

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

MARY TAYLOR,
Superintendent of Insurance
in her Capacity as Liquidator of
The Guarantee Title and Trust Company,

Plaintiff,

vs.

The Guarantee Title and Trust Company,

Defendant.

CASE NO. 08CVH07-10725

JUDGE GUY L. REECE, II

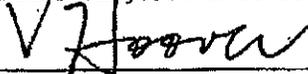
**MOTION FOR ORDER TO DISCONTINUE
HANDLING OF PROOFS OF CLAIMS IN CLASSES 4-9**

Plaintiff, Mary Taylor, Ohio Superintendent of Insurance in her capacity as Liquidator of The Guarantee Title and Trust Company ("Liquidator"), requests this Court, pursuant to R.C. 3903.02(A), 3903.22 and 3903.43, for an Order relieving the Liquidator of any obligation she may have to adjudicate and determine proofs of claims in classes 4-9 as defined in R.C. 3903.42. A Memorandum in Support is attached.

Respectfully submitted,

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COMMON PLEAS COURT
FRANKLIN CO., OHIO

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MEMORANDUM IN SUPPORT

I. BACKGROUND

A. Introduction

The Guarantee Title and Trust Company ("GTT") is an Ohio domiciled title insurance company that was organized in 1899. On October 27, 2008, this Court issued an order placing GTT in liquidation and appointing the Ohio Superintendent of Insurance as the Liquidator pursuant to R.C. Chapter 3903 ("Liquidation Order"). At that time, this Court also approved the Liquidator's Notice of the liquidation and ordered that October 27, 2009 would be the absolute final bar date by which proofs of claims had to be received by the Liquidator (the "absolute final bar date"). At the time of liquidation, GTT wrote business in multiple states, including 15 states where it was authorized to transact insurance business. In addition, GTT held several general checking accounts and used them as escrow accounts for its agency business, but it never reconciled these accounts. Instead, the company's management left it for the Liquidator to sift through the wreckage and reconcile these accounts. For these reasons and other reasons that are documented in the record of this case, the costs of administration have been and remain significant.

B. Notices of Liquidation and Proof of Claims

The Liquidator issued 268,058 required notices of liquidation throughout the United States pursuant to R.C. 3903.22. The Liquidator also published notice of the liquidation in several newspapers and has continuously provided information on her website as required by the Liquidation Order. This Court approved the proof of claims form and directed it to be issued by the Liquidator. Thus, the Liquidator issued 71,315 proof of claim forms, as approved by this Court, to all known GTT claimants and policyholders. Ultimately, 780 claimants filed timely

proofs of claim forms on which each claimant specifically indicated whether or not the claim is a claim arising under a policy (*i.e.*, Class 2 under R.C. 3903.42(B)).¹

C. Reasonably Collectible Estate Assets

During the course of this liquidation, the Liquidator thoroughly reviewed the books and records of GTT. Given the limited resources available to spend on asset collection because of the nearly no asset estate position, the Liquidator identified and collected, where reasonable, known and reasonably collectible assets of GTT. The largest assets collected to date include the return of statutory deposits by certain states, the recovery of \$304,000 from the directors' and officers' insurer, and the recovery of \$175,000 in recoupments.

As to other possible asset recovery, no reinsurance exists to recover. Additionally, the transfers within two years of the receivership are primarily to GTT's vendors. In order to conserve the minimal assets available, an exhaustive preference analysis was not performed. However, it appears likely, from a sampling that was performed, that challenges to these transfers would result in fact intensive litigation of, among other issues, the ordinary course of business defense. Similarly, the Liquidator was formally notified as part of the settlement of the directors and officers litigation² that no audit reports or similar documentary support exists in Nation's or GTT's Kansas offices.³ Such documents would be necessary to pursue a claim against the E&O insurer arising out of the PLM defalcation. PLM and First Closings, another agency where defalcations damaged GTT, have no collectible assets.

As a result of this cost-benefit analysis, the Liquidator orally requested and received this Court's authority to cease spending additional assets on administration and asset recovery and

¹ Sixty-three (63) proofs of claims were received after the absolute final bar date. These claims are barred pursuant to R.C. 3903.22, R.C. 3903.35 and the Liquidation Order.

² *Hudson v. Likens, et al.*, Franklin C.P. Case No. 09CV06-9350.

³ This is despite GTT's claims personnel's pre-liquidation assertions that such documents existed.

instead proceed to close the estate in a manner that might possibly provide minimal distribution to Class 2 Claimants.

D. Review of Claims, Adjudication and Determination of Class 2 Claims and Potential Distribution

R.C. 3903.43(A) provides, in relevant part, that “[t]he liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as [s]he considers necessary.”⁴ The Liquidator has now completed her review of all 780 proofs of claims that she received on or before the absolute final bar date. However, she has not further investigated any facts necessary to adjudicate and determine (that is, investigated, valued and either allowed in full or as compromised, or denied in whole or in part) all such claims. To date, the Liquidator has completed her adjudication and determination of all claims in Class 2 as defined in R.C. 3903.42(B) (all timely claims arising under policies for losses incurred, and all claims of guaranty associations), except for one claim filed by a guaranty association. The Liquidator’s investigation and determination/adjudication has been confined to timely-filed Class 2 Claims because it is certain that the estate’s assets will remain insufficient to pay any portion of any claim in any class below Class 2. The liability for the Class 2 claims allowed as of February 18,

⁴ R.C. 3903.43 continues in its entirety:

“(A) . . . He [the liquidator] may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by any person or organization, including guaranty association or foreign guaranty association. Unresolved disputes shall be determined under section 3903.39 of the Revised Code. As soon as practicable, he [the liquidator] shall present to the court a report of the claims against the insurer with his recommendations. The report shall contain the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the person to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(B) The court may approve, disapprove, or modify the report on claims by the liquidator. Such reports as are not modified by the court within a period of sixty days following submission by the liquidator shall be treated by the liquidator as allowed claims subject thereafter to later modification or to rulings made by the court pursuant to section 3903.39 of the revised Code. No claim under a policy of insurance shall be allowed for an amount in excess of policy limits.

2011 exceeds \$5 million. The Liquidator has less than \$2 million in assets. Whether allowed Class 2 claimants will receive any percentage distribution of their allowed claims is also uncertain and depends significantly on whether additional Class 2 Claims are allowed and whether the Liquidator can promptly close the estate, including obtaining a release of claims by the federal government. The Liquidator optimistically anticipates the retention of at least \$1 million for a small distribution to allowed Class 2 claimants. However, such distribution is uncertain as the costs of administering the estate if it were to continue would exceed the amount of the retention.

E. Discontinuing Investigation and Handling of Class 4-9 Claims

In order to attempt preservation of some assets for distribution to Class 2 claimants, the Liquidator requests authority to discontinue her investigation and further handling of all claims in Classes 4 through 9.⁵ Even if the Liquidator were to accept the valuation as claimed by the claimants in Classes 4 through 9 and allow all of those claims in full (thereby not denying in whole or in part any claim under R.C. 3903.39), there will be no money to pay any portion of those claims.⁶ Estate assets spent further investigating, negotiating or determining nearly 400

⁵ R.C. 3903.42(C) defines Class 3 claims as claims of the federal government. The Liquidator is in the process of obtaining a federal release of these claims so she may close the estate.

⁶ R.C. 3903.39 provides:

(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. If no such filing is made, the claimant may not object to the determination.

(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.

additional claims in classes that are certain to receive no distribution serves only to further diminish the Liquidator's chances of making any distribution to Class 2.

II. LAW AND ARGUMENT

No single definitive section of the Ohio Revised Code addresses the problem of such limited estate assets as to preclude any distribution to Classes 4 through 9. Thus, to make a determination, the sections of Ohio's Supervision, Rehabilitation and Liquidation Act, R.C. 3903.01-.59, ("the Act") must be considered and construed in *pari materia*.

Specifically, R.C. 3903.02(C) and (D) provides that the Act shall be liberally construed to effect the statutory purpose of protecting the interests of the insureds, claimants, creditors and the public generally through, among other things, enhanced efficiency and economy of liquidation. Additionally, R.C. 3903.18(A) charges that the Liquidator shall take possession of an insolvent insurance company's assets and administer them under the general supervision of this Court. Further, R.C. 3903.21(A)(6)(b) states that the Liquidator may "do other acts as are necessary to or expedient to collect, conserve or protect [the insolvent insurer's] assets."

As previously described the process begins as described by R.C. 3903.22 which requires the Liquidator to give notice of the liquidation to all persons reasonably expected to have claims in a liquidation so they are able to file timely claims and possibly receive a distribution of the insolvent insurer's assets. As to payment of claims, however, R.C. 3903.42 provides that 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." It further provides that "[n]o subsections shall be established within any class."

As to notification once a proof of claim has been filed, R.C. 3903.39(A) requires the Liquidator to notify claimants if the amount of their claim is *denied in whole or in part*. See

footnote 6, *supra*. Further, R.C. 3903.43(A) authorizes the Liquidator to investigate claims as the Liquidator considers necessary and requires the Liquidator to present to this Court a report of the Liquidator's recommendations of the amount of each claim duly filed in the liquidation. See footnote 2, *supra*.

In other cases, the Franklin County Common Pleas Court has approved Administrative Operating Procedures that authorized the Liquidator to notify claimants that she is discontinuing handling and reporting of claims the Liquidator knows will not be paid due to insufficient funds in the estate. *Fabe v. The Oil & Gas Ins. Co.*, Franklin C.P. Case No. 90CVH-05-3409, March 8, 1994 Journal Entry and Order, pp. 1, 3, 4, 10, 11 (attached as Exhibit A). The rationale supporting these procedures is that the cost of administration of these claims exceeds the amount of the distribution and therefore unnecessarily wastes and depletes estate assets. The procedure was implemented to pay in full all higher priority claims. *Id.* Thus, considering all of the Acts provisions comprehensively, this Court is authorized to permit the Liquidator to discontinue handling and reporting of claims in classes that the Liquidator knows will not be paid due to insufficient funds in the estate.

III. CONCLUSION

For the foregoing reasons, the Liquidator respectfully requests an Order as follows:

1. Authorizing her to discontinue her handling of all claims in Classes 4 through 8 and directing the Liquidator to mail the notice attached hereto as Exhibit B to all such claimants via first class mail to the address on the proof of claim form or the last known address provided by the claimant. The notice shall inform the claimants that (i) their proof of claim form states that their claim is not a claim arising under a policy, a claim of a guaranty association or a claim of the federal government and therefore is a claim that falls into a priority level below Classes 2 or 3; (ii) that a distribution, if any is made in this liquidation, will be made only to a priority level above Class 3; (iii) the proof of claim will not be further reviewed, investigated, determined or adjudicated on its merits because there are insufficient assets in the GTT estate with which to make any distribution on the claim. The

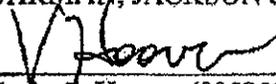
Liquidator will not be required to do anything further in the event the notice letter is returned as a result of an incorrect address with no forwarding address.

2. Authorizing the Liquidator to take no action in regard to Class 9 claims because the only Class 9 claims in the liquidation were withdrawn pursuant to a settlement agreement approved in this case and in *Hudson v Likens, et al.*, Franklin C.P. Case No. 09CV06-9350.
3. Authorizing the Liquidator to exclude all claims in Classes 4 through 9 from a report of claims filed pursuant to R.C. 3903.43(A).

Respectfully submitted,

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Telephone: 614/487-9200
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Date

Claimant
Address
Address
Address

Liquidator Number:

**The Guarantee Title and Trust Company in Liquidation
Notice to Claimants in Classes 4 through 9**

The Liquidator of the Guarantee Title and Trust Company (GTT) has concluded that the GTT assets are insufficient to make any distribution to claimants in the GTT liquidation with priority levels 4 through 9, as defined in Ohio Revised Code Section 3903.42. Based upon the Liquidator's reports to the Liquidation Court of the asset position of GTT, the Liquidation Judge has relieved the Liquidator of any obligation to further review for purposes of determining value or otherwise adjudicating proofs of claims falling in classes 4 through 9 due to insufficient funds in the estate to pay in full all higher priority claims. The reports can be found at www.ohliq.com - Open Liquidations—Guarantee title and Trust Company—Documents.

Ohio Revised Code Section 3903.42 (B) defines a Class 2 claim generally as a claim under a policy for a loss covered under the terms of a policy. Ohio Revised Code Section 3903.42 (C) defines Class 3 as claims of the Federal Government. According to the information provided by you on the submitted Proof of Claim form, as well as any supporting documentation you provided, your stated claim does not fall within either the definition of an applicable Class 2 or Class 3 claim. Therefore, pursuant to the court order referenced above, no further consideration will be given to the class or value of your claim. Also included in this group of non-considered claims are those claim forms received by the GTT Liquidator after the October 27, 2009 absolute final bar date for filing proof of claim forms.

We have enclosed for your reference a copy of ORC Section 3903.42 as well as a copy of the applicable Court Order.

