

IN THE SUPREME COURT OF OHIO

UNITED TELEPHONE CREDIT UNION :

Plaintiff-Appellee, :

vs. :

KENNETH A. ROBERTS, Acting Deputy :
Superintendent for Credit Unions, Ohio :
Department of Commerce, Division :
of Financial Institutions :

Defendant- Appellants, :

and :

AMERICAN MUTUAL SHARE INS. CO. :

Intervening Defendant-Appellee. :

Case No. 2006-1174

MOTION OF PROPOSED INTERVENOR

THE LAW OFFICES OF SQUIRE & PIERRE-LOUIS, LLC FOR LEAVE TO INTERVENE

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FILED

MAR 20 2007

**MARCIA J MENGEL, CLERK
SUPREME COURT OF OHIO**

The Law Offices of Squire & Pierre-Louis, LLC ("S&P") hereby moves this Court for leave to intervene as a plaintiff and relator to protect its interest in earned attorney fees from the representation of Appellant United Telephone Credit Union, Inc., for a declaratory judgment against Appellees Kenneth A. Roberts (in his capacity as Acting Deputy Superintendent of Credit Unions, Ohio Division of Financial Institutions) (the "Roberts" or the "DFI") and American Mutual Share Insurance Corp. ("ASI"), and for a writ of prohibition against Appellee Roberts, each in connection with legal representation of UTCU before the Franklin County Common Pleas Court between February 2003 and August 2005. This motion is brought under authority within Sup.Ct.R. X., Sections 1(A) and 2, Sup.Ct.R. XIV, Sec. 4(A), and pursuant to Ohio Civ.R. 24, as explained below.¹

A memorandum in support is attached hereto as well as a proposed pleading.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. Introduction and Brief Overview of S&P's Claims

¹ Before filing this motion, the undersigned sought clarification from the Clerk's Office as to whether such motions are permitted, and it was thereafter confirmed that no rule prohibited this motion and that the Clerk would accept the filing.

S&P is an Ohio limited liability company under which two licensed attorneys practiced law between 2003 and 2005, one of whom was the undersigned, its sole remaining member.² S&P seeks intervention in this case to protect its interests in this litigation, namely, its rights to recover 2 ½ years worth of reasonable attorney fees from UTCU for its work in the underlying litigation. S&P does not claim that Appellees must pay its attorney fees; it claims that Appellees may not prohibit UTCU from paying its attorneys from its credit union assets for its work under the case. While this case was pending in the trial court, the State and ASI refused to permit UTCU to access its own resources to vindicate its due process rights under R.C. 1733.361(A)(2). Instead, it funded the conservator's litigation while UTCU's trial counsel, S&P, were denied legal fees from UTCU notwithstanding the statutory rights of the UTCU director.³ The current parties and their respective counsel do not and cannot adequately represent S&P's interests, as the interests are adverse in multiple regards. S&P's interests in this case are unique and independent.

The applicable rules and analyses for this motion are set forth below, and demonstrate that S&P has good cause to intervene in this action.

II. Statement of Relevant Facts

On February 24, 2003, Appellee Roberts issued an order appointing ASI as conservator over UTCU (the "Conservatorship Order" *attached as Exhibit 1*). In relevant part, the Conservatorship Order stated as follows:

United Telephone Credit Union ("Credit Union"), whose principal place of business is located at 20525 Center Ridge Road, Room 450, Rocky River, Ohio, is a corporation organized and qualified to do business pursuant to Revised Code Chapter 1733. * * * *Conservatorship Order, p. 1.*

² Neither lawyer currently practices under S&P.

³ S&P is aware of the representation within UTCU's merit brief wherein its sole director, Natalie Hughes, personally financed this litigation. However, S&P notes that it has not received any compensation from any source to date on account of its representation of UTCU in this matter.

* * *

Pursuant to Revised Code Section 1733.361, Credit Union may commence a civil action in the Court of Common Pleas, Franklin County, Ohio to obtain an order compelling the Division to remove the conservator. *Conservatorship Order, p.3.*

The source of UTCU's right to commence a civil action in Franklin County Common Pleas Court to challenge the conservator appointment is R.C. 1733.361(A)(2).

UTCU hired S&P to commence and prosecute the civil action underlying this appeal seeking an order from the Franklin County Common Pleas Court compelling the Superintendent to remove the conservator. *See Affidavit of Natalie Hughes at ¶¶2-3, Exhibit 2 attached hereto.* S&P was justified in relying on the DFI's unequivocal statement that UTCU was "a corporation organized and qualified to do business pursuant to Revised Code Chapter 1733." *Conservatorship Order, p. 1.*

Following the Conservatorship Order and R.C. 1733.361(A)(2), UTCU's attorneys filed a complaint on February 27, 2003 seeking an order compelling ASI's removal. UTCU voluntarily dismissed the action without prejudice on May 20, 2003, then re-filed the complaint under authority within the Ohio savings statute on May 20, 2004. On June 23, 2004, S&P filed UTCU's Amended Complaint, pursuant to Civ.R. 15, Civ.R. 57, R.C. 2305.19(A) and R.C. 1733.361(A)(2), which serves as the primary pleading for this appeal. *Attached hereto as Exhibit 3.*

The Amended Complaint included a prayer for S&P's rights to attorney fees. *Amended Complaint, p. 5 attached hereto as Exhibit 3.* S&P drafted and filed the motions for summary judgment and other documents, attended all hearings, advocated at oral argument, and ultimately obtained a Judgment Entry on August 10, 2005 on UTCU's behalf compelling the Superintendent to remove ASI as conservator. *Judgment Entry attached hereto as Exhibit 4.* (the "Judgment Entry").

As a direct result of the Judgment Entry, the then-Superintendent of Credit Unions, F. Scott O'Donnell, removed the conservator on September 28, 2005 (the "Removal Order" attached hereto as Exhibit 5). The Removal Order states, in pertinent part:

IN COMPLIANCE WITH THE ORDER OF THE FRANKLIN COUNTY COMMON PLEAS COURT, THE SUPERINTENDENT HEREBY terminates the appointment of American Mutual Share Insurance Corporation as Conservator of United Telephone Credit Union, Inc., Rocky River, Ohio pursuant to the 2003 Order.⁴ *Removal Order, p. 2.*

During the pendency of the trial court action and even after obtaining the order, however, UTCU was not able to pay S&P its legal fees from its own assets because DFI and ASI had control, and they refused to effectively permit funding of a challenge to their own actions regardless of R.C. 1733.361(A)(2). Instead, the DFI opined that the individual(s) who authorizes a civil action pursuant to R.C. 1733.361(A)(2) must bear all of the costs and fees associated therewith, and may only be reimbursed for such a challenge if the challenge is successful. *Oct. 13, 2005 Letter from DFI to ASI, attached hereto as Exhibit 6 (the "DFI Position Letter")*.

It is DFI's position that, in any challenge of a conservatorship order, the challenger must bear all costs of the challenge up front. If the challenger is successful, reimbursement may be sought from the credit union. If the challenger is not, he or she will bear the costs of the unsuccessful challenge. *Exhibit 6, ¶2.*

There is no statutory or administrative provision authorizing this position. This position is not stated within the Conservatorship Order. This position does not define "successful" or "unsuccessful" either. A "successful party", by definition, "is one who obtains judgment of competent court vindicating civil claim of right." *Black's Law Dictionary* (6th Ed.1991).

Despite the hundreds of billable hours spent for UTCU by S&P, each of UTCU, the DFI and ASI have left S&P to fend for itself to fight for its own fees. Neither DFI nor ASI will pay UTCU's legal fees incurred even though the challenge was "successful", in that the

⁴ The 2003 Order is the Conservatorship Order.

Superintendent issued the Removal Order as a direct result of the Judgment Entry, notwithstanding its subsequent reversal. Clearly, seeking legal fees from UTCU while under the control of DFI and ASI is an exercise in futility that spells a recipe for more years of litigation that frustrates the entire purpose of R.C. 1733.361(A)(2). Counsel for ASI even submitted a letter to the undersigned stating ASI's position very clearly:

Please be advised that it is ASI's position that there is no presently, duly constituted board of directors of UTCU. ASI, as Conservator for UTCU, exercises all rights, powers and authority of the directors, officers and members of UTCU pursuant to R.C. § 1733.361. At no time did ASI, as Conservator, engage you as counsel for UTCU. *February 15, 2006 letter from Orla Collier to Lloyd Pierre-Louis, attached hereto as Exhibit 7.*

Since there is no damage award in this type of civil action, no lawyers can even contemplate a contingency fee arrangement. Withholding access to legal fees, however, makes the statute powerless for most credit union boards, which are denied redress.

Notwithstanding the ultimate result of UTCU's appeal, S&P is entitled to reasonable attorney fees because R.C. 1733.361(A)(2) contemplates that a credit union authorized to commence a civil action to vindicate its rights must hire counsel, and withholding reasonable fees and expenses to the credit union's counsel during and after the pendency of such an action effectively denies S&P its property interest as well as UTCU's remedy. S&P attempted to obtain court intervention at the trial court level to compel payment, but then-counsel for UTCU vehemently disagreed as to the appropriateness of the request.

II. The Motion is Permitted Under this Court's Rules.

"Unless otherwise prohibited by these rules, an application for an order or other relief shall be made by filing a motion for the order or relief. The motion shall state with particularity the grounds on which it is based." *Sup.Ct.R. XIV, Sec. 4(A)*. The undersigned has not located

any rule that prohibits a motion for leave to intervene in a “cause on review as may be necessary to its complete determination.” *Ohio Const. Art. IV, Sec. 2(B)(6)*.

Sup.Ct.R. X applies only to actions within this Court’s original jurisdiction under Article IV, Section 2 of the Ohio Constitution. *Sup.Ct.R. X, Sec. 1(A)*. S&P submits that the issues of attorney fees are necessary to a complete determination of the issues in this case, and that this case falls within the Court’s original jurisdiction under Section 2(B)(6) of the Ohio Constitution. “The Ohio Rules of Civil Procedure shall supplement these rules unless clearly inapplicable.” *Sup.Ct.R. X, Sec. 2*. Rule 24 of the Ohio Rules of Civil Procedure is not clearly inapplicable in this case, and supplements the rules of this Court.

Ohio Civ.R. 24 states:

(A) *Intervention of right*. --Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(B) *Permissive intervention*. --Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of this state confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(C) *Procedure*. --A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Civ.R. 5. The motion and any supporting memorandum shall state the grounds for intervention and shall be accompanied by a pleading, as defined in Civ.R. 7(A), setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of this state gives a right to intervene.

III. Law and Argument

A. S&P Has a Right to Intervene.

S&P claims a right to intervene pursuant to Civ.R. 24(A)(2) or, alternatively, Civ.R. 24(B)(2). S&P claims an interest in its legal fees because: 1) UTCU hired it to commence this civil action, which the Conservatorship Order and R.C. 1733.361(A)(2) stated that it could file, 2) S&P successfully prosecuted the lawsuit and obtained the objectives UTCU required, and 3) R.C. 1733.361(A)(2) inherently contemplates that reasonable attorney fees and costs will be borne by the credit union authorizing commencement of the civil action. Without intervention, S&P's arguments will fall upon deaf ears, and, as a practical matter, will lead to more years of litigation over these same issues.

B. S&P's Interests Cannot Be Adequately Represented by Existing Parties.

S&P's interests cannot be adequately represented by the existing parties or their representatives. First and most obvious, the DFI has no interest in S&P and, in fact, has consistently taken positions adverse to S&P, including directing ASI to file a malpractice counterclaim against S&P in 2004 when S&P made a claim for legal fees for work performed for UTCU pre-conservatorship. ASI, S&P and their respective counsel were engaged in litigation against each other since 2004, and ASI's interests are allied with those of the DFI.

S&P no longer represents UTCU and has been involved in adversarial litigation involving former co-counsel that, as a practical matter, leaves S&P's interests vulnerable to total destruction, sabotage or damage to its claims.

S&P's interests cannot be adequately represented by UTCU or its counsel. As the attached correspondences indicate, counsel for UTCU and all entities associated with the Hughes

family⁵ are adverse to S&P and its undersigned counsel. See Exhibit 8 (correspondences). It is no secret that the family members of UTCU's sole director, Natalie Hughes, are driving forces behind UTCU. S&P's former co-counsel were retained to oppose S&P in litigation in Cuyahoga County. Co-counsel for UTCU, Gabriel Aizenberg, testified in court against S&P making inaccurate statements of fact and law in relation to other Hughes-related litigation. The undersigned has been deposed twice in relation to other litigation, which includes S&P's challenge to the Hughes' family-owned bank's improper claim to S&P's accounts receivables. Furthermore, the past conduct, testimony and record from extraneous litigation surrounding the respective interests of UTCU's counsel and S&P's counsel manifests complete distrust for the protection of S&P's interests. Thus far, the Hughes' have hired a brigade of lawyers against S&P's interests and those of the undersigned, some of whom are involved in this case as counsel,⁶ in this Court and three others across the State.

It is also clear through the earlier filings by UTCU that S&P, UTCU and counsel for UTCU have adverse views on when and under what conditions compensation is due for legal services. Without prior notice, UTCU filed a Notice of Termination of Lloyd Pierre-Louis as counsel in this case in 2006 when he complained that S&P was not paid for his work on this matter, and his efforts to seek the trial court's intervention to force UTCU to pay for its litigation were vigorously rebuffed and withdrawn by UTCU co-counsel. Through filings with this Court and in testimony in other litigation, S&P has learned that co-counsel were being paid, while S&P was on the front lines awaiting the Judgment Entry. Even after obtaining the Judgment Entry,

⁵ According to a Feb. 26, 2006 correspondence to the undersigned, the entities associated with the Hughes include The United Telephone Credit Union, The Fahey Banking Company, Natalie Hughes, Martin Hughes, III, Carl Hughes (in his individual capacity and in his capacity as guardian of Martin Hughes, Jr.) and others. The undersigned notes, however, that neither S&P nor the undersigned represented The Fahey Banking Company, Martin Hughes, III or Carl Hughes in his individual capacity during any relevant period.

⁶ Thus far, S&P and its counsel have received either adversarial pleadings, testimony, briefs and civil proceedings from numerous attorneys representing the Hughes' interests, including Scott Mendeloff, Gabriel Aizenberg, Michael Schaeffer, Darren A. McNair, Erica Probst, Janet Lowder, Martin Hughes, III and Robert Fragale.

UTCU co-counsel refused to permit S&P or the undersigned to seek court-intervention for legal fees from UTCU.

C. S&P Is Entitled to Reasonable Legal Fees from UTCU.

A client has an absolute right to discharge an attorney or law firm at any time, with or without cause, subject to the obligation to compensate the attorney or firm for services rendered prior to the discharge. *Reid, Johnson, Downes, Andrachik & Webster v. Lansberry* (1994), 68 Ohio St.3d 570, paragraph one of the syllabus. S&P is owed substantial legal fees, evidenced by the pleadings and filings of record, and should not be forced to risk losing over two years of legal fees by filing a separate civil action, while those in this litigation – whose interests are adverse to S&P’s interests – may benefit from a favorable judgment.

S&P should not be forced to file a new civil action, then re-litigate the same issues pending here, then wait an additional 4 years as the litigation works its way back to this Court. Hundreds of thousands of dollars in legal fees have already been expended on this case by both the State of Ohio and UTCU for ASI’s legal bills – yet none of those dollars have been spent to pay for S&P’s legal bills.

D. UTCU Must Have Counsel to Enforce Its Due Process Rights, Which R.C. 1733.361 Recognizes.

UTCU cannot file and prosecute a civil action pursuant to R.C. 1733.361(A)(2) to pursue its due process rights without the employment of counsel. “A corporation cannot lawfully engage in the practice of law[.]” *Judd v. City Trust & Savings Bank* (1937), 133 Ohio St. 81, paragraph two of the syllabus. A corporation is ‘an artificial being, invisible, intangible, and existing only in contemplation of law. *Id.* at 86. Rule VII, Sec. 2 of the Rules for the Government of the Bar States, in pertinent part:

(A) The unauthorized practice of law is the rendering of legal services for another

by any person not admitted to practice in Ohio under Rule I and not granted active status under Rule VI, or certified under Rule II, Rule IX, or Rule XI of the Supreme Court Rules for the Government of the Bar of Ohio.

The practice of law embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts. *Land Title Abstract & Trust Co. v. Dworkin* (1934), 129 Ohio St. 23, paragraph one of the syllabus.

It is clear from R.C. 1733.361(A)(2), the Ohio Supreme Court's Rules for the Governance of the Bar, and the case law of Ohio that UTCU cannot enforce its rights in a court of law unless it has a licensed attorney representing it in court. Therefore, R.C. 1733.361(A)(2), the Supreme Court rules and the Constitution contemplates the credit union employing a licensed attorney to pursue a civil action under R.C. 1733.361(A)(2) on its behalf.

E. The DFI Position Letter is Unlawful and Unconstitutional.

1. R.C. 1733.361(A)(2) was established to provide UTCU with due process.

Article I of the Ohio Constitution states, in pertinent part, as follows:

§ 16. Redress in courts

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

Accordingly, this case constitutes an action brought by a "person", UTCU, authorized by law – R.C. 1733.361(A)(2) – to seek a Franklin County Common Pleas Court order compelling the State (*i.e.* the Superintendent of Credit Unions) to remove the conservator he appointed over it on February 24, 2003 (*i.e.* the injury and the remedy).

But the DFI Position Letter's objective is to render R.C. 1733.361(A)(2) useless or

otherwise make it hopelessly impractical or unaffordable for any credit union board or directors to enforce. Unless there is someone wealthy enough to finance litigation, the person authorized by the credit union to challenge conservatorship must, most likely, risk financial disaster. This is a dangerous proposition, as most credit union directors, no matter how altruistic their motives and claims against a conservatorship may be, will not jeopardize substantial personal finances no matter how meritorious their claim may be. But justice should not have a price tag and be limited to only multi-millionaires. Justice should not be denied by those spending the State's money or with unfettered access to a credit union's treasury either.

There is no statutory or administrative authority to support the DFI Position Letter. The DFI, in establishing this rule, did not comply with the Ohio Administrative Procedures Act, R.C. 119., *et seq.* "A rule adopted by an agency subject to the Administrative Procedure Act (Chapter 119, Revised Code) without compliance by such agency with the provisions of such Act is invalid." *In re Appeal from Rules and Regulations of the Div. of Social Administration Dept. of Public Welfare* (Franklin 1963), 118 Ohio App. 407, paragraph one of the syllabus. The provisions of R.C. 119.02 and 119.03, a part of the Administrative Procedures Act, concerning procedure to adopt agency rules, are mandatory. *Id.* at paragraph two of the syllabus. Failure by an administrative agency to adopt a rule *as to giving notice* before it initiates or takes steps to adopt a regulatory rule invalidates such regulatory rule. *Id.*

Unquestionably, the DFI did not have any prior public notice of this new rule that applies only to civil actions brought under R.C. 1733.361(A)(2), did not hold any hearings, or even attempt to comply with R.C. 119.03. The DFI Position Letter, therefore, is invalid as a matter of law.

F. UTCUs Legal Fees are Expenses of the Conservatorship that are to be Paid out of the Assets of UTCU.

R.C. 1733.361(F) states:

The expenses of the conservatorship and compensation of the conservator if any, as provided in this section, shall be paid out of the assets of the credit union and shall be a lien thereon prior to any other lien.

The legal fees and costs associated with the conservatorship in R.C. 1733.361 include division (A)(2) of the section. But for the conservatorship, the credit union would not incur legal expenses. "Expenses of the conservatorship" is not synonymous with "compensation of the conservator. Nothing in the statute limits the expenses of the conservatorship to only those legal expenses incurred by the conservator.

V. Conclusion

S&P has no intention to beg UTCU, DFI or ASI for what rightfully belongs to it. Nor will it simply go away without demanding justice. Thus far, S&P has been left to interpret the logic from the counsel and parties that can be described as nothing less than unintelligible.

UTCU, through the Hughes family counsel, fired the undersigned for seeking an order from the trial court to compel payment from the credit union's assets – not from Mrs. Hughes – for S&P's legal work. Meanwhile and ironically, they now fight in this appeal to reinstate the very order obtained through S&P's efforts.

ASI maintains that it, as conservator and with the power of the UTCU directors, has the sole authority to determine if, when and who will challenge its own conservatorship.

DFI 1) informs UTCU that it is a credit union authorized to act under R.C. 1733, 2) informs UTCU that it has a right to commence a lawsuit pursuant to R.C. 1733.361, 3) then changes its mind about UTCU's authority to do so, and then 4) manufactures new rules on how and when UTCU or any credit union may pay for the statutorily-authorized lawsuit.

Because of this quandary in statutory interpretation and implementation, S&P comes to this Court because there is no other place to go.

S&P does not suggest that UTCU can simply order that money be transferred without any oversight during a conservatorship challenge. Nothing in the statute prohibits a court from receiving fee applications, subject to DR 2-106's reasonableness standards. But it is certainly non-sensical to permit the very target of a conservatorship challenge – the Superintendent and the conservator – to ultimately decide who will be paid legal fees, when payment will be made, whether certain fees and expenses are reasonable and other factors in determining fees. Without this Court's ruling on these matters, the door will be left open to abuse, waste and injustice for this credit union, S&P and future parties and counsel to this type of litigation.

“The legal profession cannot remain a viable force in fulfilling its role in our society unless its members receive adequate compensation for services rendered, and reasonable fees should be charged in appropriate cases to clients able to pay them.” *EC 2-15*. At taxpayer expense, the Attorney General's Office has authorized its outside counsel to receive hundreds of thousands of dollars to defend this action and appeal.⁷ ASI has paid its own lawyers hundreds of thousands of dollars (if not over \$1 million by now) in legal fees with nominal oversight at the expense of 5,000 members of UTCU. Despite the underlying work that UTCU seeks to have this Court reinstate, UTCU even pretends that S&P did not participate in this case, as it appears to be the only law firm that has not been paid for its work on this matter.

UTCU should pay for services it requested. No one can credibly argue that S&P did not do the job it was retained to do. No one can credibly refute that the Conservatorship Order informed its then-directors and manager(s) that UTCU, as of February 24, 2003, was a “corporation organized and qualified to do business pursuant to R.C. 1733” and that it could “commence a civil action” seeking removal of ASI. No one can credibly refute that R.C. 1733.361(A)(2) contemplates lawyers being hired to commence the civil action. Despite creative

⁷ Information from the Comptroller's office confirms this representation.

and unfair efforts by the DFI, ASI, UTCU, and each of their respective lawyers to erase S&P from the history of this case, S&P will fight for its own interests just as zealously and as dignified as it did for UTCU at the trial court level.

Accordingly, S&P requests intervention in this action in order to protect its interests in this litigation. A proposed pleading is attached pursuant to Ohio Civ.R. 24(C) as *Exhibit 9*.

Respectfully submitted,



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Attorney for Intervenor S&P

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing *Motion to Intervene* was served this 19th day of March, 2007 via mail upon the following:

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F. Scott O'Donnell, Superintendent
Of Credit Unions*



Lloyd Pierre-Louis (0068086)

EXHIBIT 1

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS
COLUMBUS, OHIO 43215-6120

IN THE MATTER OF: UNITED TELEPHONE CREDIT UNION
ROCKY RIVER, OHIO

ORDER APPOINTING CONSERVATOR

JURISDICTION

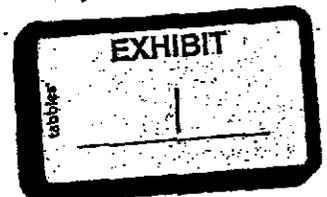
Pursuant to Revised Code section 121.07(C), there is created the Division of Financial Institutions ("Division"), Department of Commerce, which shall have all powers and perform all duties vested by law in the Superintendent of Financial Institutions. Pursuant to Revised Code sections 1733.01 and 1733.32, the Division shall see that the laws relating to credit unions are executed and enforced. Pursuant to Revised Code section 1733.32, the Deputy Superintendent for Credit Unions shall be the principal supervisor of credit unions.

United Telephone Credit Union ("Credit Union"), whose principal place of business is located at 20525-Center Ridge Rd., Room 450, Rocky River, Ohio; is a corporation organized and qualified to do business pursuant to Revised Code Chapter 1733. Pursuant to Revised Code Section 1733.361, the Division may issue an order appointing a conservator when necessary to conserve the assets of a credit union for its members, depositors, and creditors.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the Division's ongoing examination/investigation of Credit Union, the Division finds as follows:

1. On or about November 26, 1978, Credit Union purchased 1,742 shares of Fahey Banking Company ("Fahey"), Marion, Ohio, and booked the value of the shares on its general ledger at \$220,475.
2. On or about October 30, 2001, the Board of Directors of Credit Union authorized the sale and relinquishment of its ownership of the 1,742 common shares of Fahey.
3. On or about November 1, 2001, Credit Union relinquished its ownership of the 1,742 common shares of Fahey for no apparent value and transferred the shares to Merrill Lynch to the account of and for the beneficial interest of Natalie Hughes, a director of both Credit Union and Fahey and the majority shareholder of Fahey.



4. Natalie Hughes issued a check dated May 27, 2002 to Credit Union for \$220,475, which check was deposited by Credit Union, and on or about May 29, 2002 Credit Union removed the 1,742 common shares of Fahey from its general ledger.
5. On or about June 27, 2002, the Board of Directors of Credit Union authorized the sale of the 1,742 common shares of Fahey to Merrill Lynch for \$220,475.
6. Fahey's shares were evaluated in an independent stock evaluation at the fair market value of \$1,250 per share as of June 30, 2002, indicating the fair market value of the 1,742 common shares of Fahey to be \$2,177,500.
7. The sale of 1,742 common shares of Fahey for \$220,475 caused a dissipation of assets of Credit Union and harm to its members, depositors, and creditors in the approximate amount of \$1,957,025.
8. The records of Credit Union did not accurately reflect the relinquishment or sale of the 1,742 common shares of Fahey, in that:
 - a. The joint examination conducted by the Division and American Share Insurance, insurer of Credit Union shares, from November 19 through November 26, 2001 revealed that the 1,742 common shares of Fahey were still carried on Credit Union's general ledger.
 - b. Credit Union's Statement of Financial Condition as of December 31, 2001 includes the value of the 1,742 common shares of Fahey.
 - c. On or about January 3, 2002, Fahey issued a dividend check for the 1,742 common shares of Fahey in the amount of \$1,742 to Credit Union, which dividend check was subsequently deposited into Credit Union's account.
 - d. On December 23, 2002, Fahey issued a dividend check for the 1,742 common shares of Fahey in the amount of \$1,742 to Credit Union, which dividend check was subsequently deposited into Credit Union's account.
9. On July 18, 2002 the Board of Directors of the Credit Union entered into a supervisory agreement with the Division and ASI in which Credit Union agreed to correct numerous policy and procedural practices, but has not substantially complied with the agreement. These corrective actions included:
 - a. Adopting an appropriate expense payment/reimbursement policy by September 30, 2002. Credit Union continues to operate without a sufficient expense payment/reimbursement policy and continuously reimburses or pays the expenses of its officers, directors and other persons that may be either employees or independent contractors, without sufficient or proper documentation and approval of the expenses.
 - b. Identifying and reporting to the Internal Revenue Service (IRS) all unreported disbursements of Credit Union funds to directors, officers, employees, and independent contractors by September 30, 2002. Such identification and

- report has not been provided, exposing Credit Union to IRS penalties and sanctions.
- c. Requiring Credit Union's Secretary/Manager, Martin Hughes, to relinquish control of and discontinue writing checks drawn on Credit Union's accounts. Board of Directors of Credit Union has failed to require the Secretary/Manager, Martin Hughes, to relinquish control of the checks and discontinue writing checks drawn on Credit Union's accounts.
 - d. Requiring Credit Union to establish a credit committee to evaluate all loan applications and cease authorizing the Secretary/Manager, Martin Hughes, to individually evaluate loan applications. Credit Union continues to allow loans to be made contrary to Credit Union's loan policy and loan applicants' credit scores.
 - e. Requiring Credit Union to obtain the approval of the Division prior to appointing new directors. Credit Union has caused Credit Union funds to be disbursed to person(s) not approved as new director(s).

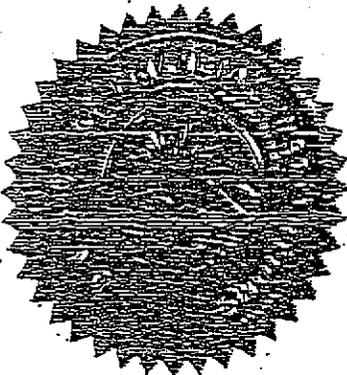
10. The actions and business practices described in the above paragraphs and other actions related to the financial condition of Credit Union have dissipated and continue to dissipate the assets of the Credit Union resulting in harm to the Credit Union, its members, depositors and creditors.

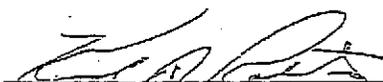
BASED ON THE FOREGOING, THE DIVISION HEREBY CONSIDERS IT NECESSARY TO CONSERVE THE ASSETS of the Credit Union and appoints American Share Insurance as Conservator of United Telephone Credit Union, Inc., Cleveland, Ohio, which appointment shall be effective upon acceptance.

This Order may be revoked and the Conservatorship terminated by the Division at any time. This Order shall become null and void upon: (1) the approval by the Division of a merger of Credit Union pursuant to Revised Code section 1733.34; or (2) the appointment of a liquidating agent by the Division pursuant to Revised Code section 1733.37.

Pursuant to Revised Code section 1733.361, Credit Union may commence a civil action in the Court of Common Pleas, Franklin County, Ohio to obtain an order compelling the Division to remove the conservator.

WITNESS MY HAND at Columbus, Ohio, this 24th day of February 2003.





Kenneth A. Roberts
Acting Deputy Superintendent for Credit Unions

EXHIBIT 2

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

Squire & Pierre-Louis, LLC, *et al.*

Judge Lynch

Counterclaim Defendants,
Third Party Plaintiffs

Case No. 04 CVH 05-4805

vs.

American Mutual Share Insurance Corp.

Counterclaim Plaintiff,
Third Party Defendant,

vs.

Orla Collier, *et al.*

Third Party Defendants.

AFFIDAVIT OF NATALIE HUGHES,
MEMBER AND DIRECTOR OF UNITED TELEPHONE CREDIT UNION, INC.

STATE OF OHIO

SS

COUNTY OF CUYAHOGA.

I, Natalie Hughes, being duly cautioned and sworn, hereby state the following:

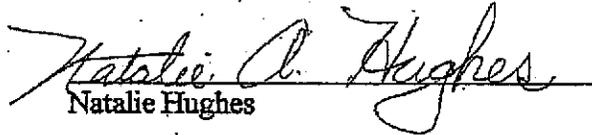
1. I am over 18 and competent to give testimony and this affidavit,
2. I am a member of United Telephone Credit Union, Inc. ("UTCU") and a member of its board of directors.
3. In 2003, UTCU retained Squire & Pierre-Louis, LLC to challenge the conservatorship of American Mutual Share Insurance Corporation ("ASM") in *United Telephone Credit Union, Inc. v. Kenneth A. Roberts*, Franklin C.P. No. 04-CVH-05-5436, Reece, J. On July 26, 2005, Judge Reece ruled that the February 24, 2003 conservatorship order was unlawful and void.

4. UTCU has not authorized any suit, defense, or claim related to legal malpractice against Squire & Pierre-Louis, LLC, Percy Squire, or Percy Squire Co., L.L.C. to be brought by ASI, Orla Collier, Esq., or any other attorney at Benesch, Friedlander, Coplan & Aronoff, LLP (collectively "Benesch"). ASI has taken such action without UTCU board consent, consultation, input, or approval.

5. Prior to February 24, 2003, UTCU's board of directors had approved Mr. Squire's representation of both UTCU and Martin J. Hughes, Jr., as the interests of both in the Union Eye Care Center litigation were consistent.

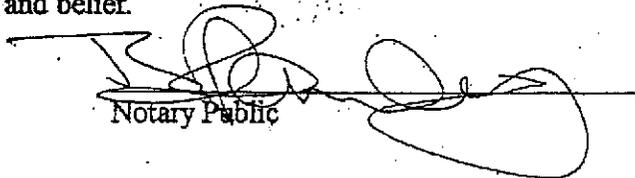
6. After February 24, 2003, Squire & Pierre-Louis, LLC did not represent any of UTCU's legal interests during the Union Eye Care Center litigation. ASI and Benesch claim to have represented UTCU during the Union Eye Care Center litigation, although neither ASI nor Benesch ever met with, consulted with, or obtained the approval of UTCU with respect to such representation.

7. Further the affiant sayeth naught.


Natalie Hughes

NOTARY PUBLIC

Natalie Hughes appeared before me this 4 day of August, 2005, and did swear and confirm that the above statement which she signed in my presence is true to the best of his knowledge, intention and belief.


Notary Public

My commission expires _____

Date: _____

BRIAN L. PAULEY
Notary Public, State of Ohio
My Commission Expires Nov. 17, 2007

EXHIBIT 3

IN THE COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO

45113604

UNITED TELEPHONE CREDIT
UNION, INC.,
20525 Center Ridge Road
Rocky River, Ohio 44116

Plaintiff,

vs.

KENNETH A. ROBERTS, in his official
capacity as Acting Deputy Superintendent
for Credit Unions
OHIO DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL
INSTITUTIONS
77 S. High Street, 21st Floor
Columbus, Ohio 43215-6120

Defendant.

Judge O'Neill
Case No. 04-CVH-05-5436

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
JUN 23 PM 4:46
COURT CLERK

**AMENDED COMPLAINT FOR
PERMANENT INJUNCTIVE
AND DECLARATORY RELIEF**

United Telephone Credit Union, Inc. ("UTCU"), by and through counsel,
hereby alleges as follows:

1. This action was previously filed in Franklin County, Ohio as Case No. 03 CVH 0202278. It was voluntarily dismissed without prejudice on May 20, 2003. This renewed action is filed within one year under the Ohio Savings Statute, R.C. 2305.19.
2. UTCU brings this civil action under R.C. 1733.361(A)(2) and Ohio Civ.R. 57, respectively, for an order compelling the Division of Financial Institutions

(the "Division"), a division of the Ohio Department of Commerce, to remove the conservator appointed over UTCU, and for a declaration that the Acting Deputy Superintendent is without authority under R.C. 1733.361 to appoint a conservator over UTCU.

Aspy 3605

2. UTCU is an Ohio corporation registered as a business as a credit union pursuant to R.C. 1733. *et seq.* Martin J. Humes, Jr. had been the President of UTCU for over 40 years since, it was founded.

3. The Acting Deputy Superintendent purportedly has supervisory authority over credit unions pursuant to R.C. 1733.01 and 1733.32.

4. Purportedly, in accordance with the provisions of R.C. 1733.361, the Acting Deputy Superintendent has issued the Order at Exhibit A, placing UTCU under the control of a conservator. The findings upon which the Acting Deputy Superintendent's actions are based are riddled with error, beyond the scope of the Acting Deputy Superintendent's authority, and a gross abuse of discretion. By reason of the Acting Deputy Superintendent's unlawful usurpation, an Order should issue immediately, prohibiting any further implementation of the Order at Exhibit A. The errors of the Acting Deputy Superintendent, incorporated into Exhibit A, are set forth in part, in the following paragraphs.

5. On or about November 26, 1978, UTCU came into possession of 1,742 shares of Fahey Banking Company ("Fahey"), Marion, Ohio, and booked the value of the shares on its general ledger at \$220,475.

6. On or about October 30, 2001, the Board of Directors of UTCU authorized the sale and relinquishment of its ownership of the 1,742 common shares of Fahey.

However, a transfer of the shares never occurred and UTCU's financial ledger never reflected such a transfer.

451/3606

8. UTCU could not approve such a transfer because it did not obtain the required fairness opinion needed by Fahey to approve such a transfer. See, Exhibit B.

9. Moreover, a joint examination conducted by the State of Ohio Department of Commerce Division of Financial Institution (hereinafter referred to as "Division") and the insurer of UTCU's shares, American Share Insurance (hereinafter "ASI"), revealed that the 1,742 common shares of Fahey were still carried on UTCU's financial ledger.

10. UTCU's Financial Statement as of December 31, 2002 continued to reflect the value of the Fahey shares, further indicating that a share transfer did not take place.

11. On July 18, 2002, UTCU's Board of Directors entered into an agreement with the Division and ASI to ensure that UTCU's procedures and practices remained consistent with industry standards and Ohio law.

12. Throughout 2002 and thereafter, UTCU substantially complied with the terms of the agreement, and received telephone confirmation from Division and ASI that such compliance was occurring.

13. The Division and ASI officials consistently reassured UTCU of its compliance and cooperation, and neither the Division and ASI never indicated otherwise prior to or about February 24, 2003.

14. The result of UTCU's compliance and financial solvency was that assets belonging to the UTCU gained value.

A5113601

15. To UTCU's knowledge, there was no objective information to indicate that company assets were decreasing in value or otherwise dissipating.

16. Despite UTCU's financial solvency, substantial compliance with the agreement, and clear indication via the general ledger that Fahey shares remained in UTCU's control and possession, the Acting Deputy Superintendent issued an Order appointing a conservator, stripping UTCU's officers and board of directors of ultimate control and responsibility purportedly to protect UTCU's assets.

REMOVAL OF CONSERVATOR AND DECLARATION

17. Plaintiff hereby realleges all the foregoing as if the same were fully rewritten herein.

18. As the Order indicates, the acting Deputy Superintendent found that the Fahey shares were not transferred from UTCU.

19. As the Order further indicates, UTCU received \$220,475.00 from Natalie Hughes, but did not transfer anything to her in return.

20. As the Order further indicates, the Fahey Bank paid dividends, which UTCU received and deposited into its own account, for the Fahey shares even after UTCU purportedly transferred the Fahey shares to Ms. Hughes.

21. The undisputed facts indicate that UTCU actually gained cash and dividends, and that the financial condition of UTCU increased during the period of the Division's investigation.

22. UTCU has owned and continues to own the Fahey shares, as evidenced by the Fahey books.

23. UTCU has voted and continues to vote the Fahey shares.

24. There is no evidence in the Order or otherwise to suggest that Ms. Hughes has made any attempt to transfer the Fahey shares to herself.

25. The undisputed facts within the Order further indicate that, contrary to paragraph 10 of the Order, that the financial condition of UTCU has improved rather than dissipated.

26. The investigation by the Division did not warrant appointment of a conservator. The Acting Deputy Superintendent has no authority to appoint a conservator. The Acting Deputy Superintendent should be ordered to remove the conservator.

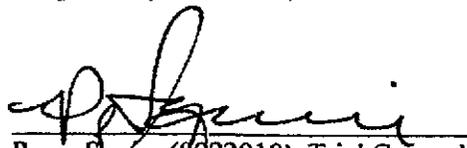
WHEREFORE, UTCU prays for the following relief:

- a. An Order permanently enjoining the Acting Deputy Superintendent from appointing a conservator over UTCU;
- b. A declaration that the Acting Deputy Superintendent does not have the authority to issue the order of February 24, 2003;
- c. An injunction that requires Defendant to withdraw his appointment of a conservator for UTCU based upon the facts in the Order and compelling the removal of the conservator;
- d. An accelerated hearing on the action;
- e. Attorneys fees;
- f. Any other necessary equitable or legal relief necessary and proper under the circumstances.

45113608

45113609

Respectfully submitted,

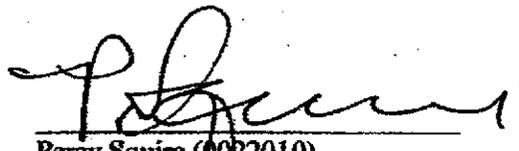


Percy Squire (0022010), Trial Counsel
Lloyd Pierre-Louis (0068086)
Squire & Pierre-Louis, LLC
65 East State Street, Ste. 200
Columbus, Ohio 43215
(614)224-6528, Telephone
(614)224-6529, Facsimile
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Verified Complaint & Motion
for Temporary Order has been served by ordinary U.S. mail, postage pre-paid on this
23rd day of June 2004 upon the following person(s):

Joseph M. Marotta
Assistant Attorney General
30 East Broad St., 26th Floor
Columbus, Ohio 43215-3428



Percy Squire (0022010)
Attorney for Plaintiff

EXHIBIT 4

TERMINATION NO. 17
BY: JB 8-10-05

IN THE COURT COMMON PLEAS
FRANKLIN COUNTY, OHIO

FINAL APPEALABLE ORDER

UNITED TELEPHONE
CREDIT UNION, INC.

Plaintiff,

vs.

KENNETH A. ROBERTS

Defendant.

Case No. 04-CVH-05-5436
(Formerly Case No. 03-CVH-02-2278)

Judge Reece

Magistrate Browning

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2005 AUG 10 AM 9:43
CLERK OF COURTS

JUDGMENT ENTRY
(FINAL APPEALABLE ORDER)

In accordance with this Court's July 26, 2005 Decision 1) granting in part and denying in part Plaintiff United Telephone Credit Union, Inc.'s Motion for Partial Summary Judgment against Defendant Kenneth A Roberts, Acting Deputy Superintendent for Credit unions filed January 4, 2005; 2) granting in part and denying in part Plaintiff United Telephone Credit Union, Inc.'s Motion for Partial Summary Judgment against Intervening Defendant American Mutual Share Insurance Company ("ASI"), or Alternatively, to Dismiss ASI from this Action filed January 12, 2005; and 3) denying Defendant, Kenneth A. Roberts, in his official capacity as Acting Deputy Superintendent for Credit Unions, Division of Financial Institution, Department of Commerce's Cross-Motion for Summary Judgment filed January 18, 2005, judgment is hereby entered as follows.

Judgment is hereby entered for Plaintiff United Telephone Credit Union, Inc. ("UTCU") and against Defendant Kenneth A. Roberts, Acting Deputy Superintendent for Credit Unions, Ohio Department of Commerce, Division of Financial Institutions and against Intervening Defendant ASI as follows:

- 1) The Ohio Savings Statute, R.C. 2305.19, applies to civil actions commenced pursuant to R.C. 1733.361(A)(2), and saved UTCU's action herein.
- 2) UTCU's sole director, Natalie Hughes, has standing to bring this action on behalf of UTCU under R.C. 1733.361(A)(2) and to reconstitute the board in accordance with UTCU bylaws and applicable Ohio law.
- 3) The decision of whether to appoint a conservator over an Ohio credit union under R.C. 1733.361(A)(1) requires the exercise of judgment and discretion, which the Superintendent for Credit Unions may not delegate because such authority is not expressly conferred by statute.
- 4) Kenneth A. Roberts, Acting Deputy Superintendent for Credit Unions, Ohio Department of Commerce, Division of Financial Institutions, is not the Superintendent for Credit Unions and did not have statutory authority under R.C. 1733.361(A)(1) to appoint a conservator over UTCU.
- 5) The February 24, 2003 order of conservatorship Defendant Kenneth A. Roberts issued is void on its face, has no legal effect and is incapable of being ratified.
- 6) R.C. 1733.361(A)(2) does not authorize the issuance of a permanent injunction requiring Defendant Roberts to withdraw his appointment of a conservator for UTCU and to cease and desist from undertaking actions specifically and exclusively designated for the Superintendent of Credit Unions.
- 7) The Superintendent of Credit Unions, F. Scott O'Donnell, is hereby **ORDERED** to remove the conservator, ASI, appointed over UTCU pursuant to the void February 24, 2003 order issued by Defendant Roberts.

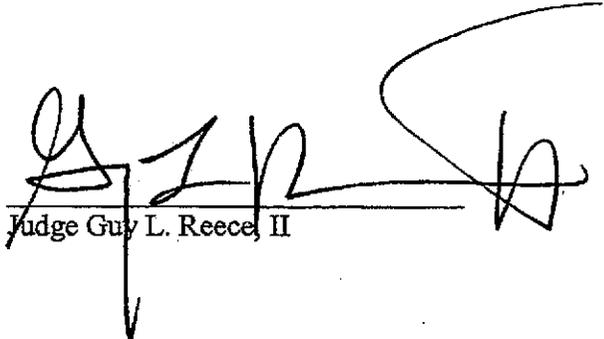
Defendant, Kenneth A. Roberts, in his official capacity as Acting Deputy Superintendent for Credit Unions, Division of Financial Institutions, Department of Commerce's Cross-Motion for Summary Judgment filed January 18, 2005 is denied. R.C. 1733.361(A) does not authorize equitable relief. Accordingly, subject matter jurisdiction does not exist to consider the remaining requests for relief within the Complaint and such claims for relief are hereby dismissed without prejudice.

Defendant, Kenneth A. Roberts, in his official capacity as Acting Deputy Superintendent for Credit Unions, Division of Financial Institutions, Department of Commerce shall bear the costs in this action in accordance with Civil Rule 54(D).

FINAL APPEALABLE ORDER

IT IS SO ORDERED.

10 Aug 05
Date


Judge Guy L. Reece, II

Copies to:

Percy Squire, Esq. (0022010)
Lloyd Pierre-Louis, Esq. (0068086)
Squire & Pierre-Louis, LLC
65 E. State Street, Suite 200
Columbus, Ohio 43215
(614) 224-6528; (614) 224-6529 *facsimile*

*Counsel for Plaintiff United Telephone
Credit Union, Inc.*

Jim Petro (0022096)
Ohio Attorney General
By Special Counsel:

Kathleen M. Trafford, Esq. (0021753)
John C. Hartranft, Sr. Esq. (0023037)
Polly J. Harris, Esq. (0029433)
Julie L. Atchison, Esq. (0069907)
Porter, Wright, Morris & Arthur LLP
41 South High Street
Columbus, Ohio 43215
(614) 227-2000; (614) 227-2100 *facsimile*

Special Counsel for Defendant Roberts

Orla E. Collier, III, Esq. (0014317)
John F. Stock, Esq. (0004921)
Ronald L. House, Esq. (0036752)
Benesch, Friedlander, Coplan & Aronoff LLP
88 E. Broad St., Ste. 900
Columbus, Ohio 43215
(614) 223-9300; (614) 223-9330 *facsimile*

*Counsel for Intervenor Defendant American
Mutual Share Insurance Co.*

EXHIBIT 5

PORTER WRIGHT MORRIS & ARTHUR LLP

Attorneys & Counselors at Law

Polly J. Harris
(614) 227-1962
pharris@porterwright.com

41 South High Street
Columbus, Ohio 43215-6194

Facsimile: 614-227-2100
Toll Free 800-533-2794

September 28, 2005

Via Telecopy

Lloyd Pierre-Louis, Esq.
The Law Offices of Squire & Pierre-Louis, LLC
65 E. State Street, Suite 200
Columbus, Ohio 43215-4277

Re: United Telephone Credit Union, Inc., Rocky River, Ohio

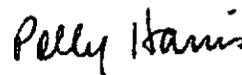
Dear Mr. Pierre-Louis:

This office represents the Ohio Division of Financial Institutions in matters related to United Telephone Credit Union, Inc. of Rocky River, Ohio. Enclosed are copies of the following documents dated September 28, 2005:

- Termination of Appointment of Conservator;
- Order of Appointment of Conservator, and
- Certificate of Appointment of American Mutual Share Insurance Corporation as Conservator.

Please contact me if you have any questions.

Very truly yours,



Polly J. Harris

PIH:cs-f

cc: John Izzo, Esq.
Enclosures

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS
COLUMBUS, OHIO 43215-6120

IN THE MATTER OF: UNITED TELEPHONE CREDIT UNION
ROCKY RIVER, OHIO

TERMINATION OF APPOINTMENT OF CONSERVATOR

JURISDICTION

Pursuant to Revised Code §121.07(C), there is created the Division of Financial Institutions ("Division"), Department of Commerce, which shall have all powers and perform all duties vested by law in the Superintendent of Financial Institutions. Pursuant to Revised Code §§1733.01 and §1733.32(A)(1) and (2), the Division and the Superintendent of Financial Institutions shall see to it that the laws relating to credit unions are executed and enforced, and the Deputy Superintendent for Credit Unions shall be the principal supervisor of credit unions.

United Telephone Credit Union, Inc. (the "Credit Union"), whose principal place of business is located at 20525 Center Ridge Rd., Room 450, Rocky River, Ohio, is a corporation organized and qualified to do business pursuant to Revised Code Chapter 1733.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to Revised Code §1733.361, the superintendent of credit unions may issue an order appointing a conservator whenever he considers it necessary to conserve the assets of a credit union for its members, depositors, and creditors.

On February 24, 2003, the Division of Financial Institutions, pursuant to an Order Appointing Conservator (the "2003 Order") signed by the Acting Deputy Superintendent for Credit Unions, appointed American Mutual Share Insurance Corporation as Conservator for the Credit Union (the "Conservator"). On August 10, 2005, the Franklin County Court of Common Pleas, Case No. 04CVH05-5436, ruled that the 2003 Order was void because it was not signed by the Superintendent of Financial Institutions, and ordered the Superintendent of Financial Institutions to remove the Conservator appointed pursuant to the 2003 Order. On September 23, 2005, the United States District Court for the Southern District of Ohio, in Case No. C2 05-0077, also found that the 2003 Order was void because it was not signed by the Superintendent of Financial Institutions.

Pursuant to Revised Code §1733.361(D), the Superintendent may terminate a conservatorship and permit the credit union to resume the transaction of its business, subject to such terms and restrictions as he prescribes, when the Superintendent determines that the termination of such conservatorship may be safely done and would be in the public interest. The Superintendent does not believe that termination of the conservatorship over the Credit Union and the resumption of the transaction of business by the Credit Union may be safely done and would be in the public interest. However, pursuant to the Court orders described above, the Superintendent has been ordered to remove the Conservator.

IN COMPLIANCE WITH THE ORDER OF THE FRANKLIN COUNTY COMMON PLEAS COURT, THE SUPERINTENDENT HEREBY terminates the appointment of American Mutual Share Insurance Corporation as Conservator of United Telephone Credit Union, Inc., Rocky River, Ohio pursuant to the 2003 Order.

WITNESS MY HAND this 28th day of September, 2005.

9:43 AM


F. Scott O'Donnell
Superintendent of Financial Institutions

WITNESS MY HAND this 28th day of September, 2005.



Kenneth A. Roberts
Acting Deputy Superintendent for Credit Unions

EXHIBIT 6



Ohio Department of Commerce

Division of Financial Institutions
77 South High Street • 21st Floor
Columbus, OH 43215-6120
(614) 728-8400 FAX (614) 644-1631
www.com.state.oh.us

Bob Taft
Governor

Doug White
Director

October 13, 2005

Dennis R. Adams
President/CEO
American Share Insurance
5656 Frantz Road
Dublin, Ohio 43017

Dear Mr. Adams:

The Division of Financial Institutions is in possession of letter sent to your counsel, Chip Collier, by Percy Squire via e-mail on October 13, 2005. Mr. Squire is apparently asking that ASI, as conservator for United Telephone Credit Union, post the bond required by the October 13, 2005, Order issued in Franklin County Court of Common Pleas in case number 05CVH 09-10728.

It is DFI's position that, in any challenge of a conservatorship order, the challenger must bear all costs of the challenge up front. If the challenger is successful, reimbursement may be sought from the credit union. If the challenger is not, he or she will bear the costs of the unsuccessful challenge.

DFI believes that ASI, as conservator for UTCU, should not use UTCU assets to post the bond in Franklin County case number 05CVH 09-10728. The bond should be posted by the person who is prosecuting the action in the name of UTCU.

Sincerely,

Kenneth A. Roberts
Acting Deputy Superintendent for Credit Unions

EXHIBIT 7

Orla E. Collier

Writer's Direct Dial: (614) 223-9340

Writer's Email: ocollier@bfca.com

February 15, 2006

Lloyd Pierre-Louis, Esq.
Pierre-Louis & Associates, LLC
635 Park Meadow Road
Suite 215
Columbus, Ohio 43081

Re: United Telephone Credit Union, Inc. v. Roberts, et al., Case No. C2-05-0077
United Telephone Credit Union, Inc. v. O'Donnell, Case No. 05-CVH-09-10728

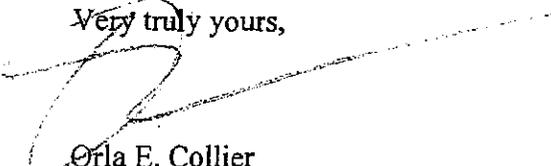
Dear Mr. Pierre-Louis:

The undersigned represents American Mutual Share Insurance Corporation ("ASI"), Conservator for the United Telephone Credit Union, Inc. ("UTCU"). I have been provided a copy of your letter of February 3, 2006 to the "directors of United Telephone Credit Union, Inc." You enclosed various motions for leave to withdraw as counsel in the above-referenced cases.

Please be advised that it is ASI's position that there is no presently, duly constituted board of directors of UTCU. ASI, as Conservator for UTCU, exercises all rights, powers and authority of the directors, officers and members of UTCU pursuant to R.C. § 1733.361. At no time did ASI, as Conservator, engage you as counsel for UTCU.

Accordingly, you should serve your letter and the accompanying motions on the person or persons who purportedly engaged you as counsel.

Very truly yours,


Orla E. Collier

cc: Dennis Adams
Duane Welsh
Polly Harris

EXHIBIT

tabbles
SP-41

EXHIBIT 8



SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN
CHICAGO, IL 60603
(312) 853 7000
(312) 853 7036 FAX

smendeloff@sidley.com
(312) 853-7362

BEIJING GENEVA SAN FRANCISCO
BRUSSELS HONG KONG SHANGHAI
CHICAGO LONDON SINGAPORE
DALLAS LOS ANGELES TOKYO
NEW YORK WASHINGTON, DC

FOUNDED 1888

February 20, 2006

By Facsimile and Post

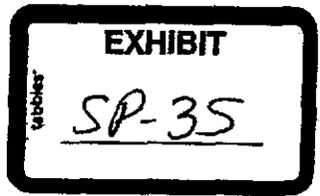
Lloyd Pierre-Louis
Pierre-Louis & Associates, Ltd.
635 Park Meadow Road, Suite 215
Columbus, Ohio 43081

Dear Lloyd:

I am writing you as counsel for Natalie Hughes, Carl Hughes (personally and as guardian for Martin J, Hughes, Jr.), Martin J. Hughes, III ("Martin Hughes"), The Fahey Banking Company, The United Telephone Credit Union, as well as any and all other entities associated with the Hughes Family. In the *Motion for Leave to Withdraw* ("Motion") that you filed in United Telephone Credit Union v. O'Donnell, Case No. 05 CVH 09-10728, you stated that you had not been terminated as UTCU's counsel. This is incorrect. At the latest, in or about November 2005, Percy Squire was orally informed that you were no longer to act as counsel to any of the aforementioned people or entities. We believe that Percy Squire did communicate these instructions to you. Furthermore, on December 21, 2005, this instruction was communicated in writing to Percy Squire:

Lloyd's assertions regarding fees and his assertions regarding deferment of payment on his loan with Fahey give him clear conflicts of interest with his client, and that he was to no longer act as counsel. Accordingly, he can not be signing briefs.

Since you saw it fit in your Motion to state that you were not terminated, Natalie Hughes, personally and in her capacity as UTCU's sole director, has instructed us to inform you that you are and have been terminated as UTCU's counsel. Furthermore, Carl and Martin Hughes have also instructed us to inform you that you are and have been terminated as counsel for Carl Hughes, the Estate of Martin J. Hughes, Jr. (via Carl Hughes as guardian for Martin J, Hughes, Jr.), Martin Hughes, The Fahey Banking Company as well as any and all other entities associated with the Hughes Family.



Sidley Austin LLP is a limited liability partnership practicing in affiliation with other Sidley Austin partnerships



LLOYD PIERRE-LOUIS
FEBRUARY 20, 2006
PAGE 2 | CHICAGO

Please understand that it personally saddens me to have to deliver this message.

Very truly yours,

Scott Mendeloff

CHI 3449422v.1



SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN
CHICAGO, IL 60603
(312) 853 7000
(312) 853 7036 FAX

BEIJING GENEVA SAN FRANCISCO
BRUSSELS HONG KONG SHANGHAI
CHICAGO LONDON SINGAPORE
DALLAS LOS ANGELES TOKYO
NEW YORK WASHINGTON, DC

smendeloff@sidley.com
(312) 853-7362

FOUNDED 1866

February 20, 2006

By Facsimile and Post

Lloyd Pierre-Louis
Pierre-Louis & Associates, Ltd.
635 Park Meadow Road, Suite 215
Columbus, Ohio 43081

Dear Lloyd:

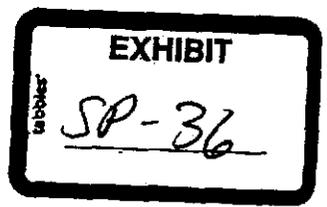
As you know, at least a month ago, we spoke and I asked you to send me a summary and analysis of what you believe you are owed. As I explained, that analysis needs to be broken out by matter and invoice, showing what is owed for each matter by reference to month and invoice. If you contend that less than an entire month's fees/expenses are due for a given invoice, please specify what you contend is still due on the invoice in question.

It is important to the Hugheses and the associated entities that we represent that we get to the bottom of and resolve the dispute with you as soon as possible. That process cannot even begin to happen without you providing us an unambiguous written statement of your claim supported by at least reference to outstanding invoices. Please understand that we view the foregoing as the essential beginning steps of a resolution process, after which we can begin to talk with you about your demands and assess a variety of factors of central importance to the viability of your fee claims. Again, this cannot begin if we do not have an unambiguous picture of precisely what your claims are.

I urge you to get us the information we need, and look forward to resolving this matter with you in the near future.

Very truly yours,

Scott Mendeloff



CH1 3449727v.1

EXHIBIT 9

IN THE SUPREME COURT OF OHIO

THE LAW OFFICES OF
SQUIRE & PIERRE-LOUIS, LLC
c/o 5 East Long Street, Suite 700
Columbus, Ohio 43215

Case No. 2006-1174

Intervenor-Plaintiff/Relator,

vs.

UNITED TELEPHONE CREDIT UNION, INC.
20525 Center Ridge Road
Rocky River, Ohio 44116

Defendant/Respondent,

and

KENNETH A. ROBERTS, Acting Deputy
Superintendent for Credit Unions,

Defendant/Respondent,

and

AMERICAN MUTUAL SHARE INS. CO.

Defendant/Respondent.

COMPLAINT OF PROPOSED
INTERVENOR THE LAW
OFFICES OF SQUIRE &
PIERRE-LOUIS, LLC

Lloyd Pierre-Louis (0068086)
Pierre-Louis & Associates, LLC
5 East Long Street, Ste. 700
Columbus, Ohio 43215
(614) 232-9055, Telephone
(614) 232-9077, Facsimile
Counsel for Proposed Intervenor

Orla Collier, Esq.
Benesch, Friedlander, Coplan & Aronoff
88 East Broad Street, Suite 900
Columbus, Ohio 43215
(614) 223-9300, Telephone
(614) 223-9330, Facsimile
Counsel for Appellee ASI

Kathleen Trafford, Esq.
Porter, Wright, Morris & Arthur
41 S. High Street
Columbus, Ohio 43215
(614) 227-2000, Telephone
(614) 227-2100, Facsimile
Counsel for Appellee Kenneth Roberts

Fordham E. Huffman, Esq.
Jones Day
325 John H. McConnell Blvd.
PO Box 165017
Columbus, Ohio 43216
(614) 469-3939, Telephone
(614) 461-4198, Facsimile
Counsel for Appellant UTCU

Now comes Proposed Intervening Plaintiff-Relator The Law Offices of Squire & Pierre-Louis, LLC ("SP"), by and through counsel, and alleges as follows:

OVERVIEW OF CASE

1. This is an action to protect the property interests SP has in attorney fees properly earned, but wrongfully withheld by the United Telephone Credit Union, Inc. ("UTCU"), the Ohio Department of Commerce, Division of Financial Institutions (the "DFI") and its agent, American Mutual Share Insurance Corporation ("ASI").

PARTIES

2. SP is an Ohio limited liability company. As permitted by the Ohio Supreme Court's Rules for Governance of the Bar, two lawyers practiced law for SP during the relevant period described herein – Percy Squire, Esq. and Lloyd Pierre-Louis, Esq.

3. UTCU is an Ohio credit union.

FACTS COMMON TO ALL COUNTS

4. On February 24, 2003, an employee of the DFI issued an order purporting to appoint a conservator over UTCU under the auspices of R.C. 1733.361(A)(1).

5. The order included language that UTCU could file a civil action in Franklin County Common Pleas Court seeking an order compelling the Superintendent of Credit Unions to remove the conservator.

6. UTCU hired SP to seek an order from the Franklin County Common Pleas Court compelling the conservator to remove the conservator.

7. UTCU's agent and director, Natalie Hughes confirmed that such a contract existed. See attached Affidavit of Natalie Hughes. The statements within paragraphs 1, 2 and 3 of said affidavit are incorporated by reference.

8. UTCU expected to pay for legal services performed by SP, and SP expected to receive compensation for the work.

9. In August 2005, SP obtained an order from the Franklin County Common Pleas Court compelling the Superintendent to remove the conservator.

10. In September 2005, the Superintendent removed the conservator pursuant to the order SP obtained on behalf of UTCU.

11. The DFI submitted a letter on October 13, 2005 stating that a credit union's assets cannot be used for the costs, expenses or legal fees for a civil action commenced pursuant to R.C. 1733.361(A)(2). *Exhibit 2.*

12. The DFI did not give any prior notice of any administrative rule establishing the rule set forth in Exhibit 2.

13. To date, SP has not yet been paid for this work, authorized by UTCU pursuant to R.C. 1733.361(A)(2) and the February 24, 2003 order.

COUNT I – DECLARATORY JUDGMENT

14. Plaintiff incorporates all the foregoing allegations by reference.

15. SP and UTCU have an oral contract for legal services. Because the contract was oral, there is no written agreement to attach in accordance with Civ.R. 10.

16. UTCU had legal authority under R.C. 1733.361(A)(2) to hire SP as legal counsel to commence a civil action on its behalf in accordance with the provisions therein.

17. UTCU has legal authority to pay SP its reasonable attorney fees and costs in connection with the prosecution of its civil action under R.C. 1733.361(A)(2) on an ongoing basis without interference from the Superintendent for Credit Unions, any employee of the DFI or the conservator, ASI.

18. ASI, as conservator, has a duty to honor legal representation agreements and arrangements between UTCU and SP as its legal counsel in connection with UTCU's filing and prosecution of civil actions filed to seek and order compelling removal of the conservator.

19. ASI lacks legal authority to withhold legal fees and expenses of SP as UTCU's counsel in connection with the prosecution of the conservatorship challenge.

COUNT II – BREACH OF CONTRACT

20. Plaintiff Relator incorporates all the foregoing allegations by reference.

21. UTCU's failure to pay SP legal fees in connection with its representation is a breach of contract, for which UTCU is liable for damages.

COUNT III – UNJUST ENRICHMENT

22. Plaintiff Relator incorporates all the foregoing allegations by reference.

23. UTCU has been enriched by the work of SP, as its work was instrumental in obtaining the order removing the conservator. UTCU's retaining the services of SP without compensation is manifestly unjust, and SP is entitled to compensation therefore.

COUNT IV – WRIT OF PROHIBITION

24. Plaintiff Relator SP incorporates all the foregoing allegations by reference.

25. The October 13, 2005 letter from the DFI is an illegal order and unlawful instruction, as it was not adopted according to the Ohio Administrative Procedures Act.

26. This Court has authority to issue a writ of prohibition preventing Appellee Roberts and DFI from enforcing the rule set forth in Exhibit 2.

PRAYER FOR RELIEF

WHEREFORE, Proposed Intervenor Plaintiff/Relator SP demands judgment as follows:

- 1) As to Count I, declaratory judgment against UTCU and Appellees declaring that:
 - a) UTCU had legal authority under R.C. 1733.361(A)(2) and the Conservatorship Order to hire SP as legal counsel to commence a civil action on its behalf in accordance with the provisions therein;
 - b) UTCU has legal authority to pay SP its reasonable attorney fees and costs in connection with the prosecution of its civil action under R.C. 1733.361(A)(2) on an ongoing basis without interference from the Superintendent for Credit Unions, any employee of the DFI or the conservator, ASI;
 - c) ASI, as conservator, has a duty to honor legal representation agreements and arrangements between UTCU and SP as its legal counsel in connection with UTCU's filing and prosecution of civil actions filed to seek an order compelling removal of the conservator;
 - d) ASI lacks legal authority to withhold legal fees and expenses of S&P as UTCU's counsel in connection with the prosecution of the conservatorship challenge; and
 - e) a trial court has authority to accept, receive and approve legal fee applications and to order interim and final payment(s) of legal fees from the assets of an Ohio credit union for representation in connection with a civil action brought pursuant to R.C. 1733.361(A)(2).
- 2) As to Count II and III, judgment of damages in excess of \$25,000.00, plus costs and fees;
- 3) As to Count IV, declaratory judgment that the October 13, 2005 letter from the DFI is void, invalid and of no legal effect and unenforceable, and that it violates the Ohio Administrative Procedures Act;
- 4) All other legal and equitable relief available.

Respectfully submitted,



Lloyd Pierre-Louis, Esq. (0068086)

Pierre-Louis & Associates, LLC

5 East Long Street, Suite 700

Columbus, Ohio 43215

614-232-9055 Telephone

614-232-9077 Facsimile

lp@lpl-law.com OR

lloydpl5752@sbcglobal.net

Attorney for Intervenor S&P

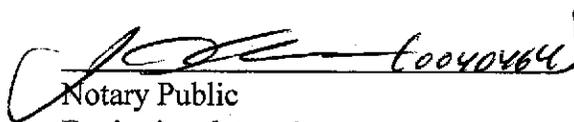
AFFIDAVIT OF COUNSEL

Pursuant to Sup.Ct.R. X, Sec. 4(B), I have personal knowledge of the contents of this complaint and am competent to testify as to all matters alleged herein.



Lloyd Pierre-Louis

Sworn and subscribed before me this 19th day of March , 2007.



Notary Public

Expiration date: Does Not Expire

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing proposed *Complaint of Intervenor* was served this 19th day of March, 2007 via mail as an attachment to the motion to intervene upon the following:

Fordam E. Huffman
Jones Day
325 John H. McConnell Boulevard
PO Box 165017
Columbus, Ohio 43216
Attorney for United Telephone Credit Union, Inc.

Orla Collier, Esq.
Benesch, Friedlander, Coplan & Aronoff
88 East Broad Street, Suite 900
Columbus, Ohio 43215
Attorney for Appellee ASI

Kathleen Trafford, Esq. (0021753)
Porter, Wright, Morris & Arthur, LLP
41 S. High Street
Columbus, Ohio 43215
*Special Counsel for Defendant
F. Scott O'Donnell, Superintendent
Of Credit Unions*



Lloyd Pierre-Louis (0068086)

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

Squire & Pierre-Louis, LLC, *et al.*

Judge Lynch

Counterclaim Defendants,
Third Party Plaintiffs

Case No. 04 CVH 05-4805

vs.

American Mutual Share Insurance Corp.

Counterclaim Plaintiff,
Third Party Defendant,

vs.

Orla Collier, *et al.*

Third Party Defendants.

AFFIDAVIT OF NATALIE HUGHES
MEMBER AND DIRECTOR OF UNITED TELEPHONE CREDIT UNION, INC.

STATE OF OHIO

SS

COUNTY OF CUYAHOGA.

I, Natalie Hughes, being duly cautioned and sworn, hereby state the following:

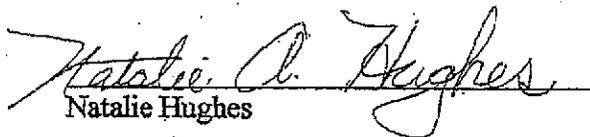
1. I am over 18 and competent to give testimony and this affidavit.
2. I am a member of United Telephone Credit Union, Inc. ("UTCU") and a member of its board of directors.
3. In 2003, UTCU retained Squire & Pierre-Louis, LLC to challenge the conservatorship of American Mutual Share Insurance Corporation ("ASP") in *United Telephone Credit Union, Inc. v. Kenneth A. Roberts*, Franklin C.P. No. 04-CVH-05-5436, Reece, J. On July 26, 2005, Judge Reece ruled that the February 24, 2003 conservatorship order was unlawful and void.

4. UTCU has not authorized any suit, defense, or claim related to legal malpractice against Squire & Pierre-Louis, LLC, Percy Squire, or Percy Squire Co., L.L.C. to be brought by ASI, Orla Collier, Esq., or any other attorney at Benesch, Friedlander, Coplan & Aronoff, LLP (collectively "Benesch"). ASI has taken such action without UTCU board consent, consultation, input, or approval.

5. Prior to February 24, 2003, UTCU's board of directors had approved Mr. Squire's representation of both UTCU and Martin J. Hughes, Jr., as the interests of both in the Union Eye Care Center litigation were consistent.

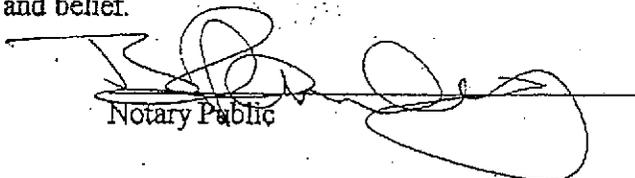
6. After February 24, 2003, Squire & Pierre-Louis, LLC did not represent any of UTCU's legal interests during the Union Eye Care Center litigation. ASI and Benesch claim to have represented UTCU during the Union Eye Care Center litigation, although neither ASI nor Benesch ever met with, consulted with, or obtained the approval of UTCU with respect to such representation.

7. Further the affiant sayeth naught.


Natalie Hughes

NOTARY PUBLIC

Natalie Hughes appeared before me this 4 day of August, 2005, and did swear and confirm that the above statement which she signed in my presence is true to the best of his knowledge, intention and belief.


Notary Public

My commission expires _____

Date: _____

BRIAN L. PAULEY
Notary Public, State of Ohio
My Commission Expires Nov. 17, 2007



Ohio Department of Commerce

Division of Financial Institutions
77 South High Street • 21st Floor
Columbus, OH 43215-6120
(614) 728-8400 FAX (614) 644-1631
www.com.state.oh.us

Bob Taft
Governor

Doug White
Director

October 13, 2005

Dennis R. Adams
President/CEO
American Share Insurance
5656 Frantz Road
Dublin, Ohio 43017

Dear Mr. Adams:

The Division of Financial Institutions is in possession of letter sent to your counsel, Chip Collier, by Percy Squire via e-mail on October 13, 2005. Mr. Squire is apparently asking that ASI, as conservator for United Telephone Credit Union, post the bond required by the October 13, 2005, Order issued in Franklin County Court of Common Pleas in case number 05CVH 09-10728.

It is DFI's position that, in any challenge of a conservatorship order, the challenger must bear all costs of the challenge up front. If the challenger is successful, reimbursement may be sought from the credit union. If the challenger is not, he or she will bear the costs of the unsuccessful challenge.

DFI believes that ASI, as conservator for UTCU, should not use UTCU assets to post the bond in Franklin County case number 05CVH 09-10728. The bond should be posted by the person who is prosecuting the action in the name of UTCU.

Sincerely,

Kenneth A. Roberts
Acting Deputy Superintendent for Credit Unions