee Title and Trust Company*

MEMORANDUM IN SUPPORT

I. Introduction

This Court appointed Plaintiff as Rehabilitator of Defendant, The Guarantee Title and Trust Company (“Guarantee”), pursuant to the Agreed Order Appointing Rehabilitator (“Agreed Order”) entered in this case on July 28, 2008. At that time, Guarantee admitted to a negative surplus of at least \$5.5 million in violation of Ohio statutes and regulations. Further, Guarantee reported a \$1,962,232 operating loss for the preceding 12 months. As a result of these facts, among others, Guarantee is statutorily insolvent as defined in R.C. § 3903.01(K) and within the meaning of R.C. § 3903.17(B).

Despite Plaintiff’s efforts to rehabilitate Guarantee, the grounds for rehabilitation found in this Court’s Agreed Order of Rehabilitation continue to exist and, therefore, form a basis for liquidation under R.C. § 3903.17(A). Further, Plaintiff believes that additional attempts to rehabilitate Guarantee would substantially increase the risk of loss to its policyholders, creditors and/or the public, or would be futile. Therefore, this Court should enter a Final Order and Judgment of Liquidation.

II. Law and Argument

R.C. § 3903.16(A) sets forth the standard for liquidation. The statute provides, in relevant part:

Whenever the Superintendent of Insurance believes rehabilitation of an insurer would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile, the Superintendent may file a motion in the court of common pleas for an order of liquidation. A motion under this division has the same effect as a complaint under Section 3903.17 of the Revised Code.

R.C. § 3903.17 sets forth three standards, any one of which support entry of a liquidation order: (A) any of the grounds for rehabilitation under R.C. § 3903.12 exist;

(B) the company is insolvent; or (C) the further transaction of business would be hazardous, financially or otherwise, to the company's policyholders, creditors, or the public. *See* R.C. § 3903.17(A)-(C). This case satisfies all three liquidation standards.

A. Guarantee Is Statutorily Insolvent

"Insolvency" is defined in R.C. § 3903.01(K), as:

(K) "Insolvency" or "insolvent" means: . . .

(2) For any other insurer, that is unable or unwilling to pay its obligations when they are due, or its admitted assets do not exceed its liabilities plus the greater of either of the following:

(a) Any capital and surplus required by law for its organization;

(b) The total par or state value of its authorized and issued capital stock.

Guarantee agreed to and admitted all of the averments in the Complaint for Rehabilitation and the Agreed Order, including the assessment of Guarantee's insolvent financial condition set forth in the affidavits of Mr. David Cook and Mr. Fred Lehr. The affidavits and admissions show that Guarantee does not meet the minimum statutory capital and surplus requirements imposed upon domestic title insurance companies. As found in the Agreed Order:

- Guarantee did not maintain an adequate reserve to cover policy claims in accordance with the Ohio Revised Code; and
- Guarantee maintained a negative \$5,515,000 statutory surplus as of March 31, 2008; and
- Guarantee suffered a \$1,962,232 operating loss for the 12 months preceding March 31, 2008.

Guarantee remains mired in the same hazardous financial crisis that existed at the time of the Agreed Order. Prior to rehabilitation, Guarantee failed to consistently pursue

agent recoupments, and the Rehabilitator has determined that Guarantee cannot now generate enough income to satisfy statutory surplus requirements. Indeed, Guarantee's claims obligations have increased during rehabilitation, while its premium income has ceased as a result of the Agreed Order. Further, the Rehabilitator's exploration of a sale of assets or another transaction to infuse funds has not materialized. Guarantee's insolvency, as defined in R.C. § 3903.01(K) and within the meaning of R.C. § 3903.17(B), therefore forms a basis for liquidation under R.C. § 3903.17(A) and (B).

B. Further transaction of business by Guarantee is financially hazardous to Guarantee's creditors, policyholders and the public, as consented to by Guarantee and found by this Court in the Agreed Order.

This Court found in the Agreed Order, upon the consent and agreement of Guarantee, that that "further transaction of business by Guarantee would be financially hazardous to its policyholders, creditors or the public, pursuant to R.C. § 3903.12(A)." (Agreed Order, para. 1). The Court's finding is based, in part, on admitted facts that Guarantee (1) operates at a loss of \$1.9 million, (2) maintains a negative surplus of over \$5.5 million; (3) does not properly reserve for claims; and (4) fails to adequately maintain accounting records in accordance with the Ohio Revised Code and applicable accounting standards.

Despite the efforts of the Rehabilitator, the hazardous financial condition of Guarantee persists. As set forth above, Guarantee's claims reserving and administration, accounting and other business practices cannot be transformed in order for the Company to generate sufficient income to cure its insolvency in the foreseeable future. Moreover, the Rehabilitator has been unable to generate income from alternative methods, and Guarantee's owner has refused to infuse additional funds into Guarantee to correct all or

even a portion of the reserve deficiency. Therefore, the basis for an order of liquidation exists pursuant to R.C. § 3903.17 (C).

C. The Rehabilitator believes that continued rehabilitation would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile.

The continued rehabilitation of Guarantee's business would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile because of Guarantee's inability to generate sufficient income and increase its reserves. Guarantee's business is title insurance for real property. Typically, Guarantee should have received a premium for the title insurance policy from its agent at or near the time that the real estate transaction closed. Unlike a life insurance policy, the premium on a title insurance policy is paid once and does not renew on an annual basis. Without the possibility of a renewal payment, Guarantee relies on its agents to assure marketable title prior to selling its title insurance policies in exchange for a single premium. Prior to rehabilitation, Guarantee failed to consistently collect premium or pursue recoupments, thus reducing income to the Company. At the same time, claims escalated.

The Rehabilitator has attempted to rehabilitate Guarantee by generating income through alternative sources and reducing its claims and expenses. These efforts were prejudiced by Guarantee's failure to promptly make available for examination by the Rehabilitator all of its own property, books, accounts, documents, or other records, or those of any subsidiary or related company, including Nations, as documented in interlocutory Orders entered in this case. *See* R.C. § 3903.12(F).

First, the Rehabilitator attempted to sell Guarantee, as a whole. The Rehabilitator had conversations with several potential buyers. However, none of these conversations has yet produced a sale. Second, the Rehabilitator investigated the sale of certain assets

of Guarantee. In her investigation, the Rehabilitator determined that two wholly owned title agencies may have had some potential value. The Rehabilitator contracted with a consultant to appraise the two title agencies. After the consultant investigated the title agencies, he provided the Rehabilitator with his opinion on the aggregate value of both agencies less than \$30,000. The Rehabilitator did not receive any timely offers to purchase either title agency. Third, Guarantee's owner has refused to infuse additional funds into Guarantee.

In addition, the Rehabilitator reduced operating expenses. Prior to the Rehabilitation, Guarantee maintained operations in Ohio, Florida and Kansas. The Rehabilitator decided to consolidate Guarantee's operations to one location in Ohio. The Rehabilitator closed the unprofitable title agencies in Florida and Ohio after finding no buyer and that each agency could not generate new business sufficient to rehabilitate Guarantee, and undertook to move claims and accounting functions from Kansas to Ohio.

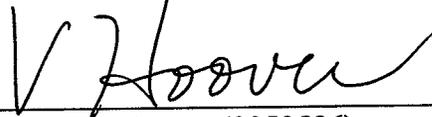
III. Conclusion

For the foregoing reasons, this Court should terminate the Rehabilitation, issue an order of liquidation and appoint a liquidator.

Respectfully submitted,

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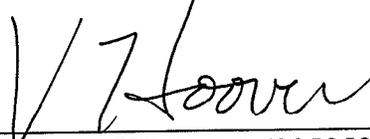
*Attorneys for Mary Jo Hudson,
Superintendent, Ohio Department of
Insurance, in her Capacity as Rehabilitator
of The Guarantee Title and Trust Company*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this *Motion for Order of Liquidation and Appointment of Liquidator* including the *Memorandum in Support* was sent to the following by facsimile and e-mail this 10th day of October 2008.

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