

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

HAROLD T. DURYEE,
Superintendent of Insurance
State of Ohio,

Plaintiff,

vs.

MERCHANTS' AND MANUFACTURERS'
INSURANCE COMPANY,

Defendant.

Case No. 86CV-07-4442

Judge Patrick McGrath

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
91 FEB 28 AM 10:13
ADAMS I. ENRIGHT
CLERK OF COURTS

ORDER APPROVING FINAL ACCOUNTING OF THE LIQUIDATOR,
CLOSING OF LIQUIDATION ESTATE, DISCHARGE AND
RELEASE OF LIQUIDATOR AND TRANSFERRING FUNDS
THAT ARE UNECONOMIC TO DISTRIBUTE

This matter came on before the Court upon the Application of Harold T. Duryee, Liquidator of Merchants' & Manufacturers' Insurance Company, for Approval of Final Accounting, Discharge and Release of Liquidator, Order to Transfer Funds that are Uneconomic to Distribute and for closing of the Liquidation Estate. Upon consideration of the Liquidator's Application, the Memoranda in Support and the attached exhibits and Affidavit,, the Court finds the Application is well taken and it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The Final Accounting of the Liquidator, and all actions of the Liquidator reflected therein, is hereby approved; and
2. The Liquidator, his predecessors, assigns, and any and all deputies, agents, and/or employees of the Office of the Ohio Insurance Liquidator, including employees of the Ohio Department of Insurance are hereby discharged and released of any and all responsibility and liability in connection with the liquidation of Merchants' & Manufacturers' Insurance Company; and
3. In the event it is determined that collateral is being held by any agent of M&M for the benefit of a principal, obligee or indemnitor of a bond issued by M&M, the Liquidator is discharged and/or excused from any responsibility or liability arising from the existence of said collateral.

4. All funds remaining in the liquidation estate, as set forth in the Final Accounting of the Liquidator, are deemed to be uneconomic to distribute and are hereby ordered transferred to the Ohio Department of Insurance; and

5. The Court finds that all matters regarding the Liquidation have been finalized and the Liquidation Estate of Merchants' & Manufacturers' Insurance Company is hereby closed.

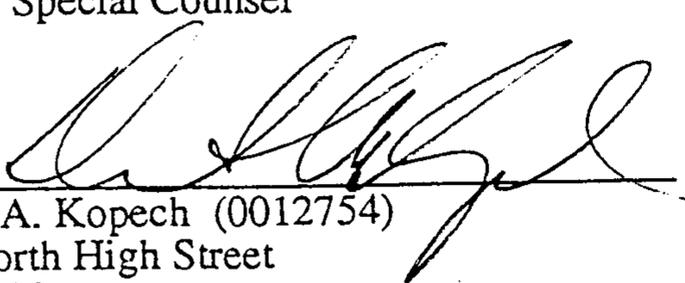
JUDGE MCGRATH

Dated: _____

APPROVED BY:

LEE I. FISHER
Attorney General of Ohio

By: RISHEL, MYERS & KOPECH
Special Counsel



David A. Kopech (0012754)
280 North High Street
Suite 800
Columbus, Ohio 43215
(614) 221-0717

Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
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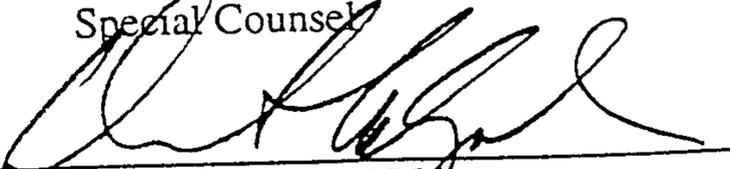
**APPLICATION FOR APPROVAL OF FINAL ACCOUNTING,
DISCHARGE AND RELEASE OF LIQUIDATOR AND ORDER TO
TRANSFER FUNDS THAT ARE UNECONOMIC TO DISTRIBUTE
AND CLOSE THE LIQUIDATION ESTATE**

Now comes Harold T. Duryee, Liquidator of Merchants' and Manufacturers Insurance Company, and moves this Court for an Order approving The Final Accounting of the Liquidator (attached as Exhibit A); transferring funds that are uneconomic to distribute to the Ohio Department of Insurance; discharging and releasing the Liquidator, his predecessors, assigns and any and all deputies, agents or employees of the Office of the Ohio Insurance Liquidator and employees of the Ohio Department of Insurance, of all liability; and closing the liquidation estate of Merchants' and Manufacturers' Insurance Company. The Liquidator supports this motion with the attached memorandum.

Respectfully submitted,

LEE I. FISHER
Attorney General of Ohio

By: RISHEL, MYERS & KOPECH
Special Counsel


David A. Kopech (0012754)
RISHEL, MYERS & KOPECH
280 North High Street, Suite 800
Columbus, Ohio 43215
(614) 221-0717
Attorneys for the Liquidator

MEMORANDUM

Merchants' and Manufacturers' Insurance Company was placed into Liquidation by Order of this Court on August 10, 1986. On December 9, 1993, this Court entered an Order approving the claims in the Merchants & Manufacturers' liquidation estate and ordering distribution of funds, after withholding sufficient funds for administrative expenses, on a pro-rata basis to the allowed claimants.

Class 1 claims have been paid in full. There were no Class 2 claims filed. The distribution pursuant to this Court's Order of December 9, 1993 on Class 3 claims has been completed. As of February 14, 1994 four checks totalling \$1,221.66 remained uncashed. Pursuant to this Court's December 9, 1993 Order, these uncashed checks have reverted back to the liquidation estate as unclaimed funds.

The Liquidator has determined that the unclaimed funds held by the estate are insufficient to make a distribution pursuant to § 3903.45(A), Revised Code, requiring distribution of the unclaimed funds pro rata to all known claimants. The cost associated with distributing the funds pro rata to the known Class 3 claimants would exceed the unclaimed funds held by the estate, making it uneconomic to distribute the remaining unclaimed funds.

§ 3903.46, Revised Code, provides direction with regard to funds held by the Liquidator which are uneconomic to distribute. Specifically, § 3903.46 states:

(A) When all assets justifying the expense of collection and distribution have been collected and distributed under sections 3903.01 to 3903.59 of the Revised Code, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are uneconomic to distribute, as may be appropriate.

(B) Any other person may apply to the court at any time for an order under division (A) of this section. If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

This statute gives the Liquidator discretion to determine at what point all assets justifying the expense of collection and distribution have been collected and distributed. It gives the Court authority to order a transfer of any remaining funds that are uneconomic to distribute. Therefore,

pursuant to Ohio Revised Code § 3903.46, the Liquidator requests the Court for an order to transfer all funds remaining at termination of the liquidation and discharge of the Liquidator to the Ohio Department of Insurance.

§ 3903.46 is part of the National Association of Insurance Commissioners' "Insurer's Rehabilitation and Liquidation Model Act." This model act has been adopted, in some form, by twenty-seven (27) states. Research into the statutes and case law of those states that have adopted a provision analogous to Revised Code § 3903.46 located no cases interpreting the statute. However, the variations of the model act adopted in Kentucky, Minnesota, South Dakota, and New Hampshire made specific provisions for the transfer of funds that are uneconomic to distribute.

New Hampshire Revised Code Statute 402-C:48 permits the court to order the remaining funds to be transferred ". . . to the state treasury for the credit of the insurance department" Kentucky Revised Code § 304.33-470 provides, in pertinent part, that "The court may grant the discharge or make any other orders deemed appropriate, including an order to transfer to the state treasury for the common school fund any remaining funds that are uneconomic to distribute." Minnesota Statute 60 B.48 provides for ". . . transfer to the state treasury to the credit of the general fund. . . ." South Dakota Codified Law § 58-29B-130 provides that the remaining funds may be transferred to the state treasurer.

Because the Ohio Legislature was silent upon the issue of where to transfer any remaining funds that are uneconomic to distribute, discretion rests with this Court. The Liquidator submits that transfer to the Ohio Department of Insurance is a logical disposition for the funds because 1) if the Liquidator were to attempt to distribute the funds pro rata to known Class 3 claimants the funds would be totally utilized to pay the administrative expenses of doing so, thereby being futile and benefiting no one; and 2) transfer of the funds to the Ohio Department of Insurance will provide funds to the Ohio Department of Insurance to facilitate and encourage the carrying out of its stated purpose, as set out in O.R.C. § 3903.21(A)(4), whereby the Department

may advance costs necessary in other liquidations and/or rehabilitations of insurers for the protection of the interests of insureds, claimants, creditors and the public generally.

The Liquidator is presently unaware of the existence of any collateral which is being held for the benefit of any principal, obligee or indemnitor of M&M. Moreover, the Liquidator would be unable to determine whether agents of M&M may have retained collateral which could benefit any principal, obligee or indemnitor as that information is beyond the range of information to which the Liquidator has access. However, in order to close this liquidation estate, the Liquidator requests the Court to order that in the event that it is determined that collateral is being held by any agent(s) of M&M, the Liquidator is discharged and/or excused from any responsibility or liability arising from the existence of said collateral.

The administrative expenses of the M&M estate have been or will be fully paid upon receiving approval of this Court of the final accounting. The Liquidator's Final Accounting (attached as exhibit "A") indicates that all assets of the estate that were economically distributable have been distributed and \$1,221.66 remains on hand as of February 14, 1994, funds the Liquidator requests be transferred to the Ohio Department of Insurance thereby leaving a zero balance in the liquidation estate's asset account. See attached Exhibit "A". The Liquidator's Final Accounting also contains the Statement of Receipts and Disbursements for the period from July 1, 1993 through December 31, 1993. Further, the Liquidator does not anticipate the receipt of additional funds by the M&M liquidation estate. Finally, the Liquidator has reviewed the books and records of the estate and determined that all matters involving the estate have been finalized (See attached affidavit of Lynne C. Hengle).

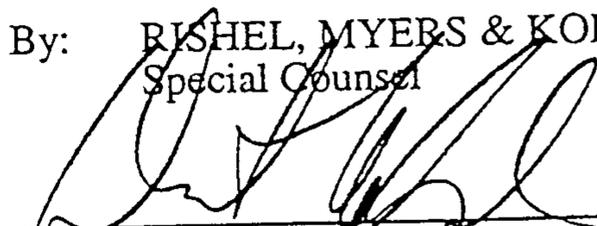
Accordingly, as the liquidation of M&M has been completed, the Liquidator moves this Court for an Order approving the Final Accounting of the Liquidator (Exhibit A), and authorizing the transfer of the remaining assets to the Department of Insurance, discharging and releasing the Liquidator, his predecessors, assigns and any and all deputies, agents or employees

of the Office of the Ohio Insurance Liquidator, including employees of the Ohio Department of Insurance, of all liability, and closing the M&M liquidation estate.

Respectfully submitted,

LEE I. FISHER
Attorney General of Ohio

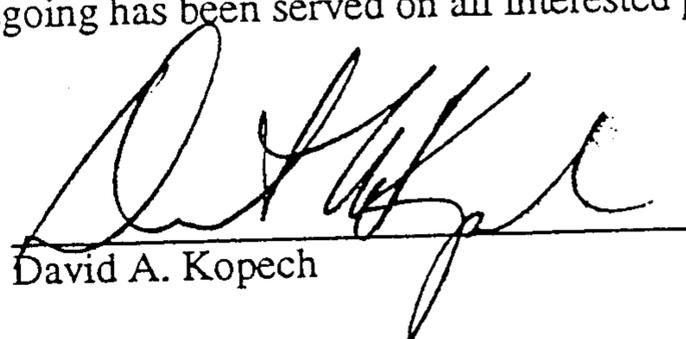
By: RISHEL, MYERS & KOPECH
Special Counsel



David A. Kopech (0012754)
RISHEL, MYERS & KOPECH
280 North High Street, Suite 800
Columbus, Ohio 43215
(614) 221-0717
Attorneys for the Liquidator

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on all interested parties
this 24 day of February, 1994.



David A. Kopech

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Judge Patrick McGrath

FINAL ACCOUNTING OF THE LIQUIDATOR

Harold T. Duryee, Superintendent of Insurance for the State of Ohio, as Liquidator of Merchants' and Manufacturer' Insurance Company ("Merchants' & Manufacturers"), hereby files the Final Accounting of the Liquidator consisting of the following documents:

1. Statement of Receipts and Disbursements for the period July 1, 1993, through December 31, 1993 and January 1, 1994 through closing date;
2. Merchants' & Manufacturers Comparative Balance Sheet as of December 31, 1993 and closing date;
3. Merchants' & Manufacturers' Comparative Income Statement for January 1, 1993, through December 31, 1993 and closing date;
4. Statement of Capital and Surplus Account;
5. Comparative General Operating Expenses for December 31, 1993 and closing date; and
6. List of final disbursements to be made from the Merchants' & Manufacturers' Estate.

These statements account for all assets received and disbursements made through the closing date.

Exhibit A



Liquidator of Merchants & Manufacturers Insurance Company
Statement of Receipts and Disbursements
For The Period 07/01/93 to 12/31/93

	<u>CASH</u>	<u>SECURITIES</u>	<u>TOTAL</u>
Balance at 06/30/93	\$5,577.71	\$2,276,585.99	\$2,282,163.69
Security Amortization for the Period	0.00	(12,405.77)	(12,405.77)
<u>RECEIPTS</u>			
Investment Proceeds (Note 1)	1,884,180.21	(1,884,180.21)	0.00
Investment Proceeds - Repurchase Agmt (Note 3)	380,000.00	(380,000.00)	0.00
Interest/Dividend Income	89,116.92	0.00	89,116.92
Salvage and Subrogation (Note 2)	1,225.00	0.00	1,225.00
Reinsurance Recoveries	1,050.24	0.00	1,050.24
Proceeds from Gen Construction Bond Collateral	135,372.50	0.00	135,372.50
TOTAL RECEIPTS	<u>2,490,944.87</u>	<u>(2,264,180.21)</u>	<u>226,764.66</u>
<u>DISBURSEMENTS</u>			
Employee Wages, Taxes, Benefits	23,070.73	0.00	23,070.73
General Operating Expenses	12,144.28	0.00	12,144.28
Legal Expense	51,807.47	0.00	51,807.47
Interest Paid on Bonds	0.00	0.00	0.00
Class 1 Distribution Ohio IGA	99,966.25	0.00	99,966.25
Secured Class 1 Claim - Conley, Canitano & Assoc.	16,919.65	0.00	16,919.65
Class 3 Distribution	2,259,464.07	0.00	2,259,464.07
TOTAL DISBURSEMENTS	<u>2,463,372.45</u>	<u>0.00</u>	<u>2,463,372.45</u>
Balance at 12/31/93	<u>\$33,150.12</u>	<u>\$0.00</u>	<u>\$33,150.12</u>

A

A B

- (A) Excluding \$0.00 held by States.
(B) Bonds carried at amortized value.

- Note 1: The captions "Investment Proceeds" or "Investment Purchases" represent the difference between total maturities or sales and purchases for the reporting period. This excludes interest and dividend income.
- Note 2: Some portion may be due various reinsurers and thus not be part of the general assets of the estate.
- Note 3: The captions "Investment Proceeds in Repo Agreements" or "Investment Purchases in Repo Agreements" represent the difference between total repurchases sales and purchases for the reporting period.

Liquidator of Merchants & Manufacturers Insurance Company
Statement of Receipts and Disbursements
For The Period 01/01/94 to Closing Date

	CASH	SECURITIES	TOTAL
Balance at 12/31/93	\$33,150.13	\$0.00	33,150.13
Security Amortization for the Period	0.00	0.00	0.00
RECEIPTS			
Investment Proceeds (Note 1)	0.00	0.00	0.00
Investment Proceeds - Repurchase Agmt (Note 3)	0.00	0.00	0.00
Salvage and Subrogation (Note 2)	0.00	0.00	0.00
TOTAL RECEIPTS	0.00	0.00	0.00
DISBURSEMENTS			
Employee Wages, Taxes, Benefits	15,893.04	0.00	15,893.04
General Operating Expenses	9,672.59	0.00	9,672.59
Legal Expense	8,806.16	0.00	8,806.16
Class 3 Distribution (Uncashed Checks)	(1,221.66)	0.00	(1,221.66)
TOTAL DISBURSEMENTS	33,150.13	0.00	33,150.13
Balance at Closing Date	<u>(\$0.00)</u>	<u>\$0.00</u>	<u>(\$0.00)</u>
	A	A B	

- (A) Excluding \$0.00 held by States.
(B) Bonds carried at amortized value.

Note 1: The captions "Investment Proceeds" or "Investment Purchases" represent the difference between total maturities or sales and purchases for the reporting period. This excludes interest and dividend income.

Note 2: Some portion may be due various reinsurers and thus not be part of the general assets of the estate.

Note 3: The captions "Investment Proceeds in Repo Agreements" or "Investment Purchases in Repo Agreements" represent the difference between total repurchases sales and purchases for the reporting period.



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PRELIMINARY & UNAUDITED STATEMENT - FOR INTERNAL USE ONLY

**Merchants' and Manufacturers' Insurance Company in Liquidation
Comparative Balance Sheet
As of Closing Date & December 31, 1993**

	Balance At Closing Date	December 31 1993
ASSETS:		
	0.00	0.00
Bonds	(0.00)	33,150.13
Cash on Hand and on Deposit (Sch 1)	0.00	0.00
Repurchase Agreements	0.00	0.00
Reinsurance Recoverable	0.00	0.00
Interest and Dividends Due and Accrued	0.00	0.00
First National Bank of Mercer County	0.00	0.00
Bond Collateral Held	0.00	0.00
Intercompany Accounts Receivable	0.00	0.00
	<hr/>	<hr/>
Sub-Total	(0.00)	33,150.13
 NON-ADMITTED ASSETS:		
	0.00	0.00
Uncollected Premium	0.00	0.00
A/R - Merchants' Bonding Agency	0.00	0.00
A/R - Direct Bill	0.00	0.00
A/R - EGP	0.00	0.00
A/R - Comm. Liquidation Cancellation	0.00	0.00
A/R - Other	0.00	0.00
A/R - M&M Financial Corp.	0.00	0.00
	<hr/>	<hr/>
Total Non-Admitted Assets	0.00	0.00
	<hr/>	<hr/>
Less Total Non-Admitted Assets	0.00	0.00
	<hr/>	<hr/>
TOTAL ASSETS	(0.00)	33,150.13

PRELIMINARY & UNAUDITED STATEMENT - FOR INTERNAL USE ONLY

Merchants' and Manufacturers' Insurance Company in Liquidation
 Comparative Balance Sheet
 As of Closing Date & December 31, 1993

	Balance At Closing Date	December 31 1993
LIABILITIES:		
Ceded Reins. Bal. Payable	0.00	0.00
Paid and Settled Losses (Sch 2)	0.00	0.00
Paid and Settled LAE (Sch 3)	(0.00)	106,231.17
GMAC Div. Payable	0.00	0.00
Commissions Payable (Sch 4)	0.00	53,490.27
Accounts Payable-MBA (Sch 5)	0.00	59,469.63
Class 3 Liabilities (Sch 6)	(0.00)	3,005,205.88
Committed Losses	0.00	0.00
Return Premium Payable (Sch 7)	0.00	0.00
Agents Credit Balance (Sch 8)	0.00	42,732.17
Funds Held Deposits	0.00	0.00
Loss Reserves net of Ceded	0.00	0.00
LAE Reserves net of Ceded	0.00	0.00
General Expense Reserve (Sch 9)	0.00	34,371.79
Bail Build-Up Fund	0.00	0.00
Bond Collateral Held	0.00	0.00
		<hr/>
Total Liabilities	(0.00)	3,301,500.91
SURPLUS:		
Ledger Surplus	0.00	(6,931,565.70)
Capital Stock	0.00	400,000.00
Gross Paid-in & Contr Surplus	0.00	866,000.00
Surplus Notes Payable	0.00	2,397,214.92
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Total Surplus	0.00	(3,268,350.78)
		<hr/>
TOTAL LIABILITIES AND SURPLUS	(0.00)	33,150.13
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PRELIMINARY & UNAUDITED STATEMENT - FOR INTERNAL USE ONLY

Merchants' and Manufacturers' Insurance Company in Liquidation
 Comparative Income Statement
 For January 01, 1994 through Closing Date
 January 01, 1993 through December 31, 1993

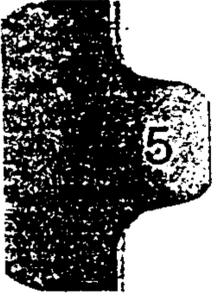
	Balance At Closing Date	December 31 1993
REVENUE:		
Investment Income		110,388.88
Interest Income	0.00	(42,849.41)
(Premium)/Discount on Bonds	0.00	
Total Investment Income	0.00	67,539.47
Premium Income		148,255.05
Premiums Written	0.00	
Total Premium Income	0.00	148,255.05
Other Income		26,435.44
Miscellaneous (Sch 10)	0.00	
Total Other Income	0.00	26,435.44
TOTAL REVENUE	0.00	242,229.96
EXPENSES:		
Liquidation Expenses		579,810.38
General Operations (Sch 11)	0.00	(2,510,553.94)
Incurred Losses	0.00	6,748.21
Incurred Loss Adjustment Expense	(0.00)	
Total Liquidation Expenses	0.00	(1,923,995.35)
Other Expenses		0.00
Loss on Sale of Assets	0.00	
TOTAL EXPENSES	0.00	(1,923,995.35)
NET INCOME/(LOSS)	0.00	2,166,225.31



Merchants' and Manufacturers' Insurance Company in Liquidation
 Comparative Income Statement

For January 01, 1994 through Closing Date
 January 01, 1993 through December 31, 1993

	Balance At Closing Date	December 31 1993
Surplus - Prior Period	(6,931,565.70)	(9,451,808.63)
Gains(+) and Losses(-) in Surplus		
Net Income(Loss)	0.00	2,166,225.31
Writedown of Assets & Liabilities	53,776.63	0.00
Writedown of Capital Stocks	3,663,214.92	0.00
Reversal of Losses to Surplus	3,214,574.15	0.00
Reversal of Non-Admitted Assets	0.00	364,017.62
Change in Surplus for the Year	6,931,565.70	2,530,242.93
SURPLUS - CURRENT YEAR	<u>0.00</u>	<u>(6,931,565.70)</u>



PRELIMINARY & UNAUDITED STATEMENT - FOR INTERNAL USE ONLY

 MERCHANTS' AND MANUFACTURERS' INSURANCE CO. IN LIQUIDATION

GENERAL OPERATING EXPENSES

For January 01, 1994 through Closing Date

January 01, 1993 through December 31, 1993

	Balance At Closing Date	December 31 1993
1 CLAIMS ADJUSTMENT SERVICES	0.00	10,207.36
2 ADVERTISING	0.00	2,157.85
3 BOARDS, BUREAUS AND ASSOCIATIONS	0.00	2.41
4 SALARIES	0.00	54,452.15
5 EMPLOYEE RELATIONS AND WELFARE	(0.00)	4,135.42
6 INSURANCE	0.00	225.61
7 TRAVEL AND TRAVEL ITEMS	0.00	341.20
8 RENT AND RENT ITEMS	0.00	14,425.65
9 EQUIPMENT	0.00	2,255.02
10 PRINTING AND STATIONARY	0.00	454.00
11 POSTAGE, TELEPHONE, TELEGRAPH, EXCHANGE AND EXPRESS	0.00	925.08
12 LEGAL AND AUDITING	0.00	73,433.77
Subtotal (Items 1 to 12)	0.00	163,015.52
13 TAXES, LICENSES AND FEES		
a) INSURANCE DEPARTMENT LICENSES AND EXAMINER FEES	(0.00)	2,670.58
b) PAYROLL TAXES	(0.00)	3,383.43
c) ALL OTHER (excluding federal and foreign income and real estate)	0.00	0.00
14 MISCELLANEOUS		
a) INVESTMENT EXPENSES & BANKING FEES	0.00	2,919.73
b) OUTSIDE SERVICES	0.00	689.74
c) MISCELLANEOUS	0.00	407,131.38
TOTAL EXPENSES INCURRED	0.00	579,610.38
15 LESS UNPAID EXPENSES CURRENT YEAR		
a) CURRENT PERIOD EXPENSES	0.00	34,371.79
b) GUARANTY ASSOCIATION ADMINISTRATION	0.00	0.00
	0.00	34,371.79
16 ADD UNPAID EXPENSES PREVIOUS YEAR	34,371.79	13,731.46
TOTAL EXPENSES PAID	34,371.79	559,170.05



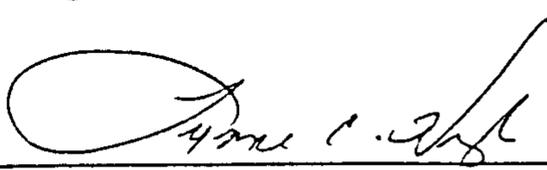
MERCHANTS & MANUFACTURERS INSURANCE COMPANY
Final Account
Disbursements to be Made at Closing of Liquidation Estate

Administrative Expenses to be Paid are as Follows:

1. Rishel, Myers & Kopech (legal fees)	\$2,188.99
2. Peat Marwick & Mitchell (Preparation of final 1993 tax return)	1,000.00
3. Ohio Department of Insurance (Examiner Billings)	609.43
4. American Druggists Insurance Co. (Intercompany expense allocation and warehouse costs)	6,310.98
5. Proprietors Insurance Company (Intercompany expense allocation)	15,205.82
6. Carlile, Patchen & Murphy	43.50
7. Ohio Department of Insurance (Class 3 Distribution Checks not cashed within 60 days, not economical to distribute)	1,221.66
 TOTAL ADMINISTRATIVE EXPENSES TO BE PAID AT CLOSING	 <u>\$26,580.38</u>

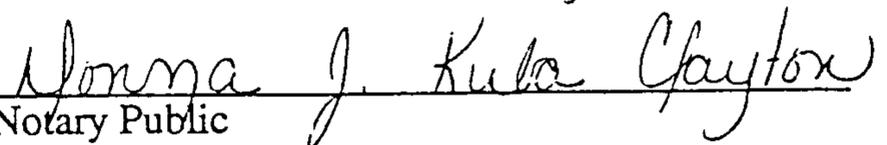
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4. I have read the statements set forth in the Application for Approval of the Final Accounting of the Liquidator and the supporting Memorandum of Law, and I have found them to be true and accurate to the best of my knowledge and belief.



Lynne C. Hengle

Sworn to and subscribed before me this 22 day of February, 1994.



Notary Public

DONNA J. KUBA
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES-MAY 3, 1994