**IN THE COURT OF COMMON PLEAS**
**FRANKLIN COUNTY, OHIO**

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|---|---|---|
| **MARY JO HUDSON,** | : | |
| **Superintendent of Insurance** | : | **CASE NO. 08CVH07-10725** |
| **in her Capacity as Liquidator of** | : | |
| **The Guarantee Title and Trust Company,** | : | |
| | : | **JUDGE GUY L. REECE, II** |
| **Plaintiff,** | : | |
| | : | |
| **vs.** | : | |
| | : | |
| **The Guarantee Title and Trust Company,** | : | |
| | : | |
| **Defendant.** | : | |

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
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CLERK OF COURTS

**PLAINTIFF'S MOTION FOR APPROVAL**
**OF ADMINISTRATIVE OPERATING PROCEDURE**

Plaintiff, Mary Jo Hudson, in her capacity as Liquidator of The Guarantee Title and Trust Company ("Plaintiff") respectfully requests approval of the attached Administrative Operating Procedure for Payment of Administrative Costs and Expenses. This motion is supported by the attached Memorandum in Support.

Respectfully submitted,

**NANCY H. ROGERS**
**Attorney General State of Ohio**

By Outside Counsel:
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## MEMORANDUM IN SUPPORT

## I. Introduction

Ohio Revised Code §3903.21(A)(3) and (4) authorize the Liquidator to employ and compensate people who are necessary to assist in the liquidation. Paragraph 25(b) of the October 27, 2008 Liquidation Order authorizes the Liquidator to adopt Administrative Operating Procedures necessary to aid in the efficient and economic administration of the GTT liquidation, subject to the approval by this Court. Consistent with this authority, the Liquidator respectfully requests approval of the attached Administrative Operating Procedure entitled, *Administrative Costs and Expenses Procedure*. (AOP). The AOP memorializes long standing practices and procedures of the Office of the Ohio Insurance Liquidator for the accounting, allocation and payment of administrative expenses. Through the AOP, the Liquidator also seeks to improve transparency through new requirements for court approval of certain administrative expense transactions and settlements.

## II. Argument

As set forth in the AOP, the Liquidator incurs administrative expenses necessary for the administration of insurers in rehabilitation or liquidation. Administrative expenses include costs necessary to: employ a Chief Deputy Liquidator and various other Deputy Rehabilitators/Liquidators and employees; retain attorneys and consultants; lease office space; and enter into service and supply contracts with vendors and suppliers for goods, equipment or services. In this case, as in other liquidation cases, administrative expenses fall into two categories for accounting and payment purposes: (1) individual estate administrative expenses; and (2) joint estate administrative expenses.

Each liquidation estate individually and directly incurs its own administrative expenses for administrative and professional goods or services from attorneys, actuaries, accountants, appraisers, consultants and other vendors that serve on an estate-specific basis to

assist the Liquidator in taking possession of that particular insurer's property and conducting that insurer's rehabilitation or liquidation proceeding. The AOP refers to this category of expenses as "Individual Administrative Services and Expenses." The Liquidator incurs, pays and accounts for Individual Administrative Services directly from the incurring Estate's own, segregated bank account and assets. *See* R.C. 3903.21(A)(4). The Court approves these administrative expenses via its approval of the Liquidator's semi-annual periodic accountings (Court Cash Reports of receipts and disbursements) that are filed in each liquidation case pursuant to R.C. 3903.18(E). *See also* Liquidation Order, para. 25(a).

Estates jointly incur administrative services and expenses when such expenses and services benefit all or more than one Estate and improve efficiency and economies of scale in the best interests of each Estate's creditors, policyholders and the general public. The AOP refers to this category of expenses as "Joint Administrative Services and Expenses." The prime examples of Joint Administrative Services and Expenses consist of the services provided by, and the associated cost of, those employees of the Office of the Ohio Insurance Liquidator who work on all liquidation cases, and the cost of shared office and record storage facilities. It is more cost effective for all estates to share these costs. The Liquidator therefore accounts for and fairly allocates the costs of the "Joint Administrative Services and Expenses" as they are incurred, *pro rata* among all of the liquidation and rehabilitation estates pursuant to a General Operating Expense Allocation Procedure and Formula ("the GOE allocation method"), in use since at least 1993, that fairly weighs equally the number of hours liquidation office personnel charge to each Estate and the amount of assets held by each Estate. The GOE allocation method is set forth in detail in the AOP and is recalculated quarterly, or when a liquidation estate is added or closed. As with the individual estate administrative expenses, the Court in each liquidation case approves the joint estate administrative expenses via its approval of the Liquidator's semi-annual periodic accountings (Court Cash Reports of receipts and

disbursements) that are filed in each liquidation case pursuant to R.C. 3903.18(E). *See also* Liquidation Order, para. 25(a).

Last, the AOP includes a procedure for court approval to incur certain administrative services and expenses and to settle adversary cases the Liquidator may bring pursuant to R.C. Chapter 3903. This procedure will improve transparency and further the protection of policyholders, creditors, the public and the Liquidator in insurance insolvency proceedings.

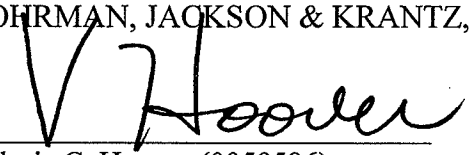
## III. Conclusion

For the foregoing reasons, this Court should approve the attached Administrative Operating Procedure for Payment of Administrative Costs and Expenses.

Respectfully submitted,

**NANCY H. ROGERS**
**Attorney General State of Ohio**

By Outside Counsel:
KOHRMAN, JACKSON & KRANTZ, LLP



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of this *Motion for Approval of Administrative Operating Procedure* was served on the following by regular U.S. Mail, postage prepaid this 21st day of November 2008.

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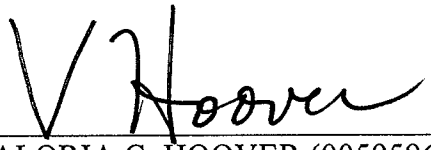
*Attorneys for Defendant, The Guarantee Title and Trust Company and for Nations Holding Company, Hiram E. Blomquist, Christopher M. Likens and the former Directors of The Guarantee Title and Trust Company*



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# ADMINISTRATIVE COSTS AND EXPENSES PROCEDURE

***Purpose***

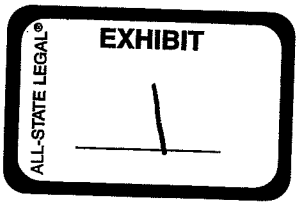
This Administrative Operating Procedure documents the practices and procedures of the Office of the Ohio Insurance Liquidator with respect to incurring, paying for and accounting for Administrative Services and Expenses, including the sharing, advancement, allocation and reimbursement of Joint Administrative Services and Expenses among the various Rehabilitation and Liquidation Estates.

***Introduction***

1. The Superintendent of Insurance in her capacity as Liquidator (the "*Liquidator*") is vested by operation of law with the title to all of the property, contracts, and rights of action of each Liquidation Estate pursuant to Section 3903.18(A) of the Ohio Revised Code (the "*ORC*") and the Liquidation Orders issued by the Franklin County Court of Common Pleas in each Liquidation case (the "*Supervising Court*"). The Liquidator is generally charged under ORC §3903.18 with the duty to secure, marshal, administer and distribute the assets of all liquidated insurers under the supervision of the Supervising Court.

2. The Superintendent of Insurance in her capacity as Rehabilitator (the "*Rehabilitator*") is vested by operation of law with the title to all of the property, contracts, and rights of action of each Rehabilitation Estate pursuant to ORC § 3903.13(A) and the Rehabilitation Orders issued by the Supervising Court for each Rehabilitation Estate. The Rehabilitator is generally charged under ORC §3903.13 with the duties to take possession of the assets of rehabilitated companies, and to administer them under the supervision of the Supervising Court.

3. To assist in the economic and efficient performance of her statutory and fiduciary duties to administer and resolve the affairs of an insurer in rehabilitation or liquidation for the benefit of the creditors, policyholders and the general public, the Liquidator and Rehabilitator (collectively, the "*Receiver*") is required to incur Administrative Services and Expenses. The Receiver has, among other things, (1) employed a Chief Deputy Liquidator and various other Deputy Rehabilitators/Liquidators and employees; (2) incurred attorneys' fees; (3) retained consultants; (4) leased office space at 50 West Town Street, Suite 350, Columbus, Ohio 43215 and five warehouses necessary and appropriate for the operation of the Office of the Ohio Insurance Liquidator separate and apart from the State of Ohio Department of Insurance and for the Receiver's deputies, employees, attorneys and consultants to perform administrative services; and (5) entered into service and supply contracts with vendors and suppliers for goods, equipment or services that support the deputies, employees and consultants in carrying out their administrative duties with respect to the efficient and economical liquidation or rehabilitation of all insurance companies in rehabilitation or liquidation.



4. All insurance companies in court-ordered rehabilitation or liquidation (collectively, the *"Estates"*) individually and directly incur their own Administrative Services and Expenses for administrative and professional goods or services from attorneys, actuaries, accountants, appraisers, consultants and other vendors that serve on a matter-specific basis, as necessary to assist the Receiver in taking possession of the particular insurer and conducting the rehabilitation or liquidation proceeding in the best interests of each Estate's creditors, policyholders and the general public. These Administrative Services and Expenses are referred to herein as, the "*Individual Estate Administrative Services and Expenses.*

5. Estates jointly incur Administrative Services and Expenses only when such expenses and services benefit all or more than one of the Estates and improve efficiency and economies of scale in the best interests of one or more of the Estates, and each Estate's creditors, policyholders and the general public, including but not limited to the following:

(A) services by such executive, management, professional, technical, and clerical employees of the Office of the Ohio Insurance Liquidator as may be assigned for such purposes by the Receiver, including but not limited to services of the Chief Deputy Liquidator and various other Deputy Rehabilitators/Liquidators and employees, financial and accounting services, legal services, audit services, information and technology services, treasury services, human resources services, communications services, payroll processing services, employee benefits participation, procurement services, tax and related services, contract negotiation and administration services, insurance and risk management services, and clerical services;

(B) the purchase or rental and use of office and storage facilities, including, but not limited to, office space, utilities, equipment, machinery, supplies, computers and computer software, communications equipment, insurance policies, and other personal property;

(C) services provided by third-party consultants and professionals to the Office of the Ohio Insurance Liquidator and/or to more than one of the Estates; and

(D) all other necessary expenses incurred by the Receiver in resolving the affairs of multiple insurers in rehabilitation or liquidation.

These Administrative Services and Expenses are collectively referred to herein as the "*Joint Administrative Services and Expenses.*"

6. ORC § 3903.21(A)(4) authorizes the Liquidator to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise administering the business and property of a liquidated insurer. ORC § 3903.14(A) similarly authorizes the Rehabilitator to pay out of the funds or assets of the rehabilitated insurer all expenses of taking possession of the insurer and of conducting the rehabilitation proceedings.

7. The Receiver accounts for and fairly allocates the costs of the "*Joint Administrative Services and Expenses*" as they are incurred, *pro rata* among the Liquidation and Rehabilitation Estates pursuant to a formula, in use since at least 1993, that weighs equally the number of hours liquidation office personnel charge to each Estate and the amount of assets held by each Estate.

8. This Procedure documents the Receiver's practices and procedures with respect to incurring Individual and Joint Administrative Services and Expenses, including the sharing, advancement, allocation and reimbursement of Joint Administrative Services and Expenses among the Estates.

***Incurring Administrative Expenses***

1. Estates shall incur Joint Administrative Services and Expenses only when they benefit more than one Estate (and specifically each Estate that is incurring the Joint Administrative Services and Expenses) and when such expenses and services improve efficiency and economies of scale. Otherwise, each Estate shall directly incur Individual Administrative Services and Expenses based on the needs of that particular Estate.

***Payment of Administrative Expenses***

1. All Individual Administrative Services and Expenses shall be billed to and paid for directly by the incurring Estate from that Estate's own, segregated bank account. Payment of Individual Administrative Services and Expenses shall not be advanced by, paid from, shared by or allocated to any other person or Estate, except the Ohio Department of Insurance and only to the extent provided in ORC §3903.14(A).

2. When Estates incur Joint Administrative Services and Expenses, the Receiver shall designate one or more Estates to advance payment of all Joint Administrative Services and Expenses as follows:

(A) *Joint Employment Services and Expenses.* The Oil & Gas Insurance Company Estate currently employs at will and pays all compensation and employee benefits of employees in the Office of the Ohio Insurance Liquidator. All of these employees are under the direction, control, and supervision of the Receiver. The Oil & Gas Insurance Company Estate shall be responsible for the payment of all payroll and withholding taxes relating to all such employees for services provided to one or more of the Estates. The Oil & Gas Insurance Company Estate shall be responsible for the payment of all payroll additives (such as, insurance premiums, health care and retirement benefits and the like). The Oil & Gas Insurance Company shall maintain Worker's Compensation, unemployment compensation, Social Security, professional liability and similar coverages with respect to such employees and shall, in this regard, prepare and file all necessary reports and make all necessary remittances to the appropriate governmental agencies.

(B) *Other Joint Administrative Services and Expenses.* The Credit General Insurance Company Estate currently advances all sums necessary to pay for all other necessary Joint Administrative Services and Expenses that are required to resolve the affairs of one or more of the Estates and that benefit more than one of the Estates, including (i) overhead, rents, service fees, supplies; (ii) all outside accounting, auditing, actuarial, claims handling, legal, clerical, information technology and any other outside professional administrative service; (iii) all regulatory and other filings and reports; and (iv) all storage services, travel and all other services and expenses necessary to resolve the affairs of insurers in rehabilitation or liquidation and that benefit more than one of the Estates.

3. Some Estates may not incur or receive any Joint Administrative Services and Expenses, such as when a company in rehabilitation or liquidation continues to maintain its own offices and/or where the Receiver has determined that it is more economic, efficient or practical for that company to continue to (i) employ and pay all compensation and employee benefits of that rehabilitated or liquidated company's employees and (ii) incur and pay for its own general and other Administrative Services and Expenses. In those cases, all Administrative Services and Expenses shall be treated as Individual Administrative Services and Expenses and paid for directly and exclusively by the Estate that incurred the expenses from that Estate's own, segregated bank account. In those cases, The Oil & Gas Insurance Company and the Credit General Insurance Company shall not be responsible for the advance or payment of any of the individual incurring Estate's employment expenses, general services or other administrative expenses and services; and, the Receiver shall not allocate the cost of the administrative services and expenses to any other Estate.

4. No Estate or the Receiver shall charge any other Estate a fee for advancing, allocating, accounting or payment of Joint Administrative Services and Expenses.

5. Joint Employment Services and Expenses shall be paid bi-weekly. Full payment for all other Individual and Joint General Administrative Services and Expenses shall be made by no later than the end of the calendar month following the billing month. Charges and payments or set-offs between Estates for provision and payment of Joint Administrative Services and Expenses shall be supported by documentation sufficient to independent auditors, which may be maintained in electronic form.

6. Each Estate does maintain, and shall continue to maintain, its own segregated bank accounts from which the Estate shall pay directly for its Individual Administrative Services and Expenses and from which the Estate shall pay (directly or through reimbursement to the Advancing Estate) for its allocated share of Joint Administrative Services and Expenses. There is and shall be no commingling of any one Estate's funds held in bank accounts with such funds of another Estate.

***Accounting and Allocation of Administrative Services and Expenses***

1. Each Estate shall continue to maintain clear and accurate records documenting and accounting for procurement and payment of all Individual and Joint Administrative Services and

Expenses, which records are not public records under ORC §149.43, or any other state or federal statute, regulation, common law or law governing public records.

2. After The Oil & Gas Insurance Company Estate or the Credit General Insurance Company Estate, as appropriate, has advanced payment for a particular Joint Administrative Service and Expense as set forth above (*i.e.*, issued a bi-weekly paycheck to an employee of the Office of the Ohio Insurance Liquidator or paid the rent for the Office of the Ohio Insurance Liquidator), that payment shall be allocated equally and consistently among the Estates that received and benefited from that Joint Administrative Service and Expense using the General Operating Expense Allocation Procedure and Formula (the "*GOE Allocation Percentage*") as set forth below.

3. The GOE Allocation Percentage is a method of cost allocation. The GOE Allocation Percentage is calculated quarterly. The GOE Percentage weighs assets and salaries of each Estate equally to calculate a percentage of Joint Administrative Services and Expenses to be allocated to each Estate. The GOE Percentage is derived from the amount of hours all persons have spent benefiting all Estates (including time charged as General Administration) and the amount of services provided to all Estates (*i.e.*, total monthly utility bill) and the amount of assets of each Estate for the previous quarter, as follows:

(A) *Calculating the Quarterly GOE Allocation Percentage.* Every three (3) months, each Estate will total and average the par value of the invested assets of that Estate in order to calculate a quarterly average of the par value of invested assets for each Estate. Using this average, a percentage will be calculated reflecting the total par value of invested assets that each Estate has in relation to the total par value of all investments held by all Estates. ("*Quarterly Asset Percentage Per Estate*"). Second, for the same three (3) month period, each Estate will total and average the amount of salaries directly paid (or reimbursed to the Ohio Department of Insurance) by that Estate in order to calculate a quarterly average of the salary obligations of each Estate. Using this average, a percentage will be calculated reflecting the amount of salaries that each Estate incurred in relation to the amount of salaries paid by all Estates. ("*Quarterly Salary Percentage Per Estate*"). The Quarterly Asset Percentage Per Estate and the Quarterly Salary Percentage Per Estate are then averaged on an Estate by Estate basis to arrive at the GOE Percentage to be used by each Estate for the following quarter for purposes of allocating the cost of Joint Administrative Services and Expenses.

(B) *Allocating Joint Employment Services and Expenses.* The costs of employees in the Office of the Ohio Insurance Liquidator shall be allocated to each Estate in proportion to the time each employee actually spends administering such Estate. Each employee is required to record and allocate all actual hours worked to the Estate for which the employee is performing services. When an employee is performing services that benefit all of the Estates, such employee time shall be designated and charged as "General Administrative Services" and then allocated to all Estates as a General Administrative Expense using the GOE Percentage. All employee time for vacation and personal time is allocated to all Estates as a General Administrative Service using the GOE Allocation Percentage.

(C) *Allocating Joint General Services and Expenses.*

(i) *50 West Town Street*: Rent, utilities and all other expenses related to occupation of 50 West Town Street, Suite 350 for purposes of the operation of the Office of the Ohio Insurance Liquidator shall be allocated to all Estates using the GOE Allocation Percentage.

(ii) *Warehouses*: The records and other property of every insurance company in rehabilitation or liquidation are stored at one of the warehouses leased by the Office of the Ohio Insurance Liquidator. Rent, utilities and all other expenses related to the occupation a warehouse is allocated only to the Estates whose records and other property is stored at that warehouse using the GOE Allocation Percentage.

(iii) *General Administrative Services:* All other Joint Administrative Services and Expenses shall be allocated to all Estates using the GOE Allocation Percentage.

4. The Receiver shall adjust charges and payments for Joint Administrative Services and Expenses based on reconciliation of amounts charged and costs incurred by each Estate.

***Court Approval of Administrative Services and Expenses***

1. Beginning November 21, 2008, the Receiver shall submit the following matters to the Supervising Court that is overseeing any Estate that will incur the Administrative Services and Expenses for prior approval to incur Administrative Services and Expenses:

(A) any lease of real estate;

(B) the hiring of consultants, if, the cost of such services is expected to exceed, or in fact exceeds, $25,000, except that the Receiver shall not seek court approval to retain experts, attorneys or consultants in anticipation or furtherance of litigation;

(C) banking relationships, which shall be reassessed no less frequently than every five (5) years, and modified based upon responses to requests for proposals issued by the Chief Deputy Liquidator to several banking institutions (for purposes of applying this procedure, the last reassessment of banking relationships occurred in October 2008);

(D) retention of independent auditors, which shall be reassessed no less frequently than every five (5) years, and modified based upon responses to requests for proposals issued by the Chief Deputy Liquidator to several public accounting firms (for purposes of applying this procedure, the last reassessment of the independent auditor relationship occurred in 2006);

(E) any expense that is outside the ordinary course of business of the Office of the Ohio Insurance Liquidator, except for emergency expenditures and all expenditures for information and technology services, equipment, repairs or improvements;

(F) any expense in the ordinary course of business of the Office of the Ohio Insurance Liquidator that is expected to exceed, or in fact exceeds, $25,000, except for emergency expenditures and all expenditures for information and technology services, equipment, repairs or improvements; and

(G) the settlement and/or compromise of all litigation and disputes initiated by the Receiver under the authority of R.C. Chapter 3903, unless the Supervising Court for each Estate orders a different standard or procedure for approval of the settlement and/or compromise of all such litigation and disputes arising out of a rehabilitation or liquidation case; provided, however, that,

(i) proofs of claims are not claims initiated by the Receiver and shall be determined and approved by the Supervising Court exclusively pursuant to ORC §3903.39 and ORC §3903.43; and/or

(ii) if the gravamen of a case or claim initiated by the Receiver under the authority of R.C. Chapter 3903 is a claim for less than $25,000 (examples of such claims include: claims against policyholders for the collection of premiums, certain subrogation claims and the collection of certain accounts receivable), then such claims may be settled by the Receiver, or by collection agencies or collection law firms retained by the Receiver, without approval of the Supervising Court, so long as each settlement is within the parameters of the Receiver's internal Collection Project Guidelines. The Collection Project Guidelines shall be reassessed no less frequently than every five (5) years (for purposes of applying this procedure, the last reassessment of the Collection Project Guidelines occurred in 2008).

2. In addition, the Receiver shall prepare and file with the Supervising Court for each Estate a periodic accounting showing the cash receipts and disbursements of each Estate. The Receiver shall prepare and file the periodic accounting no less than twice annually, or more frequently if ordered by the Supervising Court.

***Independent Audit of Each Estate's Administrative Services and Expenses***

1. The Chief Deputy Liquidator shall retain one independent auditor to conduct the annual audits of each Estate's finances and internal controls based upon responses to requests for proposals issued by the Chief Deputy Liquidator to several public accounting firms no less frequently than every five (5) years. For purposes of applying this procedure, the Chief Deputy Liquidator last retained an independent auditor in 2006.

2. The independent auditor shall audit, on an individual Estate basis, the finances and internal controls of each Estate. The audit shall be conducted annually as of June 30 each year beginning on the date the Order of Rehabilitation or Liquidation is entered and ending on the Receiver closes the Estate using Generally Accepted Auditing Standards.

3. The Receiver shall promptly file the independent auditor's annual Report of Audit of Financial Statements and Internal Controls for each Estate in that Estate's Rehabilitation or Liquidation Case.