

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

MARY JO HUDSON, SUPERINTENDENT ) CASE NO. 97CVH12-10867  
OF INSURANCE, OHIO DEPARTMENT OF )  
INSURANCE, IN HER CAPACITY AS )  
LIQUIDATOR OF THE P.I.E. MUTUAL ) JUDGE JOHN F. BENDER  
INSURANCE COMPANY, )  
Plaintiff, )  
v. )  
THE P.I.E. MUTUAL INSURANCE )  
COMPANY, )  
Defendant. )

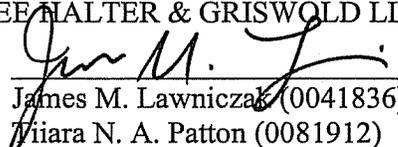
**APPLICATION FOR ORDER TERMINATING LIQUIDATION PROCEEDINGS**

Plaintiff, Mary Jo Hudson, Ohio Superintendent of Insurance in her capacity as Liquidator of The P.I.E. Mutual Insurance Company respectfully requests that this Court enter a Final Closing Order granting this Application to terminate these liquidation proceedings, discharge the Liquidator and make other provisions to close the liquidation estate and terminate this case.

Respectfully submitted,  
RICHARD CORDRAY  
Attorney General of Ohio

By Special Counsel:  
CALFEE HALTER & GRISWOLD LLP

By:

  
James M. Lawniczak (0041836)  
Tiiara N. A. Patton (0081912)  
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tpatton@calfee.com

*Attorneys for Mary Jo Hudson, in her capacity as  
Liquidator of The P.I.E. Mutual Insurance Company*

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2010 APR -1 AM 11:26  
CLERK OF COURTS

## MEMORANDUM IN SUPPORT OF MOTION

On November 24, 2009, this Court entered an Order granting the Liquidator's "Motion For Order Approving Liquidator's Final Report of Claims, Reserve For Administrative Expenses And Authorizing Final Distribution Of The P.I.E. Mutual Insurance Company." Accordingly, the Liquidator made a final distribution of \$73,936,694.78 to Class 2 claimants beginning on December 2, 2009. Only four (4) distribution checks totaling \$4,890.63 were returned (see Exhibit A). Those checks cannot be re-issued or negotiated because the Liquidator cannot locate those four claimants.

The Liquidator's Motion informed the Court that the Liquidator would apply to the Court after the final distribution is complete for a Final Closing Order discharging the Liquidator and making other provisions to close the P.I.E. liquidation estate and terminate this case pursuant to R.C. 3903.46(A) and related sections: (Liquidator's Motion, p. 7). R.C. 3903.46(A) provides:

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.

This Application therefore requests an Order approving the Liquidator's plan described below to discharge the Liquidator, distribute the above-mentioned unclaimed funds and complete related post-closing matters.

### **I. Unclaimed Funds**

R.C. 3903.45 governs the distribution of unclaimed funds. The statute contemplates a distribution of unclaimed funds to other claimants to whom it is possible to make an immediate payment pursuant to the priorities in R.C. 3903.42. It is not possible to distribute the unclaimed

funds pro-rata to all Class 2 claimants because the cost of such a distribution would exceed the amount of the unclaimed funds.

R.C. 3903.46(A), quoted above, grants the Court discretion to make an alternative order where, as here, remaining funds are uneconomic to distribute. The Liquidator proposes that the Court order the Liquidator to transfer the four (4) distribution checks totaling \$4,890.63 to the Ohio Department of Commerce, Division of Unclaimed Funds pursuant to R.C. 169.05 for the Director to hold under R.C. 169.01 *et seq.* and to allow potential claimants to search for, identify, and claim funds. This proposal is consistent with the Liquidator's treatment of unclaimed distribution checks in prior closed liquidation cases.

## **II. Retained Authority for Post-Closure Actions**

The Liquidator has otherwise reviewed the books and records of the P.I.E. estate and determined that all other matters involving the estate have substantially been finalized, other than several ministerial functions, which cannot be performed until after the closing of the liquidation takes place.

### **A. Final Accounting and Final Auditor's Report**

The first two ministerial functions are a final accounting and a final auditor's report of the estate, in the form of previous auditor's reports submitted to this Court. This accounting and auditor's report will be filed with the Court upon their completion.

### **B. 2010 Tax Return**

Because the final distribution took place in 2009 and the P.I.E. estate will be finally closed in 2010, a P.I.E. 2009 tax return and a final P.I.E. 2010 tax return must be prepared and filed with the Internal Revenue Service ("IRS").

**C. Disposition of Insurer's Records and Report on Court's Preservation Order**

R.C. 3903.48 provides:

Whenever it shall appear to the superintendent of insurance that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he may recommend to the court and the court shall direct what records should be retained for future reference and what should be destroyed.

The Liquidator has already destroyed many P.I.E. records pursuant to prior orders of this Court. The Liquidator now requests authority to immediately destroy: (1) all remaining pre-liquidation books and records; and (2) all post-liquidation books and records that the Liquidator determines are no longer essential, or that are not required to be maintained pursuant to applicable federal and state records retention requirements. The Liquidator further requests an order directing that all other books and records shall be destroyed on or after the date three (3) years following the date the order granting this application is entered.

After the hearing on November 19, 2009, the Liquidator undertook a search of her files and P.I.E.'s records to ascertain whether she possessed any of the following documents that Mr. Thomas F. McManamon, Jr. requested and that the Court orally ordered the Liquidator to preserve on November 13, 2009: (1) documents related to the "Lynn Hengle letter"; (2) documents related to an unspecified ledger page that Mr. McManamon claims Judge Watson utilized in a settlement conference convened on or around October 19, 1999 related to a substantive consolidation motion filed in this case; and (3) the "Veach Report." On January 5, 2010, Mr. McManamon wrote a letter to Calfee Halter & Griswold LLP (attached as Exhibit B-1) additionally requesting a copy of an affidavit, if any, secured from "Mr. Feldman" subsequent to the hearing in this case on October 19, 1999. On January 7, 2010, Mr. McManamon wrote another letter to Calfee Halter & Griswold LLP (attached as Exhibit B-2) requesting copies of

documents referenced in the Liquidator's "Motion to Dismiss Jim Winterich With Prejudice" that was filed on or about January 5, 1999 in a case captioned, *Duryee, in his capacity as Liquidator of The P.I.E. Mutual Insurance Company v. Ronald Wade, et al.*, Franklin C.P. Case No. 98CVH07-5241 (Judge Watson) and that were provided to the Liquidator by Mr. James A. Winterich.<sup>1</sup> The Liquidator also undertook a search of her files and P.I.E.'s records to ascertain whether she possessed any documents responsive to these letters. To search the P.I.E. records stored off site, the Liquidator searched a database index using the word "McManamon" and reviewed all responsive documents.

As a result of these document searches and reviews, the Liquidator did not discover any documents in category (1), except the letter itself, which Mr. McManamon has and the Liquidator will preserve. The Liquidator did not discover any documents in category (2), although there may be publicly filed motions in this court related to the substantive consolidation motion that might include such documents. The Liquidator has the Veach Report and asserts that it is privileged and non-discoverable. Based on this assertion, the Liquidator will preserve the Veach Report pursuant to the Court's November 19, 2009 Order, but has not produced it to Mr. McManamon. The Liquidator did not discover any documents responsive to the letters.

#### **D. Marietta Collection**

Legal and collection proceedings have been ongoing for years in Ohio and California to try to fully collect on the judgment obtained against former P.I.E. officer and director, James Marietta. Mr. Marietta still owes \$254,700. His last payment was in 2007. The Liquidator's collection attorneys will be paid on a contingency fee basis; thus, not requiring continued expenditures from the P.I.E. Estate to continue collection efforts, should assets be discovered.

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<sup>1</sup> The letters of January 5 and 7, 2010 purport to be public records requests. Calfee, Halter and Griswold is a private law firm that is not subject to the Public Records Act.

The Liquidator cannot speculate as to the results of the collection action at this time. Although Mr. Marietta claims that he does not have additional assets, he has a lawyer to defend against collection efforts, has thus far evaded a judgment debtor examination, and has not explained how he and his ex-wife lived and perhaps continue to live and pay taxes on their (or her) house valued at nearly a million dollars or how he maintained payments on several credit cards.

Even if the entire amount of the judgment can be collected, the outstanding obligation is not sufficiently large enough to keep the entire liquidation open until funds are received. Rather than abandon the asset at this time, the Liquidator requests that the Court allow the Liquidator to continue these collection efforts. If additional assets are discovered or additional sums collected, the Liquidator will report those assets to this Court along with a recommendation whether to reopen the liquidation and make another distribution pursuant to R.C. 3903.47. In this regard, R.C. 3903.47 provides for the reopening of a liquidation case when sufficient additional assets are discovered post-closing to justify the expense of reopening. The statute provides:

After the liquidation proceeding has been terminated and the liquidator discharged, the superintendent of insurance or other interested party may at any time file a motion to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for the reopening, it shall so order.

**E. Structured Settlements, If Any**

The Liquidator believes that prior to its liquidation P.I.E. entered into various structured settlements to fund obligations to claimants who settled their medical malpractice claims against P.I.E. insureds. Because P.I.E. did not retain any long-term payment obligations under structured settlements on its books, the Liquidator believes that P.I.E. paid a third party (a life insurance company or its affiliate) to purchase a qualified funding asset (annuity) to finance the assigned periodic payment obligation. Alternatively, even though the Liquidator has no

knowledge of P.I.E. doing so, P.I.E. could have retained the periodic payment obligation and funded it by purchasing an annuity from a life insurance company, thereby offsetting its obligation under the structured settlement with a matching asset. In this case, P.I.E. would own one or more annuities that name claimants as payees under the annuities.

The Liquidator has determined that any interest that P.I.E. may have had in any annuities funding structured settlements are not an asset of the P.I.E. liquidation estate. Therefore, pursuant to R.C. 3903.21(A)(9), the Liquidator requests the court to authorize the Liquidator to abandon any such interest in any annuities funding structured settlements.

#### **F. Reinsurance Recoverable**

The Liquidator previously notified the court on June 26, 2009 that she had completed asset recoveries, including the purported \$51 million LAE reinsurance receivable reported on P.I.E.'s 1996 financial statement and which management claimed to have received payment of in full in early 1997. The Liquidator's consultant, Reinsurance Solutions International LLC ("RSI") and counsel, James Veach of Mound Cotton, confirmed that the LAE receivable is fabricated and is otherwise not a recoverable asset. Therefore, pursuant to R.C. 3903.21(A)(9), the Liquidator requests the court to authorize the Liquidator to abandon as impossible to collect the purported \$51 million LAE reinsurance receivable reported on P.I.E.'s 1996 financial statement.

### **III. Conclusion**

For the reasons set forth above, the Liquidator respectfully requests that this Court enter an Order:

1. Pursuant to R.C. 3903.45(B) and R.C. 3903.46(A), finding that \$4,890.63, representing four (4) distribution checks that have not been negotiated or reissued because the claimants cannot be found by the Liquidator, as set forth on Exhibit A, are uneconomic to distribute to known Class 2 claimants and authorizing the

Liquidator to transfer these remaining funds to the Ohio Department of Commerce, Division of Unclaimed Funds; and

2. Pursuant to R.C. 3903.46 (A), authorizing the Liquidator or her designee to retain limited authority for the following purposes: (a) filing a final accounting with the Court; (b) filing a final audit report with the Court; (c) executing the P.I.E. 2009 tax return and the final 2010 tax return and filing the returns with the Internal Revenue Service in the manner provided by law; (d) finalizing the collection of the debt due from James M. Marietta; and (f) taking all related actions as authorized or as deemed necessary and appropriate by the Liquidator under various sections of R.C. Chapter 3903; and
3. Pursuant to R.C. 3903.46(A) and 3903.21(A)(9) ordering the abandonment of: (a) the purported \$51 million LAE reinsurance receivable on the grounds that it is fabricated and does not exist; and (b) any interest that P.I.E. may have had in any annuities funding structured settlements on the grounds that any such interest is not an asset of the P.I.E. liquidation estate; and
4. Ordering the dissolution of the corporate entity of P.I.E. pursuant to R.C. 3903.20 and in accordance with the actions authorized by this Order; and
5. Pursuant to R.C. 3903.48, approving and authorizing the destruction of the P.I.E. books and records as follows: (a) all remaining pre-liquidation books and records shall be immediately destroyed; (b) all post-liquidation books and records that the Liquidator determines are no longer essential, or that are not required to be maintained pursuant to applicable federal and state records retention requirements, shall be immediately destroyed; and (c) all other books and records shall be destroyed on or after the date three (3) years following the date of the order granting this application; and
6. Pursuant to R.C. 3903.46(A), finding that P.I.E.'s remaining physical assets are uneconomic to distribute, and approving and authorizing the Liquidator to abandon such physical assets; and
7. Authorizing the Liquidator to close all of the P.I.E. bank accounts on or before March 31, 2010; and
8. Authorizing the Liquidator to take any and all related actions required to close the P.I.E. liquidation estate or carry out the Orders of this Court; and
9. Pursuant to R.C. 3903.46(A) and R.C. 3903.07, discharging and releasing the Liquidator, her predecessors, successors, assigns and any and all current and former deputy liquidators, agents, attorneys and employees of the Liquidator and any and all current and former employees of the Ohio Department of Insurance, from any and all past, present and future claims, proofs of claims, actions, causes of action, suits, complaints, judgments, liabilities, debts, sums of money,

accounts, bonds, covenants, contracts, conversions, costs, agreements, promises, damages, costs, expenses, attorneys' fees, and demands of any kind and nature whatsoever and whenever incurred (collectively, "Claims") relating to, involving or arising out of (a) the rehabilitation and liquidation of P.I.E.; and/or (b) any action, decision, conduct, transaction, or event that was alleged, or that could have been alleged, in this case or in the P.I.E. liquidation proceedings or in any litigation relating to or involving P.I.E. or the P.I.E. rehabilitation and liquidation proceedings, whether or not such Claims are fixed or contingent, known or unknown, or suspected or unsuspected; and

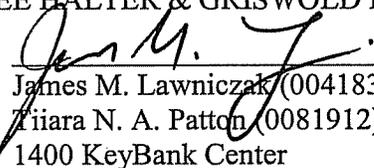
10. Finding that all other matters regarding the liquidation of P.I.E. have been finalized in accordance with the Orders of this Court, and effective immediately, the P.I.E. liquidation estate is closed and this case is terminated.

Respectfully submitted,

RICHARD CORDRAY  
Attorney General of Ohio

By Special Counsel:  
CALFEE HALTER & GRISWOLD LLP

By:

  
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Tiara N. A. Patton (0081912)

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*Attorneys for Mary Jo Hudson, in her capacity as  
Liquidator of The P.I.E. Mutual Insurance Company*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 31, 2010, I caused the Motion to be served by first class mail upon the interested persons listed below:

Scott Webster, Executive Director  
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Clifford C. Masch  
Gary H. Goldwasser  
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101 W. Prospect Avenue, Suite 1400  
Cleveland, Ohio 44115

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Penthouse #1  
Columbus, Ohio 43215

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Columbus, Ohio 43216

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McManamon Financial Services, Inc.  
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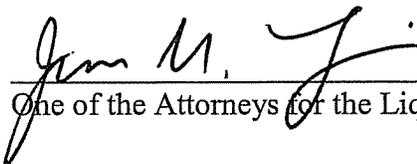
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Cleveland, Ohio 44114-3485

  
\_\_\_\_\_  
One of the Attorneys for the Liquidator

# EXHIBIT A

The P.I.E. Mutual Insurance Company, in Liquidation  
 Exhibit A - Schedule of Unclaimed Funds

<u>Liq# / Seq #</u>	<u>Claim #</u>	<u>Payee/Address</u>	<u>Determined Value</u>	<u>Distribution %</u>	<u>Total Distribution Payment</u>	<u>Less: Prev Pymt/Allow</u>	<u>Check Amt</u>	<u>Check #</u>
13001514 01	77169	Redacted	\$1,178.81	82.1203%	\$968.04	\$412.58	\$555.46	1194
24011370 01	106707	Redacted	\$1,000.00	82.1203%	\$821.20	\$350.00	\$471.20	1230
34030411 01		Redacted	\$4,392.44	82.1203%	\$3,607.08	\$0.00	\$3,607.08	1345
34031977 01		Redacted	\$542.00	82.1203%	\$445.09	\$189.70	\$255.39	1379

# **EXHIBIT B-1**



January 5, 2010

Mr. James Lawniczak  
Calfee, Halter & Griswold  
1400 Key Bank Center  
800 Superior Avenue  
Cleveland, OH 44114-2688

Re: Public Records Request  
Case #97CVH-12-10867  
Ohio State Department of Insurance, Plaintiff vs. PIE Mutual Insurance Company,  
Defendant

Dear Mr. Wallach:

Please find enclosed a copy of the transcript of the proceeding before the Honorable Michael Watson, judge, on Friday, October 19, 1999. On page 5 beginning with line 7, it says:

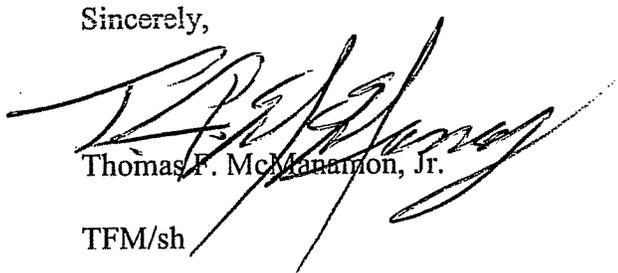
“The Court: If I might suggest that just for the record, you might submit an affidavit from Mr. Feldman as to what he would have testified to.

Mr. Wallach: We can certainly do that.

The Court: Very good”

I would like a copy of the affidavit secured from Mr. Feldman. Please respond as soon as possible.

Sincerely,



Thomas F. McManamon, Jr.

TFM/sh

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

CIVIL DIVISION

- - -

OHIO STATE DEPARTMENT :  
OF INSURANCE, :  
PLAINTIFF, :

VS. : CASE NO. 97CVH-12-10867

PIE MUTUAL INSURANCE :  
COMPANY, :  
DEFENDANT. :

- - -

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MICHAEL H. WATSON, JUDGE, ON  
FRIDAY, OCTOBER 29TH, 1999.

- - -

APPEARANCES:

MR. MARK WALLACH, ON BEHALF OF THE  
PLAINTIFF.

MR. PATRICK SMITH, ON BEHALF OF THE  
DEFENDANT.

- - -

FRIDAY MORNING SESSION,  
OCTOBER 29, 1999.

- - -

THE COURT: ALL RIGHT. WE ARE ONCE  
AGAIN PROCEEDING IN THE MATTER OF CASE NUMBER  
97CVH-12-10867. AND THIS IS THE SUBSTANTIVE  
CONSOLIDATION OF ALL THE PIE SUBSIDIARIES AT THIS  
POINT. THERE IS A MOTION FOR THE COURT TO GRANT AN  
ORDER PERMITTING THAT TO TAKE PLACE.

IT IS MY UNDERSTANDING, PERHAPS WE HAVE  
SOME ROOM ON BOTH SIDES TO MOVE ON THIS ISSUE. WOULD  
AN OPPORTUNITY TO GET THE PARTIES TOGETHER TO DISCUSS  
THAT BE OF ANY BENEFIT AT THIS POINT?

MR. WALLACH: WE WOULD BE HAPPY TO SEE  
IF THERE IS ANY WAY WE CAN RESOLVE THE MATTER.

THE COURT: MR. SMITH?

MR. SMITH: YES, YOUR HONOR. I THINK  
THAT MAKES SENSE, AT LEAST TOUCH BASE. I SPOKE VERY  
BRIEFLY WITH MR. WALLLACH, AND HE'S PROVIDED SOME  
INFORMATION WHICH I JUST SHARED WITH THE CLIENT. AND  
WE HAVE NOT HAD A CHANCE TO DIGEST EVERYTHING. IT  
WOULD BE PRUDENT TO SEE IF THERE IS A POSSIBILITY OF  
RESOLVING THE MATTER.

THE COURT: THE BACK ROOM BACK HERE IS  
AT YOUR DISPOSAL. I WILL BE AVAILABLE. IF YOU WANT

1 1 TO ADJOURN AND START CHATTING.

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3 THEREUPON, A RECESS WAS TAKEN.

4 - - -

5 THE COURT: PAT, IT'S YOUR MOTION.

6 MR. WALLACH: ACTUALLY, IT IS MY MOTION.

7 THE COURT: MARK, IT'S YOUR MOTION.

8 MR. WALLACH: YOUR HONOR, WE HAVE A  
9 MOTION BEFORE THE COURT TO SUBSTANTIVE CONSOLIDATE.

10 THE COURT: OKAY. THEREFORE --

11 MR. WALLACH: THERE WERE FOUR OBJECTIONS  
12 FILED. ALL OF THE OBJECTORS ARE REPRESENTED BY MR.  
13 SMITH. AND WE HAVE, I BELIEVE, NOW REACHED A  
14 SETTLEMENT UNDER WHICH THOSE OBJECTIONS WILL BE  
15 WITHDRAWN.

16 AND PAT, THAT IS YOUR --

17 MR. SMITH: THAT'S CORRECT, YOUR HONOR,  
18 WE HAVE REACHED A SETTLEMENT.

19 WOULD THE COURT LIKE US TO PUT THAT ON  
20 THE RECORD?

21 IS THAT FINE?

22 MR. WALLACH: SURE.

23 MR. SMITH: WE HAVE REACHED A SETTLEMENT  
24 ON ALL FOUR, A SETTLEMENT OF \$150,000. THIS WILL BE  
25 DETERMINED BY MY CLIENT, IN TERMS OF THE EXACT

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ALLOCATION. I WILL LET MARK KNOW WHAT THE ALLOCATION IS TO EACH OF THE CLIENTS.

EACH OF THEM HAS ALREADY FILED A PROOF OF CLAIM AGAINST THE PIE ESTATE. AND WITH RESPECT TO ANY MONIES THAT THEY ARE ALLOCATED IN THIS SETTLEMENT, THAT WILL BE A REDUCTION OR A SET-OFF FOR THE AMOUNT OF THEIR CLAIM, IF THEY EVER RECEIVE ANYTHING FROM THE PIE ESTATE. AND I WILL LET MARK KNOW THOSE NUMBERS WITHIN, YOU KNOW, THE NEXT WEEK.

THE COURT: VERY GOOD.

MR. SMITH: WITH RESPECT TO THE MOTION, WE WILL AGREE THAT OUR OBJECTIONS, IF YOU WILL, TO MARK'S MOTION, WILL BE WITHDRAWN. AND IT IS ALSO MY UNDERSTANDING BECAUSE MY CLIENT RAISED AS TO WHETHER OR NOT THERE WAS ANY CONSIDERATION OF BRINGING ANY TYPE OF AN ACTION AGAINST ANY OF THEM, AND IT IS MY UNDERSTANDING -- AND, MARK, I WILL LET YOU ADDRESS THAT IN TERMS OF HOW YOU WANT TO COMMENT.

MR. WALLACH: I CAN REPRESENT TO THE COURT THAT AT THE PRESENT TIME, THE LIQUIDATOR KNOWS OF NO BASIS FOR ANY CLAIMS AGAINST ANY OF THE FOUR OBJECTORS, AND HAS NO PLANS TO BRING ANY AT THIS TIME.

THE COURT: MR. SMITH, ANYTHING ELSE?

MR. SMITH: THAT'S IT, YOUR HONOR. WE

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APPRECIATE THE EFFORTS OF THE COURT AND OPPOSING  
COUNSEL.

THE COURT: ALL RIGHT. THANK YOU.

MR. WALLACH: YOUR HONOR, WE WILL PLAN  
TO SUBMIT AN ORDER ON THE MOTION FOR SUBSTANTIVE  
CONSOLIDATION, SINCE THERE ARE NO FURTHER OBJECTIONS.

THE COURT: IF I MIGHT SUGGEST THAT JUST  
FOR THE RECORD, YOU MIGHT SUBMIT AN AFFIDAVIT FROM  
MR. FELDMAN AS TO WHAT HE WOULD HAVE TESTIFIED TO.

MR. WALLACH: WE CAN CERTAINLY DO THAT.

THE COURT: VERY GOOD.

- - -

THEREUPON, THE HEARING WAS CONCLUDED.

- - -

CERTIFICATE

I DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE AND ACCURATE AND COMPLETE TRANSCRIPT OF THE  
HEARING IN THIS MATTER ON OCTOBER 29, 1999, TAKEN BY  
ME AND TRANSCRIBED BY ME FROM MY STENOGRAPHIC NOTES.

MARK W. NEAL, ASSISTANT  
OFFICIAL COURT REPORTER.

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# **EXHIBIT B-2**



January 7, 2010

JAN 8 2010

Mr. Mark Wallach  
Calfee, Halter & Griswold  
1400 Key Bank Center  
800 Superior Avenue  
Cleveland, OH 44114-2688

Re: Public Records Request Duryee vs. Wade  
Franklin County Court of Common Pleas  
Case #98CVH-07-5241, James A. Winterich

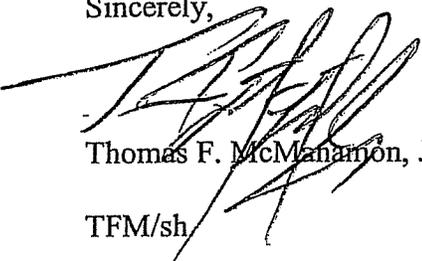
Dear Mr. Wallach:

I am making a public records request for the documents provided the liquidator by Mr. James A. Winterich (which established that he does not owe PIE \$66,298.19 for advances).

I have for your convenience attached a copy of the motion to dismiss Jim Winterich with prejudice. Also attached is a copy of the order approving the motion to dismiss with prejudice claims against Jim Winterich and a copy of the letter from Mark T. Freeman to Ellen M. Brooks Esq. that provides a copy of the motion to dismiss.

Please provide me with copies of those documents to the address shown on this letterhead. If you have any questions, please don't hesitate to call me.

Sincerely,

  
Thomas F. McManamon, Jr.

TFM/sh

Enc.

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

HAROLD T. DURYEE,  
in his capacity AS LIQUIDATOR  
OF THE P·I·E MUTUAL INSURANCE  
COMPANY

Plaintiff,

v.

RONALD WADE, *et al.*,

Defendant.

) CASE NO. 98CVH07-5241

) JUDGE MICHAEL WATSON

) MOTION TO DISMISS

) JIM WINTERICH WITH PREJUDICE

Harold T. Duryee, in his capacity as Liquidator of The P·I·E Mutual Insurance Company ("P·I·E"), does hereby, pursuant to Rule 41(A)(2) of the Ohio Rules of Civil Procedure, move this Court to dismiss with prejudice the claims brought in this action against Jim Winterich ("Winterich"), each party to bear his own costs, including attorneys fees.

The basis for this Motion is that Winterich has provided the Liquidator with documents which establish that Winterich does not owe P·I·E \$66,298.19 for advances.

Respectfully submitted,

  
MARK I. WALLACH (0010948)  
BRIAN EISENBERG (0010903)  
MARK T. FREEMAN (0068524)  
CALPER, HALTER & GRISWOLD LLP  
1400 McDonald Investment Center  
800 Superior Avenue  
Cleveland, Ohio 44114-2688  
(216) 622-8200

Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

HAROLD T. DURVEE,  
in his capacity as LIQUIDATOR OF THE  
P-I-E MUTUAL INSURANCE  
COMPANY,

Plaintiff,

v.

RONALD WADE, et. al.,  
Defendants;

) CASE NO. 98CVH07-5241  
)  
) JUDGE MICHAEL WATSON  
)  
) ORDER APPROVING MOTION TO  
) DISMISS WITH PREJUDICE  
) CLAIMS AGAINST  
) DEFENDANT JIM WINTERICH  
)  
)  
)

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This matter is before the Court upon the Motion to Dismiss Claims Against Defendant Jim Winterich With Prejudice by Plaintiff.

The Court, having considered, among other things, the foregoing Motion, governing law, and the arguments of counsel, hereby ORDERS and DECREES that the Motion shall be, and hereby is GRANTED, and that all claims against Defendant Jim Winterich in the case entitled Durvee v. Wade et. al., Case Number 98CVH-07-5241, are hereby DISMISSED WITH PREJUDICE, each party to bear his own costs.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE MICHAEL H. WATSON

ALFEE, HALTER & GRISWOLL, L.P.  
ATTORNEYS AT LAW

1400 McDonald Investment Center  
800 Superior Avenue, Cleveland, Ohio 44114-2688  
216/622-8200 Fax 216/241-0816

Direct Dial No. 216/622-8254

January 5, 1999

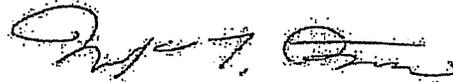
Ellen M. Brooks, Esq.  
Roth, Rolf & Goffman Co.,  
350 Corporate Circle  
30100 Chagrin Blvd.  
Cleveland, OH 44124-5705

RE: Daryce v. Wade, Franklin County Court of Common Pleas, Case No. 98CVH-07-  
5241

Dear Ms. Brooks:

Please find enclosed a copy of Plaintiff's Motion to Dismiss with Prejudice the  
Claims brought against Jim Winterich.

Sincerely,



Mark P. Freeman

MTF:cb  
Enclosure

cc: Nicholas J. Milanich, Esq.  
Mark Immormino, Esq.  
Charles V. Longo, Esq.