



## MEMORANDUM IN SUPPORT

Prior to GTT's liquidation, and in order to permit GTT to conduct its title insurance business in certain states, GTT made general or special deposits of securities or funds with such states pursuant to various state statutes. Deposits made by an insurer pursuant to statute as a condition of doing business in the insurer's non-domiciliary states, are called "special deposits." The purpose of these special deposits is to secure payment of the insurer's insurance obligations in the depository state. *See e.g.* Ohio Revised Code ("O.R.C.") 3953.06 ("Every title insurance company, prior to the issuance of any title insurance policy in this state, shall deposit with the superintendent of insurance, for the security and protection of its policyholders in this state, fifty thousand dollars in bonds . . ."); O.R.C. 3929.07 (deposit made by foreign insurer pursuant to O.R.C. 3953.06 is "for the benefit and security of all its policyholders").

In its annual statutory statement for the year ended 2007 which was filed with the Department of Insurance, GTT reported the following as "special deposits":

Arkansas	\$105,616
Florida	\$200,000
Illinois	\$1,103,810
Louisiana	\$20,000
South Car.	\$203,189
S. Dakota	\$223,582 <sup>1</sup>

Special deposits by a foreign insurer are generally deemed by statute to be held in trust for policyholders (or in some states, all policyholders and creditors) of the particular state. *See*

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<sup>1</sup> The special deposits are in securities and therefore the value of the deposits has fluctuated since the tie of the deposit and the time of the last statutory financial statement. GTT had on deposit with Ohio other securities valued at \$709,000 which were transferred to the Liquidator and liquidated at the outset of the liquidation.

e.g. 1949 OAG No. 1108 (1949) (“A deposit of securities made by a foreign insurance company with the superintendent of insurance of Ohio constitutes a trust fund for the benefit of its Ohio policyholders and bond obligees under [R.C. 3929.09]”); *see also* South Carolina Code of Laws (“S.C.L.”) 39-9-90 (bonds or securities deposited with Director of Insurance for insurer to transact business in the state “must be held as security for the payment of claims against the insurer arising out of its failure to meet obligations incurred in this State”); LSAR.S. 22.761 (special deposit is specifically for the protection of residents of Louisiana who have claims against foreign insurer); 215 ILCS 155/4(b) (“[a]ll deposits shall be held for the benefit of any insured under a policy the title insurance company issued or named party to a written escrow it accepted”). As such, special deposits are generally not considered general assets of a liquidated insurer’s estate, unless and until all or some of the deposit is released to the Liquidator. *See Levin v. Nat’l Colonial Ins. Co.*, 1 N.Y.3d 350,806 N.E.2d 473 (N.Y. 2004) (holding that the special deposit benefited only the policyholders and beneficiaries of policies written in New York State and that the ancillary receiver in New York had authority over the deposits and the ability to distribute them specifically to those beneficiaries).

Special rules apply to the distribution of special deposits in liquidation. In Ohio and most states, priority is given to paying claims against special deposits. O.R.C. 3903.58(B) provides:

The owners of special deposit claims<sup>2</sup> against an insurer for which a liquidator is appointed in this or any other state shall be given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit, so that the claims secured by it are not fully discharged from it, the claimants may share in the assets, but the sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid

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<sup>2</sup> O.R.C. 3903.01(P) defines “special deposit claim” as “any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons [such as policyholders of a particular state], but not including any claim secured by assets.”

percentages on their claims equal to the percentage paid from the special deposit.

When there are sufficient assets to justify separate receiverships, special deposit claims in liquidation are pursued in an ancillary receivership filed in the state where the deposit is located. See e.g. *Levin v. Nat'l Colonial Ins. Co.*, *supra*; *Bohlinger v. Annat*, 68 Ohio L. Ab. 453 (C.P. 1954) ("The superintendent of insurance owes a legal duty to . . . exercise his discretion within a reasonable time, either to request his appointment as ancillary receiver or transfer the statutory deposit . . . to the domiciliary receiver."). However, no state filed an ancillary receivership complaint against GTT, in part because of the limited assets in the estate. Cf. O.R.C. 3903.53(A)(1) (one condition for appointment of ancillary receivership is that "there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver").

In addition, O.R.C. 3903.21(A)(21) authorizes the Liquidator to enter into agreements with any receiver or superintendent of any other state relating to the liquidation of an insurer doing business in both states. Beginning in November 2009, the Liquidator contacted each state holding a GTT deposit and asked each state to agree to release the GTT special deposit to the Liquidator to become a part of GTT's general assets in this liquidation. Florida and South Dakota agreed with the Liquidator's request and each state released the deposit to the Liquidator. The release terminated the status of the released funds as special deposits and thus also terminated the status of affected claimants, if any, in those states as special deposit claimants, thereby permitting them to share in a possible distribution of GTT's assets pursuant to O. R.C. 3903.42 to the same extent as claimants who are not special deposit claimants. See O.R.C. 3903.58(C).

The remaining states (Arkansas, Louisiana, South Carolina and Illinois) responded by requesting that the Liquidator agree or attest to certain statutory conditions governing the release of special deposits in those states before the state would release any or all of the special deposit to the Liquidator. While each of these states has somewhat different statutes governing statutory deposits, each of these states conditions release on the absence of outstanding claims from the respective state, as explained more specifically *infra*. If outstanding claims exist in a state with special deposits, then that state has required that the special deposit pay the allowed claims from its respective special deposit fund consistent with that state's law.

Superintendents and receivers have, in other cases, entered into agreements that avoid the duplicative administrative costs of multiple (ancillary) receiverships across several states, while at the same time facilitating payment of special deposit claims from special deposits pursuant to the state law requiring the special deposits. *See e.g. Taylor v. American Chambers Life Insurance Company*, Franklin C.P. Case No. 00CVH-11-10534 (Liquidator reduced early access payments to various state guaranty associations by offsetting special deposits against the associations' class 2 claims); *Nebraska v. Amwest Surety Insurance Co.*, Lancaster Cty. D.C. Case No. C1 01 2102 (Order approving Liquidator's agreements to administer and distribute special deposits). These agreements also reduce the totality policyholder claims to be paid from the liquidation estate's general assets under R.C. 3903.58(B). Here also, all policyholder claimants in the GTT estate will benefit to a greater extent because of interstate cooperation and the protection embodied in these agreements, summarized below, in conformance with the statutes of the foreign states. As a result, in this case, the Liquidator requests approval to agree to the following use and distribution of the special deposits in Arkansas, Louisiana, South Carolina and Illinois:

**Arkansas:** The Liquidator requested that Arkansas release the statutory deposit as general assets of the GTT estate after the Liquidator attested pursuant to Arkansas law that: (i) there are no GTT policies in force and no future claims that can arise under GTT policies; (ii) after completing claims adjudication pursuant to Ohio's liquidation statutes and orders of this Court, there are no outstanding claims from Arkansas; and (iii) the company has no known premium tax or other liabilities in Arkansas. Arkansas is processing the release.

**Louisiana:** On December 15, 2010, the Liquidator entered into a written Agreement for Release and Administration of Special Deposit with Louisiana, whereby Louisiana agreed to release the special deposit and the Liquidator agreed to hold the deposit in a restricted account for the exclusive benefit of Louisiana claimants. The Liquidator agreed to adjudicate the Louisiana claims pursuant to Ohio law and the orders of this Court and use the special deposit to pay any of those claims that are allowed. Thereafter, the unexpended portion of the special deposit may be transferred from the restricted account to the general asset accounts of GTT. In this case, the Louisiana policyholder claims were denied on February 18, 2011 without any objection being filed. The remaining claims were effectively denied pursuant to this Court's Order entered on March 8, 2011 because they fall into Classes 4-9. Each of the Louisiana claimants in Classes 4-9 received the Notice ordered by this Court on March 8, 2011. None of the Louisiana claimants objected. Therefore, pursuant to the agreement, the Liquidator notified Louisiana that the statutory deposit will be transferred from the restricted account to the general assets of GTT on June 6, 2011.

**Illinois:** Under 215 ILCS 155/4(d), the statutory deposit can be released only if the Liquidator can attest that all of GTT's policy obligations in Illinois are paid in full, cancelled or assumed by another insurer. The Liquidator cannot attest to any of the statutory requirements. The amount of Illinois claims in the GTT liquidation exceeds the amount of the special deposit. Therefore, Illinois requires that the Illinois claims be treated as special deposit claims to be paid *pro rata* from Illinois statutory deposit securing those claims as reflected on the redacted Report of Special Deposit Claims that is attached and incorporated herein by reference as Exhibit A<sup>3</sup>. Illinois will compensate the GTT estate approximately \$100,000 for administering Illinois special deposit claims in lieu of an ancillary receivership. Illinois claimants will not participate in, or be factored into, any percentage distribution of the general assets of the GTT estate to Class 2 claimants.

**South Carolina:** Similar to Illinois and under S.C.L. 38-9-150, South Carolina can release the GTT statutory deposit only if the Liquidator can attest either (i) GTT has no contracts of

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<sup>3</sup> The names and address of the claimants are redacted in the Report filed with this Motion as a matter of practice at the request of several claimants in other liquidations who reported that they had been contacted and questioned by claims buyers, neighbors, and others in connection with the interim distribution. The Liquidator is attempting to respond to and protect the claimants by redacting their contact information in all Reports of Claims. The Liquidator is requesting that the claimants' names and addresses be filed under seal with the Court. The Liquidator in this case, as in others, posted this Motion and the Redacted Report on her website at [www.ohliq.com](http://www.ohliq.com) under Open Liquidations – GTT in the form of a searchable PDF so that claimants can search for information about their claims using their Proof of Claim (Liquidator) Number and have meaningful review of the information related to their claims. The website also explains that claimants may call the Liquidation Office if they have questions about the Report.

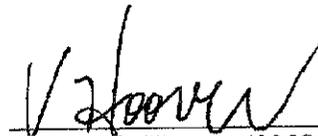
insurance in force and no unsatisfied claims in South Carolina; or (ii) a South Carolina licensed reinsurer has accepted all outstanding policies and claims. The Liquidator is unable to meet either condition. There is no reinsurance and there is one allowed Class 2 (policyholder) claim from South Carolina GTT estate. That claim is for \$111,724.33, which is less than the amount of the statutory deposit. Therefore, South Carolina and the affected claimant agreed on April 27, 2011 that the allowed claimant will withdraw (and the Liquidator will therefore deny and value at \$0) the policyholder's claim in the GTT estate and the South Carolina claimant will take no distribution from the GTT estate. The allowed South Carolina claimant will instead present its claim in South Carolina, and South Carolina will pay the claim in full from the special deposit and remit the balance of the statutory deposit (valued at \$89,012.84 as of March 31, 2011) to the Liquidator to be deposited in the general assets of the GTT estate.

The Liquidator will provide evidentiary support at the May 12, 2011 Continuous Hearing. For the foregoing reasons, the Liquidator respectfully requests approval of the above-referenced agreements, the proposed treatment and distribution of special deposits and the Report of Special Deposit Claims set forth on Exhibit A. A proposed order is attached as Exhibit B.

Respectfully submitted,

MIKE DEWINE  
Attorney General State of Ohio

By Special Counsel:  
KOHMAN, JACKSON & KRANTZ, PLL



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*Attorneys for the Liquidator of The  
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**CERTIFICATE OF SERVICE**

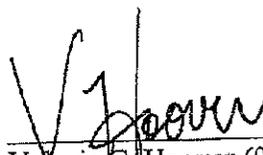
The undersigned hereby certifies that a true and accurate copy of the foregoing Motion was served via ordinary first class mail upon, and also emailed to, the following this 9<sup>th</sup> day of May, 2011:

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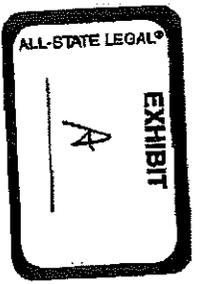
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Line#	Seq#	Claim#	Payer/Address	Determined Value	Distribution %	Total Distribution Payment	Less: Prev Payments/Allow	Check Amount
12000597	01	20074911		276,000.00	54.5336%	150,512.74	.00	150,512.74
12001102	01	2008537002		147,200.00	54.5336%	80,273.46	.00	80,273.46
12001158	01	20074918		171,000.00	54.5336%	93,252.46	.00	93,252.46
12001160	01	20074748		.00	54.5336%	.00	.00	.00
12001161	01	20074748		80,325.00	54.5336%	43,804.11	.00	43,804.11
12001162	01	20074804		46,207.15	54.5336%	25,198.42	.00	25,198.42
12001823	01	200855981Q		22,000.00	54.5336%	6,544.03	.00	6,544.03
12069136	01	20022919		60,000.00	54.5336%	32,720.16	.00	32,720.16
12069148	01	20043737		234,305.00	54.5336%	127,774.95	.00	127,774.95
12069217	01	20075061		208,244.20	54.5336%	113,563.06	.00	113,563.06
12069218	01	20075061		.00	54.5336%	.00	.00	.00
12069214	01	20085109		648.00	54.5336%	353.38	.00	353.38
12069234	01	20085121		224,000.00	54.5336%	122,155.26	.00	122,155.26
12069235	01	20085121		15,198.77	54.5336%	8,288.44	.00	8,288.44
12069262	01	20085264		32,728.00	54.5336%	17,843.21	.00	17,843.21
12069272	01	20085340		45,343.84	54.5336%	24,727.63	.00	24,727.63
12069274	01	20085340		.00	54.5336%	.00	.00	.00
12069384	01	20085654		10,986.10	54.5336%	5,991.12	.00	5,991.12
12069405	01	20085691Q		49,263.75	54.5336%	26,865.30	.00	26,865.30
12069412	01	2008570251Q		.00	54.5336%	.00	.00	.00
12069497	01	20074872		.00	54.5336%	.00	.00	.00
12069975	01	200955301Q		.00	54.5336%	.00	.00	.00
12069980	01	2008537003		177,804.14	54.5336%	96,963.00	.00	96,963.00
12070809	01	20085340		11,335.98	54.5336%	6,181.91	.00	6,181.91
12071037	01	2008537030		97,359.91	54.5336%	53,093.86	.00	53,093.86
12071151	01	200860681Q		15,500.00	54.5336%	8,452.72	.00	8,452.72
Count:	26			Grand Totals:		\$1,925,459.82		\$1,044,569.21



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

**ORDER GRANTING MOTION TO APPROVE  
TREATMENT AND DISTRIBUTION OF SPECIAL DEPOSITS**

This matter came to be heard upon the Plaintiff's Motion to Approve Treatment and Distribution of Special Deposits and Report of Special Deposit Claims ("Liquidator's Motion") pursuant to foreign state statutes that require the deposits and various sections in the Ohio Insurer's Supervision, Rehabilitation and Liquidation Act, Ohio Revised Code Sections 3903.01-.59. Upon consideration of the Liquidator's Motion, Memorandum in Support and Exhibits, and matters presented at the continuous hearing on May 12, 2011, the Court finds that good grounds exists for the Motion and that the Motion is well-taken, and, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The Liquidator's Motion is GRANTED.
2. Under O.R.C. 3903.21(A)(21), the Liquidator is empowered to enter into agreements with any receiver or superintendent of any other state relating to the liquidation of an insurer doing business in both states. This section permits the Ohio Liquidator to make agreements with the insurance officials in Florida and South Dakota, whereby



the insurance officials in those states release the special deposits to the Liquidator free and clear of any claims to the Liquidator to become part of the general assets of The Guarantee title and Trust Company liquidation estate ("GTT") based on representations of insurance officials in these states that they are empowered to release and turn over the special deposits to the Liquidator.

3. In exchange for the release to the Liquidator of special deposits held by the states of Florida and South Dakota to become part of GTT's general assets, the status of the released funds as special deposits is terminated and the claimants whose claims were formerly secured by such special deposits will lose their status as special deposit claimants, thereby permitting such claimants to share in general asset distributions pursuant to Ohio Revised Code Section 3903.42 free and clear of Ohio Revised Code Section 3903.58(B).
4. The Liquidator has satisfied the statutory requirements for release of the special deposit in Arkansas as general assets of GTT. Arkansas shall release the special deposit to the Liquidator on or before May 27, 2011 to facilitate closure of this estate.
5. Under O.R.C. 3903.21(A)(21), the Liquidator was empowered and authorized to enter into the Agreement for Release and Administration of Special Deposit with Louisiana. Under that agreement, the Louisiana special deposit shall be transferred from the restricted account to the general assets of GTT on June 6, 2011.
6. Under O.R.C. 3903.21(A)(21), the Liquidator is empowered and authorized to make agreements with insurance officials in Illinois, whereby (i) pursuant to Illinois law, the insurance officials in Illinois do not release the special deposit to the Liquidator free and clear of any claims to become part of the general assets of GTT; (ii) the

insurance officials in Illinois will release all but \$99,999.72 of the special deposit to the Liquidator as a special deposit for the exclusive benefit of the Illinois claimants as identified on Exhibit A to the Liquidator's motion; (iii) no Illinois claimant will share in any general asset distributions pursuant to Ohio Revised Code Section 3903.42; and (iv) \$100,000 of the special deposit is released to the Liquidator free and clear of any and all claims to become a part of the general assets of the GTT estate for purposes of paying the costs of special deposit claims administration.

7. Illinois shall release the special deposit to the Liquidator on or before May 20, 2011.
8. The Final Report of Illinois Special Deposit Claims attached as Exhibit A to the Liquidator's Motion, including the determinations of the amounts and the classes of each claim as set forth therein, is hereby approved. The Liquidator shall make the distribution of the Illinois special deposit to the allowed Illinois special deposit claimants at the same time as the final distribution of GTT assets in this case. The Illinois special deposit claimants shall take no distribution from the GTT estate pursuant to R.C. 3903.58(B).
9. Under O.R.C. 3903.21(A)(21), the Liquidator is empowered and authorized to make agreements with insurance officials in South Carolina, whereby (i) South Carolina pays the only allowed Class 2 claim from South Carolina in the amount of \$111,724.33; (ii) that claimant shall immediately withdraw (and the Liquidator will deny and value at \$0) that claim in the GTT estate and the South Carolina claimant will take no distribution from the GTT estate; (iii) South Carolina shall remit the balance of the statutory deposit to the Liquidator to be deposited in the general assets of the GTT estate.

10. The Liquidator's above-referenced agreements with insurance officials for the release of special deposits are approved.

It is so ORDERED.

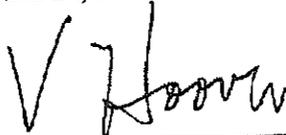
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Guy L. Reece II, JUDGE

APPROVED:

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KOHMAN, JACKSON & KRANTZ, PLL



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