IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Mary Jo Hudson, Superintendent, Ohio Department of Insurance, in her Capacity as Liquidator Of The Estate of Proliance Insurance Company	:	**CASE NO. 00CVH12 11391**
Plaintiff,	:	**JUDGE JULIE LYNCH**
v.	:	
Proliance Insurance Company	:	
Defendant.	:	

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
2012 JUL -3 AM 11:11
CLERK OF COURTS-CV

MOTION OF THE LIQUIDATOR FOR APPROVAL OF THE RELEASE AGREEMENT ENTERED INTO BETWEEN THE PROLIANCE INSURANCE COMPANY IN LIQUIDATION AND THE UNITED STATES

Plaintiff Mary Jo Hudson, Superintendent of Insurance, State of Ohio, in her capacity as Liquidator ("the Liquidator") of The Proliance Insurance Company ("Proliance"), moves the Court for an Order approving the Release Agreement entered into between The Proliance Insurance Company in liquidation and the United States. The grounds for this Motion are described more fully in the attached Memorandum in Support.

MARC DANN
ATTORNEY GENERAL, STATE OF OHIO

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Mary Jo Hudson, Superintendent, Ohio Department of Insurance, in her Capacity as Liquidator of The Estate of Proliance Insurance Company

MEMORANDUM IN SUPPORT

The Liquidator of Proliance moves the Court for an Order approving the Release Agreement entered into between Proliance, in liquidation, and the United States. A copy of the Release Agreement is attached hereto as Exhibit A.

On April 24, 2001, this Court issued an order placing Proliance Insurance Company in liquidation pursuant to Chapter 3903 of the Ohio Revised Code and appointing the Ohio Superintendent of Insurance as the Liquidator. Since then, the Liquidator has reviewed the books and records of Proliance thoroughly, has identified and collected, where reasonable, all known assets of Proliance, and is in the process of reviewing, valuing, and classifying all known claims of Proliance.

R.C. 3903.42 governs the priority of the distribution of claims from an insurer's estate. Under the statute,

> The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment.

R.C. 3903.42.

On March 28, 2005, this Court approved the Liquidator's early access, partial distribution of payments relating to the Class 1 and 2 claims of the various state guaranty funds and associations in an amount equal to seventy-five percent (75%) of the amount claimed by each of the guaranty associations. This partial distribution to these guaranty associations was in the amount of Three Hundred Seventy Four Thousand Seven Hundred Eighty Eight Dollars ($374,788.00).

On June 22, 2006, this Court approved the Liquidator's additional distribution of payments relating to the Class 1 and 2 claims of the various state guaranty funds and associations in the amount of Two Hundred Twenty Nine Thousand One Hundred Nine Dollars ($229,109.00).

Class Three claims are limited to claims of the federal government. *See* R.C. 3903.42(C).

In the case of the estate of Proliance, there are no federal claims. To facilitate the eventual final closing of the estate, the Liquidator of Proliance has entered into a Release Agreement with the United States, a copy of which is attached hereto, which release is expressly conditioned upon the approval of this Court. The Release agreement provides for a release of the Liquidator and the estate from any and all liability under § 31 U.S.C. 3713(b) in connection with this estate, subject to the terms and conditions therein.

Therefore, the Liquidator of Proliance moves the Court for an Order approving the Release Agreement entered into between Proliance, in liquidation, and the United States.

MARC DANN
ATTORNEY GENERAL, STATE OF OHIO

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RELEASE AGREEMENT

In order to permit a distribution of the assets of the estate of Proliance Insurance Company pursuant to the orders of the Court of Common Pleas, Franklin County, Ohio, Case No. 00CVH12-11391 (the "Liquidation Court"), this Release Agreement is being executed by the United States and the Liquidator of Proliance Insurance Company

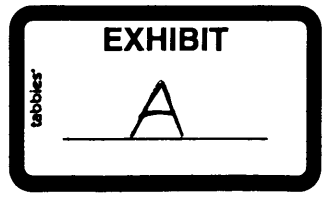
I. PARTIES

The parties to this Release Agreement are the United States and Mary Jo Hudson, Superintendent of the Ohio Department of Insurance, in her sole capacity as statutory and court-affirmed liquidator (the "Liquidator") of Proliance Insurance Company.

II. RECITALS

1. The parties do not intend this Release Agreement to release any possible claims the United States may have or may acquire against anyone for tax, fraud (including, but not limited to, securities and pension benefit fraud), or criminal liabilities to the United States.

2. Except for the express terms of this Release Agreement, the parties do not intend to create, enhance, diminish, defeat or otherwise affect such claims, if any, as the United States may have against the Liquidator or the estate of Proliance Insurance Company.



3. The parties understand that this Release Agreement is subject to the approval of the Liquidation Court, which is supervising the liquidation of Proliance Insurance Company.

4. The United States enters into this Release Agreement in reliance upon the representations of the Chief Deputy Liquidator contained in his affidavit dated January 10, 2007, attached as Exhibit A to this Release Agreement, including the Chief Deputy Liquidator's representation that Proliance Insurance Company did not issue any policies for the benefit of the Federal Government or any of its agencies.

III. AGREEMENT

1. Except only for possible federal tax, fraud, or criminal claims, the United States hereby releases and discharges the Liquidator, her agents and representatives, and the estate of Proliance Insurance Company from any and all liability under 31 U.S.C. § 3713(b) in connection with the Proliance Insurance Company liquidation.

2. Under the terms of this Release Agreement, the United States or its duly authorized representative shall have the right, prior to the destruction of Proliance Insurance Company's records in accordance with the orders of the liquidation court, during normal business hours, on a date and at a location agreed upon by the parties, to inspect, and if it wishes, to copy at its own expense, such documents, books, and records of the estate,

and of the Liquidator, as shall be reasonably necessary to determine the existence and amount of claims the United States may have against the estate, or to determine the Liquidator's compliance with the terms of this Release Agreement.

3. Except for the express undertakings of the Liquidator and the United States in this Release Agreement, nothing in this Release Agreement shall be construed

(a) to establish or perfect any claims, substantive rights, or procedural rights of the United States;

(b) to limit, restrict, diminish, or defeat any claims, substantive rights, or procedural rights of the United States;

(c) to establish or perfect any objections or defenses, substantive rights, or procedural rights of the Liquidator; or

(d) to limit, restrict, diminish, or defeat any defenses, substantive rights, or procedural rights of the Liquidator.

4. The parties agree that this Release Agreement shall not be effective unless and until it is approved by the Liquidation Court and the time for appeals of any such approval has expired. The parties further agree to cooperate with each other in seeking prompt approval of this Release Agreement from the Liquidation Court, including but not limited to making the necessary

witnesses available for testimony considered necessary or appropriate to provide the Liquidation Court with an adequate record upon which to approve this Release Agreement.

Sharon C. Williams
Trial Attorney
Civil Division
Department of Justice

Attorney for the United States

Dated: May 18, 2007

Mary Jo Hudson, Superintendent of the Ohio Department of Insurance, in her sole capacity as Liquidator of Proliance Insurance Company

BY: Douglas L. Hertlein
Douglas L Hertlein
Chief Deputy Liquidator

Dated: 5/23/07