

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 THE
P.I.E. MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

THE P.I.E. MUTUAL INSURANCE
COMPANY,

Defendant.

) CASE NO. 97CVH12-10867
)
) JUDGE JOHN F. BENDER
)
)
) **MOTION AND ACCOMPANYING**
) **MEMORANDUM OF THE**
) **LIQUIDATOR FOR APPROVAL OF**
) **MODIFICATION OF THE MAILING**
) **PROCESS FOR DETERMINATION**
) **LETTERS**
)
)

Plaintiff, Mary Jo Hudson, Ohio Superintendent of Insurance, in her capacity as Liquidator ("Liquidator") of The P.I.E. Mutual Insurance Company ("PIE"), 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 PIE liquidation estate. The Liquidator's current mailing process involves the use of both certified and first class mail. The Liquidator seeks now to use only 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 Support.

MEMORANDUM IN SUPPORT

The Liquidator requests that the Court approve the Liquidator's change of the current mailing process for sending determination letters to claimants who filed proofs of claim in the PIE liquidation estate. The proposed modification in the mailing process, which conforms to R.C. § 3903.39(A), is described below.

On March 23, 1998, this Court entered its order declaring PIE to be insolvent, placing PIE in liquidation pursuant to R.C. Chapter 3903, and appointing the Ohio Superintendent of Insurance as the

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
AUG - 6 PM 3:31
CLERK OF COURTS - CIV

Liquidator (the "Liquidation Order"). R.C. § 3903.21 and the Liquidation Order, in pertinent part, direct the Liquidator to take possession of and liquidate all property and assets of PIE, and to collect all debts and monies due PIE. The Liquidator must likewise determine the value of claims made through the proof of claim process, as set forth in R.C. §§ 3903.35-42.

After a claimant has submitted a proof of claim form ("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. § 3903.42. Upon that decision, a determination letter is generated and sent by mail to the claimant, as required by R.C. § 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 at the address shown in the proof of claim."

Previously, in an abundance of caution and beyond what the statute requires, the Liquidator sent these determination letters by certified mail to claimants and/or to their attorneys. If the certified mail delivery was not successful, and was returned as "refused" or the card was returned "unsigned," then the determination letter was re-sent via first class mail. The use of certified mail for sending determination letters was initiated as a practice by the Liquidator in the 1990s, and the Liquidator for PIE followed this practice so that the process was consistent in all liquidation estates.

It has since been determined that certified mail is no 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. § 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, the Liquidator will still be able to keep accurate records of mailings of determination letters, because first class mail letters are

considered received if not returned,¹ or they will be returned to the Liquidator, if they are undeliverable.² 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 are sent by first class mail.

Sending determination letters by first class mail is authorized and consistent with the R.C. § 3903.39(A) and related sections of the liquidation statutes under R.C. chapter 3903. By strictly complying with the statute, the Liquidator will limit the expenditure of staff resources and funds, which will lead 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 so that determination letters sent to claimants who filed proofs of claim with the PIE estate will be sent by first class mail only, as specifically authorized and provided for by R.C. § 3903.39(A).

¹ See *Cantrell v. Celotex Corp.*, 105 Ohio App.3d 90, 94, 663 N.E.2d 708 (1995) (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*, 69 Ohio App.2d 40, 429 N.E.2d 1188 (1980) (when ordinary mail is not returned, a 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 under the revised procedure proposed herein.

Respectfully Submitted,

James M. Lawniczak *By [signature]*
[signature]

MARK I. WALLACH (0010948)
JAMES M. LAWNICZAK (0041836)
NATHAN A. WHEATLEY (0072192)
CALFEE, HALTER & GRISWOLD LLP
McDonald Investment Center, Suite 1400
800 Superior Avenue
Cleveland, Ohio 44114
(216) 622-8200

**Outside Counsel to Marc Dann,
Attorney General of the State of Ohio,
Attorneys for the Plaintiff, in her capacity
as Liquidator for the P.I.E. Mutual Insurance
Company**