

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

MARY JO HUDSON, Ohio Superintendent of
Insurance, in her Capacity as Liquidator of
Personal Physician Care, Inc.,

Plaintiff,

v.

PERSONAL PHYSICIAN CARE, INC.,

Defendant.

Case No. 98CVH08-6251

Judge Stephen L. McIntosh

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
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CLERK OF COURTS

**MOTION TO APPROVE LIQUIDATOR'S UNDELIVERABLE ZERO VALUE
DETERMINATIONS, TO DETERMINE CERTAIN UNDELIVERABLE CLAIMS
AS "UNCLAIMED FUNDS," AND FOR DISALLOWANCE OF CLAIMS**

Plaintiff, Mary Jo Hudson, Ohio Superintendent of Insurance, in her capacity as Liquidator ("Liquidator") of Personal Physician Care, Inc., ("PPC"), hereby moves this Court for an Order approving the Liquidator's determination and treatment of certain claims submitted in the PPC liquidation as follows:

(1) Approve the Liquidator's zero value determinations and disallowance of certain claims to which the Liquidator assigned a zero value as identified on Exhibit "A", attached hereto, but for which claimants the Liquidator could not deliver notice of determination of zero value (hereafter referred to as the "Zero Valued Undeliverable Claims"), due to inability to locate these claimants because of these claimants' failure to notify the Liquidator of address changes as required under Ohio Revised Code (R.C.) Sections 3903.22 and this Court's November 6, 1998 order, attached hereto as Exhibit "B";

(2) Disallow certain other claims, for which the Liquidator assigned a value greater than zero as identified on Exhibit "A", but for which claimants the Liquidator could not deliver notice of determination of value (hereafter referred to as the "Valued Undeliverable

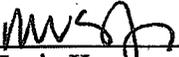
Claims”), due to inability to locate these claimants because of these claimants’ failure to notify the Liquidator of address changes, as required under R.C. Section 3903.22 and this Court’s November 6, 1998 order, attached hereto as Exhibit “B”, and further find that any distribution of proceeds from the PPC liquidation to which such claimants submitting the Valued Undeliverable Claims may otherwise be entitled be determined to be “unclaimed funds,” as provided under R.C. 3903.45(A), and be utilized in the distribution to all other claimants under R.C. 3903.42 and 3903.45;

(3) Disallow and forever bar all of the Zero Valued Undeliverable Claims and the Valued Undeliverable Claims (collectively referred to as the “Undeliverable Claims”); and

(4) Discharge and fully release the Liquidator, her predecessors, successors, assigns and any and all deputy liquidators, agents, attorneys and employees of the Office of the Ohio Insurance Liquidator from any and all liability and responsibility related to the Undeliverable Claims, as more fully discussed in the accompanying Memorandum in Support.

MARC DANN
ATTORNEY GENERAL, STATE OF OHIO

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MEMORANDUM IN SUPPORT

Plaintiff, Mary Jo Hudson, Ohio Superintendent of Insurance, in her capacity as Liquidator ("Liquidator") of Personal Physician Care, Inc., ("PPC"), hereby brings this Motion requesting that this Court approve the Liquidator's treatment and determination of the Undeliverable Claims in the PPC liquidation, which were presented through proofs of claim submitted by claimants as identified on the attached Exhibit "A", as more fully set forth below.

On August 20, 1998, this Court issued an order placing PPC in liquidation pursuant to R.C. Chapter 3903 and appointing the Ohio Superintendent of Insurance as Liquidator. On November 6, 1998, this Court issued an order authorizing the Notice of Liquidation Order And Bar Date For Filing Proofs of Claims in the PPC liquidation, which contains the standard Proof of Claim form utilized by the Liquidator (the "Notice and Proof of Claim Form"), which is attached hereto as Exhibit "B". This approved Notice and Proof of Claim Form, sent to all claimants, set forth specific instructions regarding the proof of claim process and the related requirements, including that anyone filing a proof of claim is to notify the Liquidator of any change in address after a proof of claim form is submitted. Therefore, anyone filing a proof of claim was on notice to provide the Liquidator with any change in their mailing address. Since then, the Liquidator has reviewed the books and records of PPC thoroughly, has identified and collected, where reasonable, all known assets of PPC, reviewed the numerous proofs of claim submitted, and is in the final stages of reviewing, valuing, and classifying all known claims of PPC. Accordingly, the Liquidator, pursuant to R.C. 3903.42, is also preparing to make a distribution to certain claimants of PPC. In this regard, the Liquidator has received,

reviewed and determined numerous claims presented in the PPC liquidation proceeding through proofs of claims submitted by various claimants. R.C. Chapter 3903 and the Notice and Proof of Claim Form provide the requirements and process for submitting claims by proofs of claim and the related adjudication process, as well as certain notification requirements placed upon claimants, all further discussed below.

R.C. Section 3903.39, entitled "Written notice of denial of claim", provides the process for the Liquidator to determine claims:

(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 further 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.

Further, R.C. Section 3903.43, entitled "Review and investigation of claims", provides:

(A) The liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as he considers necessary. He 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 any guaranty association or foreign guaranty association. Unresolved disputes shall be determined under section 3903.39 of the Revised Code. As soon as practicable, he shall present to the court a report of the claims against the insurer with his recommendations. The report shall include 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 persons 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 the applicable policy limits.

Among the universe of proofs of claim filed in the PPC liquidation, there were certain claims which the Liquidator assigned a zero value but could not deliver notice of determination of zero value due to inability to locate these claimants because of these claimants' failure to notify the Liquidator of address changes, as required under R.C. Section 3903.22 and as set forth in the Notice and Proof of Claim Form. Moreover, the Notice and Proof of Claim Form, at paragraph 8, clearly states that failure to notify the Liquidator of any new mailing address different from that provided on the submitted proof of claim, "...may result in your claim being barred from participating in any distribution of assets." These Zero Valued Undeliverable Claims are listed on Exhibit "A", attached hereto. There were also certain other claims, also identified on Exhibit "A", which the Liquidator assigned a value greater than zero but could not deliver notice of determination of value due to inability to locate these claimants because of these claimants' failure to notify the Liquidator of address changes as required under R.C. Section 3903.22. Pursuant to R.C. Section 3903.39, the Liquidator sent determination letters relating to both the Zero Valued Undeliverable Claims and the Valued Undeliverable Claims at the addresses originally provided to the Liquidator on the respective proofs of claim submitted relating to such claims. However, these determination letters were all returned "undeliverable". These determination letters relating to the Undeliverable Claims provided reasons for the Liquidator's valuation (denials in whole or in part), the proposed classification of the

claim, and the statement that each claimant had a period of sixty (60) days from the mailing of the letter to object and respond to the Liquidator's determination of their respective claim. The claims that were denied in whole, or the Zero Valued Undeliverable Claims, are listed as having a zero value on the attached Exhibit "A". The claims that were allowed or denied in part, or the Valued Undeliverable Claims, are listed as having a positive value on the attached Exhibit "A". For the reasons listed below, all of the Undeliverable Claims should be treated as disallowed.

I. THE LIQUIDATOR'S DISALLOWANCE OF THE ZERO VALUED UNDELIVERABLE CLAIMS SHOULD BE APPROVED.

The Liquidator appropriately sent her determination to the addresses set forth on the proofs of claims presented by the various claimants who submitted the Zero Valued Undeliverable Claims. Each of these determination letters were returned as "undeliverable". However, even though the Liquidator is not obligated to do so, further efforts were made by the Liquidator to locate good and proper addresses for these claimants but without success. Regardless of whether these claimants received actual notice of the Liquidator's determination of their Zero Valued Undeliverable Claims, the Liquidator complied with the determination procedure set forth in R.C. 3903.39, including sending the determination letters to the addresses shown on their respective proofs of claim, and such claimants did not file an objection within 60 days of the mailing of their respective letters. Accordingly, the Liquidator is reporting her determination of the denial of all of these claims under R.C. 3903.43, and the Liquidator is entitled to have these claims disallowed.

Further support for these denials of the Zero Valued Undeliverable Claims is found in the statutory requirements and included in the Notice and Form of Proof of Claim that a

claimant must comply with when filing a proof of claim. R.C. Section 3903.22 deals with provisions related to Notices of Liquidation Order. Section 3903.22 (B), in pertinent part provides: *"All claimants shall keep the liquidator informed of any changes of address."*¹ In addition, R.C. 3903.36 sets forth certain minimum requirements for a proof of claim including that the claim should include *"[t]he name and address of the claimant and the attorney who represents him, if any."* R.C. 3903.36(A)(7). That statute also provides, in subsection B, that *"[n]o claim need be considered or allowed if it does not contain the information in division (A) of this section which may be applicable."* These claimants with Zero Valued Undeliverable Claims have not apprised the Liquidator of any changes in their address in disregard of their statutory obligation to do so. The onus is on the claimants to keep the Liquidator informed at all times, of any changes in their addresses. Having failed to do so provides an additional basis for the Liquidator to deny their claims, without the necessity of mailing a new determination letter which would certainly only be returned as undeliverable again.

II. THE LIQUIDATOR'S DETERMINATION THAT ANY DISTRIBUTION ON THE VALUED UNDELIVERABLE CLAIMS SHOULD BE TREATED AS "UNCLAIMED FUNDS" AND THAT THE VALUED UNDELIVERABLE CLAIMS BE DISALLOWED SHOULD BE APPROVED.

As stated above, the Liquidator determined that the Valued Undeliverable Claims listed in Exhibit "A" have some value. However, when the Liquidator sent these claimants their determination letters to the addresses shown on their respective proofs of claim, these also were returned, undeliverable, and none of them filed an objection to the determination

¹ R.C., Section 3903.22 (B). Notice to potential claimants under division (A) of this section shall require claimants to file with the liquidator their claims together with proper proof thereof under section 3903.36 of the Revised Code, on or before a date the liquidator shall specify in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants shall keep the liquidator informed of any changes of address.

of their claims with the Liquidator within the 60-day statutory time period. As in the case of the Zero Valued Undeliverable Claims, the Liquidator attempted to locate good and proper addresses relating to the claimants who presented proofs of claim for the Valued Undeliverable Claims but without success. Accordingly, the Liquidator would be entitled, under R.C. Sections 3903.39 and 3903.43, to have Valued Undeliverable Claims allowed and classified in the amounts as set forth in their respective determination letters.

To the extent that the Valued Undeliverable Claims were determined to have had any value, however, in connection with any potential distributions on claims submitted in the PPC liquidation estate, the Liquidator should not be required to perform the useless and futile act of calculating the amount to be distributed on such Valued Undeliverable Claims, and then mailing the distribution checks to an obsolete address. Since the determination letters sent on these Valued Undeliverable Claims were returned as “undeliverable”, undoubtedly any subsequent distribution sent to such claimants would also be undeliverable and returned to the Liquidator as well. Under R.C. Section 3903.45(A)², the Liquidator would then have been able to redistribute these unclaimed funds to the remaining claimants in accordance to the priorities under Section 3903.42. By determining now that any distribution to these Valued Undeliverable Claims would be “unclaimed funds”, the PPC liquidation estate can avoid the unnecessary and wasteful expense of futilely attempting to make a distribution, only to then redistribute these funds later.

The effect of declaring that the Valued Undeliverable Claims be treated as “unclaimed funds” under 3903.45 is tantamount to disallowing these claims, and for

² R.C. Section 3903.45(A) provides: *All unclaimed funds subject to distribution remaining in the liquidator's hands when he is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown and cannot be found, shall be distributed in accordance with section 3903.42 of the Revised Code among those claimants to whom it is possible to make immediate payment.*

clarity, they should be so disallowed. Further support for disallowance of these claims is the same as the disallowance of the Zero Valued Undeliverable Claims. By the respective claimants failing to provide the Liquidator with their current addresses as required by R.C. Sections 3903.22(B) and 3903.36(A)(7) and in accordance with the Notice and Form of Proof of Claim, the Valued Undeliverable Claims are not required to even be considered or allowed under R.C. 3903.36(B). Again, the Liquidator should not be required to perform the useless act of resending determination letters denying the Valued Undeliverable Claims for failure to provide a current address, when the prior determination letters were returned, undeliverable. Therefore, there is further adequate basis for denying these claims.

Accordingly, all of the Undeliverable Claims set forth in the attached Exhibit "A" should be disallowed and denied.

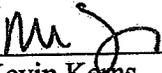
THEREFORE, in consideration of the foregoing, the Liquidator respectfully seeks from this honorable Court an Order:

- (1) Approving the Liquidator's zero value determinations and disallowance of the Zero Valued Undeliverable Claims identified on Exhibit "A", attached hereto;
- (2) Disallowing the Valued Undeliverable Claims identified on the attached Exhibit "A", and finding that any distribution of proceeds from the PPC liquidation estate to which such claimants submitting the Valued Undeliverable Claims may otherwise be entitled be determined to be "unclaimed funds" and be utilized in the distribution to all other claimants as provided under R.C. 3903.42 and 3903.45;
- (3) Disallowing and forever barring the Undeliverable Claims, identified on the attached Exhibit "A"; and

(4) Discharging and fully releasing the Liquidator, her predecessors, successors, assigns and any and all deputy liquidators, agents, attorneys and employees of the Liquidator, from any and all liability and responsibility related to the determinations and treatment of the Undeliverable Claims.

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