

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

MARY JO HUDSON,
Ohio Superintendent of Insurance,
In her Capacity as Liquidator of
The Physicians' Assurance Corporation,

Plaintiff,

vs.

The Physicians' Assurance Corporation,

Defendant.

CASE NO. 09CVH 08 12492

JUDGE LAUREL BEATTY

**PLAINTIFF'S MOTION TO APPROVE PARTIAL DISTRIBUTION TO
OHIO INSURANCE GUARANTY ASSOCIATION
ON ITS CLASS 1 ADMINISTRATIVE EXPENSE CLAIM**

Plaintiff, Mary Jo Hudson, Superintendent of Insurance, in her capacity as the Liquidator ("Liquidator") of The Physicians Assurance Corporation ("TPAC"), respectfully requests that this Court approve the Liquidator's proposed partial distribution to the Ohio Insurance Guaranty Association on its allowed Class 1 claim, as reflected in the attached *Liquidator's Preliminary Report of Ohio Insurance Guaranty Association's Class 1 Administrative Expense Claim as of October 31, 2010 and Partial Distribution to Class 1.*

Respectfully submitted,

RICHARD CORDRAY
Ohio Attorney General

By: _____

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*Attorneys for Mary Jo Hudson, Ohio Superintendent of
Insurance, in her Capacity as Liquidator of
The Physicians' Assurance Corporation*

MEMORANDUM IN SUPPORT

Pursuant to the Agreed Order of Liquidation and Order Appointing Liquidator (the "Liquidation Order") entered in this case on August 18, 2009, The Physicians' Assurance Corporation ("TPAC") was ordered liquidated pursuant to R.C. Chapter 3903. Further, the Liquidator Order appointed the Ohio Superintendent of Insurance as TPAC's Liquidator and empowered, authorized and directed the Liquidator to liquidate all of TPAC's property and assets in accordance with the laws of Ohio and under the continuing jurisdiction of this Court.

The Liquidation Order invoked the statutory scheme set forth within R.C. Chapter 3903, the Ohio Insurers, Supervision, Rehabilitation, and Liquidation Act ("Liquidation Act"). R.C. 3903.18(A) provides that an order to liquidate shall direct the Liquidator to administer the estate "under the general supervision of the court." As part of the liquidation and pursuant to the Liquidation Order and the Liquidation Act, the Liquidator undertakes to collect collectible assets of the insolvent insurance company and to make payment of the expenses of marshaling and distributing the insurer's assets. R.C. 3903.21(A)(4).

Prior to its liquidation, TPAC was licensed in and wrote business in the State of Ohio. In accordance with the liquidation statutes, the Liquidator tendered TPAC policyholder claims to the Ohio Insurance Guaranty Association (the "OIGA") at the outset of the liquidation. By statute, insurance guaranty associations or IGAs provide a means to protect and compensate insureds and third-party claimants when an insurance company is liquidated and therefore unable to meet its claims obligations. *See, PIE Mutual Insurance Co. v. Ohio Insurance Guaranty Assoc.*, (1993) 66 Ohio St. 3d. 209, 212; R.C. 3955.03. Generally speaking, when a liquidation order is entered declaring an insurance company insolvent, applicable guaranty associations assume the insolvent insurer's obligations and rights with respect to insureds and third-party claimants for liability purposes only up to the guaranty associations' coverage and payment caps. *Id.* (citing current R.C. 3955.08). The guaranty associations provide

insurance coverage (administer, defend and/or timely pay policyholder claims) to eligible claimants when no other coverage is available to pay valid claims to reduce the hardship upon innocent policyholders. *Id.*; see also R.C. 3955.13(A). Consequently, guaranty associations typically expend monies to pay claims long before resolution of the ultimate financial condition of the liquidating insurer's estate. In turn, the guaranty associations are granted Class 1 and Class 2 priority claim status in the Liquidation Estate. Class 1 claims include the guaranty associations' reasonable expenses in handling claims. R.C. 3903.42(A). The guaranty associations' Class 2 claims include all insured loss claims paid by the guaranty associations. R.C. 3903.42(B).

As of October 31, 2010, the Ohio Insurance Guaranty Association had paid and claimed in excess of \$4.1 million in health benefits on behalf of TPAC. The OIGA may continue to incur policyholder claims liabilities until all claims against TPAC are finally resolved. The OIGA will continue to incur administrative expenses until the final resolution of all policyholder claims against TPAC. The OIGA is the largest creditor of the TPAC liquidation.

In accordance with Ohio law, the Liquidator requests approval to make a partial payment on OIGA's Class 1 administrative expense claim of October 31, 2010 as reflected on Exhibit A, *Liquidator's Preliminary Report of Ohio Insurance Guaranty Association's Class 1 Administrative Expense Claim as of October 31, 2010 and Partial Distribution to Class 1*. This payment will assist the OIGA with the obligations of TPAC to former policyholders. This plan is consistent with Ohio law, which requires the Liquidator to distribute claims in order by class according to the statutory scheme set forth in R.C. 3903.42. Under R.C. 3903.42(A) and the Liquidation Order, the expenses of administration are given first priority in the distribution of assets. These expenses are paid as they become due out of the unencumbered assets of the Estate before any other claims are paid.

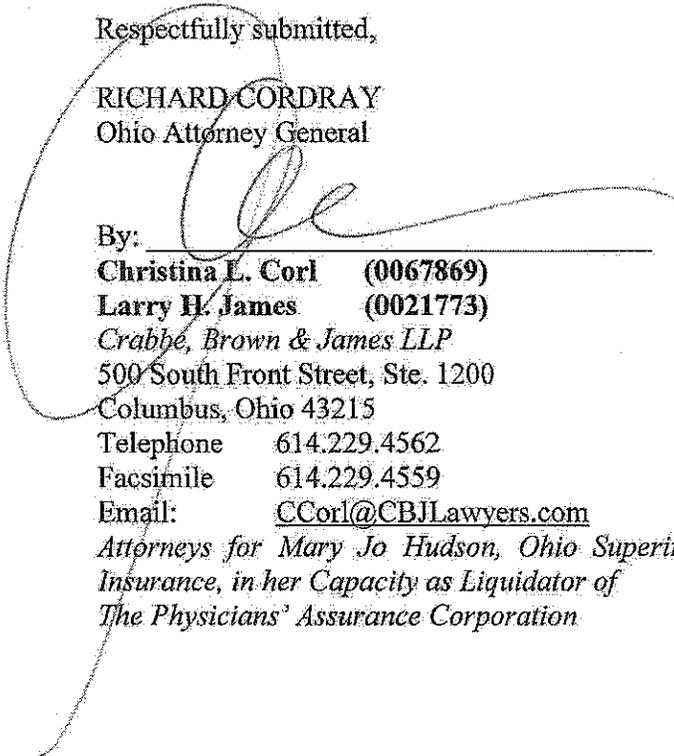
There are no disputes regarding the amount of the OIGA's Class 1 claim as of October 31, 2010. The Liquidator has established procedures for the ongoing review of the guaranty association's administrative expense claims and has determined that the claims as of October 31, 2010 are reasonable.

R.C. 3903.42(A)(6). Therefore, payment of the amount claimed by the OIGA as of October 31, 2010 as their Class 1 administrative expense, as listed on Exhibit A, is an appropriate use of the TPAC Estate assets pursuant to R.C. 3903.42.

Therefore, for the reasons outlined above, the Liquidator respectfully requests that this Court approve the Liquidator's partial distribution to the Ohio Insurance Guaranty Association on its allowed Class 1 administrative expense claim as of October 31, 2010, as reflected in the *Liquidator's Preliminary Report of Ohio Insurance Guaranty Association's Class 1 Administrative Expense Claim as of October 31, 2010 and Partial Distribution to Class 1*, attached hereto as Exhibit A.

Respectfully submitted,

RICHARD CORDRAY
Ohio Attorney General

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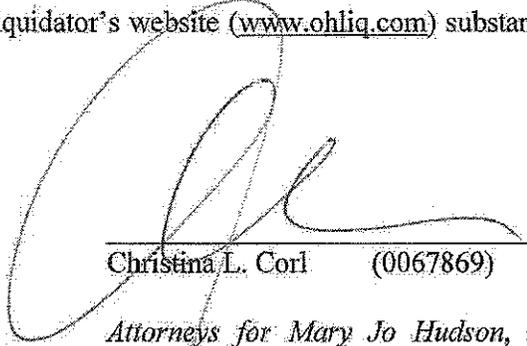
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*Attorneys for Mary Jo Hudson, Ohio Superintendent of
Insurance, in her Capacity as Liquidator of
The Physicians' Assurance Corporation*

CERTIFICATE OF NOTICE

I hereby certify that a true and accurate copy of the foregoing Motion for Approval of the Liquidator's proposed partial distribution to the Ohio Insurance Guaranty Association on its allowed Class 1 claim was posted on the Liquidator's website (www.ohliq.com) substantially contemporaneous with the filing of this Motion.



Christina L. Corl (0067869)

Attorneys for Mary Jo Hudson, Ohio Superintendent of Insurance, in her Capacity as Liquidator of The Physicians' Assurance Corporation

EXHIBIT A

**Liquidator's Preliminary Report of Ohio Insurance Guaranty Association
Class 1 Administrative Expense Claim as of October 31, 2010
and Partial Distribution**

<u>Ohio IGA</u>	<u>Report Date</u>	<u>100% Payment</u>
Administrative Expense	\$663,939.00	\$663,939.00
	Total Distribution:	<u>\$663,939.00</u>