

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

MARY TAYLOR, SUPERINTENDENT OF )  
INSURANCE, IN HER CAPACITY AS )  
LIQUIDATOR OF THE PHYSICIANS' )  
ASSURANCE CORPORATION, )

Plaintiff, )

v. )

THE PHYSICIANS' ASSURANCE )  
CORPORATION, )

Defendant. )

CASE NO. 09CVH 08 12492

JUDGE LAUREL BEATTY

**MOTION OF THE LIQUIDATOR FOR APPROVAL OF THE RELEASE AGREEMENT  
ENTERED INTO BETWEEN THE PHYSICIANS' ASSURANCE CORPORATION IN  
LIQUIDATION AND THE UNITED STATES**

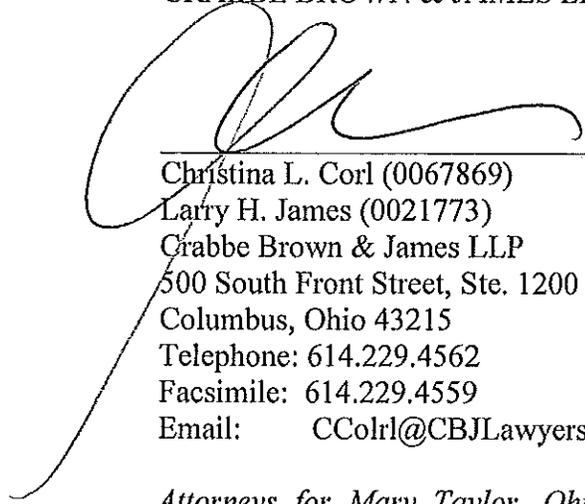
Plaintiff Mary Taylor, Superintendent of Insurance, State of Ohio, in her capacity as Liquidator ("the Liquidator") of The Physicians' Assurance Corporation ("TPAC"), moves the Court for an Order approving the Release Agreement entered into by and between TPAC and the United States ("Release Agreement"). A copy of the Release Agreement is attached and incorporated by reference herein as Exhibit 1. The grounds for this Motion are described more fully in the attached Memorandum in Support.

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2011 OCT 20 PM 3:56  
CLERK OF COURTS-CV

Respectfully Submitted,

MIKE DEWINE  
Attorney General, State of Ohio

By Special Counsel:  
CRABBE BROWN & JAMES LLP



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Larry H. James (0021773)  
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*Attorneys for Mary Taylor, Ohio Superintendent of  
Insurance in her capacity as Liquidator of The  
Physicians' Assurance Corporation*

## MEMORANDUM IN SUPPORT

Plaintiff Mary Taylor, Superintendent of Insurance, State of Ohio, in her capacity as Liquidator (“the Liquidator”) of The Physicians’ Assurance Corporation (“TPAC”) moves the Court for an Order approving the Release Agreement entered into by and between TPAC and the United States. A copy of the Release Agreement is attached hereto as Exhibit 1. The Release Agreement releases and discharges the Liquidator and the estate of TPAC from and any all liability under 31 U.S.C. § 3713(b), subject to the terms and conditions contained therein.

On August 18, 2009, this Court issued an order placing TPAC 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 TPAC, has identified and collected, where reasonable, all known assets of TPAC, and has reviewed, valued and classified all timely proofs of claims filed against the GTT estate.

O.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.

Among the various classes of claims established under O.R.C. § 3903.42, “Class 3” claims are limited to claims of the federal government. *See* OHIO REV. CODE ANN. § 3903.42(C) (2009). In the case of the estate of TPAC, there were no claims filed by the federal government.

To facilitate closure of the TPAC estate, the Liquidator of TPAC 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

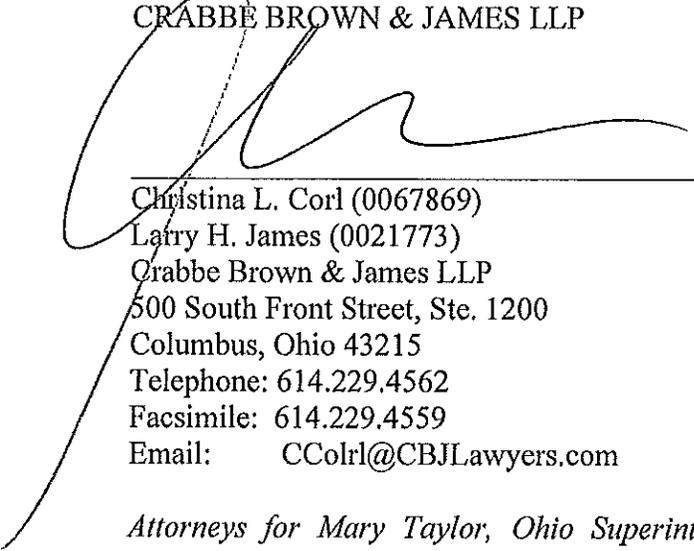
release of the Liquidator and the TPAC estate from any and all liability under § 31 U.S.C. 3713(b), subject to the terms and conditions therein.

Therefore, the Liquidator of TPAC moves the Court for an Order approving the Release Agreement entered into by and between The Physicians' Assurance Corporation in Liquidation and the United States.

Respectfully Submitted,

MIKE DEWINE  
Attorney General, State of Ohio

By Special Counsel:  
CRABBE BROWN & JAMES LLP



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Larry H. James (0021773)  
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*Attorneys for Mary Taylor, Ohio Superintendent of Insurance in her capacity as Liquidator of The Physicians' Assurance Corporation*

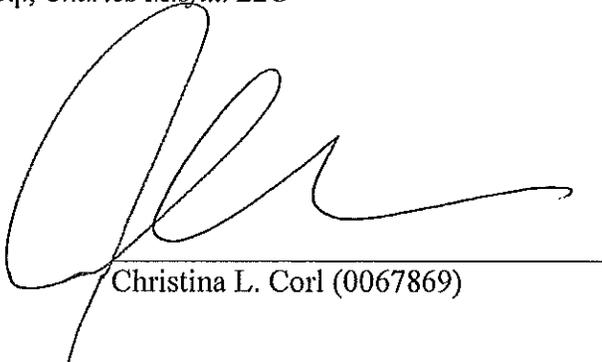
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing *Motion of the Liquidator for Approval of the Release Agreement Entered into between The Physicians' Assurance Corporation, in Liquidation and the United States* was served upon the following via Regular U.S. Mail, postage prepaid, and was also sent via email to Sharon.Williams@usdoj.gov, on this 21<sup>st</sup> day of October, 2011:

Sharon C. Williams  
Trial Attorney  
Department of Justice  
Civil Division  
1100 L Street, N.W., Room 10016  
Washington, D.C. 20005  
*Attorneys for The United States of America*

The undersigned further certifies that a true and accurate copy of the foregoing *Motion of the Liquidator for Approval of the Release Agreement Entered into between The Physicians' Assurance Corporation, in Liquidation and the United States* was posted on the Liquidator's website ([www.ohliq.com](http://www.ohliq.com)) substantially contemporaneous with the filing of this Motion and per agreement and sent via email to the following non-parties:

Joshua D. Weber, Esq., *Charles Misfud LLC*  
Brian Gianangeli, Esq., *Charles Misfud LLC*  
Charles A. Misfud, Esq., *Charles Misfud LLC*

  
\_\_\_\_\_  
Christina L. Corl (0067869)

## RELEASE AGREEMENT

In order to permit a distribution of the assets of the estate of The Physicians Assurance Corporation ("TPAC"), pursuant to the orders of the Court of Common Pleas of Franklin County, Ohio ("Court"), this Release Agreement is being executed by the United States and Lynda G. Loomis, Chief Deputy Liquidator of TPAC ("Chief Deputy Liquidator").

### I. PARTIES

The parties to this Release Agreement are the United States and the Chief Deputy Liquidator (collectively, the "Parties").

### 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), criminal liabilities, or liabilities and penalties to the United States arising under 42 U.S.C. § 1395y(b).

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 Chief Deputy Liquidator or the estate of TPAC.

3. The Parties understand that this Release Agreement may be subject to the approval of the Court, which is supervising the liquidation of TPAC.

4. The United States enters into this Release Agreement in reliance upon the representations of the Chief Deputy Liquidator contained in her affidavits dated January 10, 2011, July 29, 2011, and October 20, 2011, attached as Exhibits A, B, and C to this Release Agreement ("Affidavits").

### III. AGREEMENT

1. Except only for possible federal tax, fraud, criminal claims, or liabilities and penalties to the United States arising under 42 U.S.C. § 1395y(b), the United States hereby



releases and discharges the Chief Deputy Liquidator, Lynda G. Loomis, and the estate of TPAC from any and all liability under 31 U.S.C. § 3713(b) in connection with the TPAC 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 TPAC's records in accordance with the orders of the 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 Chief Deputy Liquidator, as shall be reasonably necessary to determine the existence and amount of claims the United States may have against the TPAC estate, or to determine the Chief Deputy Liquidator's compliance with the terms of this Release Agreement. No documents, books, or records of the estate or Chief Deputy Liquidator may be destroyed unless notice is given to the United States of any motion filed with the Court requesting approval of the destruction. If the Chief Deputy Liquidator does not request approval from the Court, she must obtain prior written authorization from the United States before destruction of any documents, books, or records of the estate or Chief Deputy Liquidator.

3. Except for the express undertakings of the Chief Deputy 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 Chief Deputy Liquidator; or

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

4. The Parties agree that this Release Agreement shall not be effective unless and until it is approved by the Court, if approval is required, 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 Court, including but not limited to making the necessary witnesses available for testimony considered necessary or appropriate to provide the Court with an adequate record upon which to approve this Release Agreement.

Dated: 10/20/11

  
By: Sharon C. Williams  
Trial Attorney  
Civil Division  
Department of Justice  
Attorney for the United States

Dated: 10/20/2011

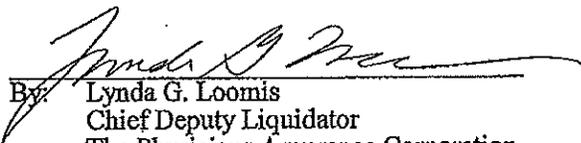
  
By: Lynda G. Loomis  
Chief Deputy Liquidator  
The Physicians Assurance Corporation,  
In Liquidation

EXHIBIT A

*Office of the Ohio Insurance Liquidator*

**The Physicians Assurance Corporation, in Liquidation  
(In Liquidation)**

50 W. Town Street, Suite 350  
Columbus, Ohio 43215-4197

Telephone: 614-487-9200  
Facsimile: 614-487-9418

**AFFIDAVIT OF LYNDA G. LOOMIS  
CHIEF DEPUTY LIQUIDATOR**

January <sup>14</sup>~~10~~, 2011

I, Lynda G. Loomis, in my capacity as Chief Deputy Liquidator of The Physicians Assurance Corporation, having been so appointed by the Court of Common Pleas of Franklin County, Ohio in Case No. 09CVH08-12492, *Hudson v. The Physicians Assurance Corporation*, in its Order dated August 18, 2009, upon personal knowledge and information known to me or supplied to me by others upon whom I rely in my capacity as Chief Deputy Liquidator, make the following statement under oath:

1. The Physicians Assurance Corporation (referred to as "TPAC" or "the company") was an Ohio domiciled insurance company incorporated on December 2, 2005; that was licensed to and wrote health insurance in Ohio.
2. TPAC's federal tax identification number is 20-5154184. There are no outstanding IRS claims against TPAC.
3. TPAC was authorized to provide insurance against accidents to persons, sickness, or temporary or permanent disability; to make insurance upon the lives of individuals, and every type of insurance appertaining thereto or connected therewith; and to grant, purchase, or dispose of annuities. At the time of its liquidation, TPAC was only writing health insurance. Further, TPAC was only licensed to do business in the State of Ohio.
4. Following its incorporation, the company operated under the name The Physicians Assurance Corporation or The Physicians Assurance Corp.
5. On August 18, 2009, TPAC was found to be insolvent and ordered into liquidation proceedings pursuant to Ohio Revised Code Chapter 3903, under the jurisdiction of the Court of Common Pleas of Franklin County, Ohio. A copy of the TPAC Liquidation Order is attached as Exhibit A and hereby incorporated by reference into this Affidavit.
6. TPAC had no subsidiaries.
7. Prior to its liquidation, TPAC used the following address: 300 West Wilson Bridge Road, Suite 250, Worthington, Ohio 43085, which was its address at the time of its liquidation.
8. TPAC did not write policies or bonds for the benefit of the federal government or any of its agencies.

9. There are no claims filed in the TPAC liquidation proceeding by federal agencies as of the date of this affidavit. The Liquidator issued Proof of Claim forms to the following federal agencies, none of which have been returned to the Liquidator for filing in the TPAC liquidation proceeding:
- a. Liquidator Proof of Claim No. 8002203, issued to Department of Justice, PO: Box 875, Ben Franklin Station, Washington DC 20044-0875;
  - b. Liquidator Proof of Claim No. 99002215, issued to Department of Justice, Attn: Sharon Williams, PO. Box 875; Ben Franklin Station; Washington DC 20044-0875;
  - c. Liquidator Proof of Claim No. 34002200, issued to Internal Revenue Service, Cincinnati, OH 45999-0012;
  - d. Liquidator Proof of Claim No. 34002201, issued to Internal Revenue Service, 200 N. High St., Columbus, OH 43215;
  - e. Liquidator Proof of Claim No. 19002214, issued to Center for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244-1850;
  - f. Liquidator Proof of Claim No. 8002119, issued to United States Trademark Center, 1425 K Street NW Suite 350, Washington DC 20005.
10. There were no environmental claims against TPAC.
11. There are no open ancillary receiverships for TPAC.
12. The claims list for TPAC has been downloaded into a CD, a copy of which is provided with this Affidavit as Exhibit B, and hereby incorporated by reference into this Affidavit.
13. A copy of the most recent financial statement and a copy of the last tax return for TPAC are attached hereto as Exhibits C and D and hereby incorporated by reference into this Affidavit.

The information contained in this affidavit is accurate and complete to the best of my knowledge.

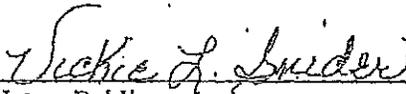
  
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 Lynda G. Loomis  
 Chief Deputy Liquidator  
 The Physicians Assurance Corporation, In Liquidation

State of Ohio            )  
 County of Franklin    ) SS

Lynda G. Loomis, Chief Deputy Liquidator, personally appeared before me and subscribed the foregoing Affidavit in my presence on this 10 day of January, 2011.



*Walter L. Snider*  
 Notary Public, State of Ohio  
 My Commission Expires  
 10/27/14

  
 \_\_\_\_\_  
 Notary Public

**EXHIBIT B**

*Office of the Ohio Insurance Liquidator*

The Physicians Assurance Corporation, in Liquidation  
(In Liquidation)

50 W. Town Street, Suite 350  
Columbus, Ohio 43215-4197

Telephone: 614-487-9200  
Facsimile: 614-487-9418

SUPPLEMENTAL AFFIDAVIT OF LYNDA G. LOOMIS  
CHIEF DEPUTY LIQUIDATOR

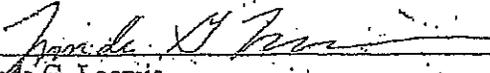
I, Lynda G. Loomis, in my capacity as Chief Deputy Liquidator of The Physicians Assurance Corporation, having been so appointed by the Court of Common Pleas of Franklin County, Ohio in Case No. 09CVH08-12492, *Hudson v. The Physicians Assurance Corporation*, in its Order dated August 18, 2009, upon personal knowledge and information known to me or supplied to me by others upon whom I rely in my capacity as Chief Deputy Liquidator, make the following statement supplementing my January 10, 2011 Affidavit under oath:

1. The Physicians Assurance Corporation (referred to as "TPAC" or "the company") first sold insurance in July 2008. TPAC was liquidated on August 18, 2009. All TPAC policies terminated and/or were cancelled and coverage expired no later than 11:59 pm on October 2, 2009.
2. Under the terms of TPAC's policies, any new claims under policies that terminated at the latest coverage date had to be reported before October 2, 2010, the one-year limitation period.
3. The absolute final bar date of March 18, 2011 was a further bar on any new claims.
4. All known claims have been adjudicated and determined.
5. The Liquidator understands that the Section 111 MSP-MRP reporting requirements (i.e., The Medicare Secondary Payer - Mandatory Insurer Reporting requirements in Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007, Public Law 100-173) pertain to Medicare coverage. It is further my understanding that these requirements did not apply to TPAC at any time prior to its August 18, 2009 liquidation date. I am informed by TPAC's third party administrator (BBMC) that CMS did not require the submission of data on behalf of any of TPAC's group health plan recipients to the Coordination of Benefits Coordinator prior to the August 18, 2009 liquidation date.
6. In this case, the Liquidator does not believe that the Section 111 reporting requirements apply to the Liquidator or the TPAC liquidation, but if they do:
  - A. The Liquidator confirmed that TPAC did not write any Medicare Supplement business. TPAC did not write workers' compensation insurance. TPAC wrote only group health plan coverage and only in Ohio for the limited time period beginning in July 2008 and ending no later than August 18, 2009.

B. The Liquidator is preparing to make a final distribution to allowed claimants and close the TPAC Liquidation. The Liquidator did not allow any claims filed by former policyholders or subscribers of TPAC. Therefore, the Liquidator does not expect to make any payment or distribution of TPAC assets to any former policyholder or subscriber of TPAC or to any other individual. Therefore, no person who possibly has or had Medicare coverage will receive any distribution of TPAC assets from the Liquidator.

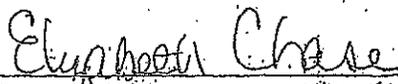
7. The Liquidator is aware that the Office of Ohio Health Plans within the State of Ohio Department of Jobs and Family Services (collectively, "ODJFS") paid some claims of a Medicaid beneficiary who was formerly a TPAC insured. ODJFS informed the Liquidator that any claim against TPAC resulting from this payment is ODJFS' claim.

The information contained in this affidavit is accurate and complete to the best of my knowledge.

  
Lynda G. Loomis  
Chief Deputy Liquidator  
The Physicians Assurance Corporation, In Liquidation

State of Ohio )  
County of Franklin ) SS

Lynda G. Loomis, Chief Deputy Liquidator, personally appeared before me and subscribed the foregoing Affidavit in my presence on this 29<sup>th</sup> day of July, 2011.

  
Notary Public

ELIZABETH CHASE  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES MAY 22, 2012

EXHIBIT C

*Office of the Ohio Insurance Liquidator*

The Physicians Assurance Corporation, in Liquidation  
(In Liquidation)

50 W. Town Street, Suite 350  
Columbus, Ohio 43215-4197

Telephone: 614-487-9200  
Facsimile: 614-487-9418

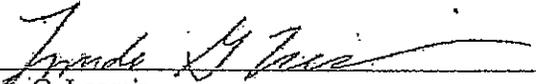
REVISED  
SECOND SUPPLEMENTAL AFFIDAVIT OF  
LYNDA G. LOOMIS, CHIEF DEPUTY LIQUIDATOR

I, Lynda G. Loomis, in my capacity as Chief Deputy Liquidator of The Physicians Assurance Corporation, having been so appointed by the Court of Common Pleas of Franklin County, Ohio in Case No. 09CVH08-12492, *Hudson v. The Physicians Assurance Corporation*, in its Order dated August 18, 2009, upon personal knowledge and information known to me or supplied to me by others upon whom I rely in my capacity as Chief Deputy Liquidator, make the following statement supplementing my January 10, 2011 Affidavit and my July 29, 2011 Supplemental Affidavit under oath:

1. The Physicians Assurance Corporation (referred to as "TPAC" or "the company") did not have any policies that included coverage for tort liability.
2. TPAC wrote only group health plan coverage in Ohio and therefore had policies that included coverage for medical expenses as set forth in its policies.
3. There is only one (1) allowed claim in the TPAC liquidation. That claim is the claim of the Ohio Insurance Guaranty Fund, which will be paid on a pro-rata basis under Ohio Revised Code § 3903.42. The Liquidator has not made any distribution payments, and will not make any distribution payments, to any individual persons who are 65 years of age or older, disabled, or otherwise entitled to benefits under the Medicare program.
4. The Liquidator did not make any distribution payments, and will not make any distribution payments, to TPAC policyholders or subscribers pursuant to TPAC policies covering medical expenses. By statute, all such post-liquidation payments were made by the Ohio Insurance Guaranty Fund.
5. Because the Liquidator did not make any payments pursuant to TPAC policies, no Medicare payments were found.
6. I believe that the Liquidator has fully complied with all reporting requirements of 42 U.S.C. § 1395y(b)(7) and (8), and all program instructions issued thereunder (presently found at <http://www.cms.gov/MandatoryInsRep/>) because there is no distribution by the Liquidator to a Medicare beneficiary to report. The Liquidator has not reimbursed the United States pursuant to 42 U.S.C. § 1395y(b)(2)(B) for Medicare payments that were

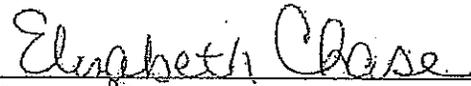
made by the Liquidator for items and services on behalf of Medicare beneficiaries whose medical care should have been paid for by TPAC or whose medical care was, or should have been, paid for pursuant to policies issued by TPAC because the Liquidator has not made, and the Liquidator will not be making, any such payments.

The information contained in this affidavit is accurate and complete to the best of my knowledge.

  
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Lynda G. Loomis  
Chief Deputy Liquidator  
The Physicians Assurance Corporation, In Liquidation

State of Ohio            )  
County of Franklin    ) SS

Lynda G. Loomis, Chief Deputy Liquidator, personally appeared before me and subscribed the foregoing Affidavit in my presence on this 20 day of October, 2011.

  
\_\_\_\_\_  
Notary Public

**ELIZABETH CHASE**  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES MAY 22, 2012