

IN THE SUPREME COURT OF OHIO

12-0653

OHIO INSURANCE GUARANTY ASSOCIATION,

Plaintiff-Appellant,

vs.

BONNIE PIKKEL, et al.,

Defendants-Appellees.

CASE NO.

On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District

Court of Appeals Case No. 97236

OHIO INSURANCE GUARANTY ASSOCIATION'S MEMORANDUM IN SUPPORT OF JURISDICTION

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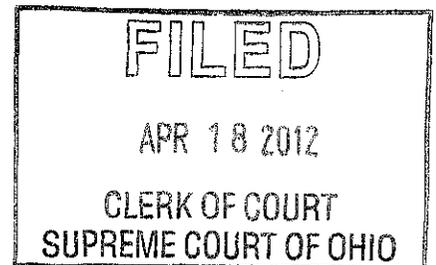


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I. THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST

The decision of the Eighth District construes the Ohio Insurance Guaranty Act (the “Act”) in a way that circumscribes the Ohio Insurance Guaranty Association’s (the “OIGA”) statutorily granted authority to enter complex settlements of disputed cases, making this case a matter of public or great general interest. The OIGA is the insurance guaranty association for Ohio residents for all insurance companies operating in Ohio. Consequently, this unwarranted circumscription of the OIGA’s ability to settle cases will affect future insurance insolvencies, future litigants with claims covered by insolvent insurers, and the courts that will be left to litigate actions that otherwise could be resolved, potentially leaving Ohio insureds at risk of a verdict in excess of guaranty coverage. This Court should accept jurisdiction of this appeal to address the issue of first impression created by the lower court’s ruling: whether the Act permits the OIGA to negotiate and enter complex settlements in order to resolve claims covered by the Act.

Prohibiting the OIGA from entering settlements merely because they are evidenced by multiple documents or because they call for performance at various times will greatly hamper the OIGA from achieving one of its statutorily granted objectives: negotiating and settling disputed claims. At the heart of the lower court’s opinion is a substantial restriction on the OIGA’s ability to creatively settle disputed claims through complex solutions. That is, the lower court found that the OIGA lacked the statutory authority to enter a settlement agreement that was evidenced through two separate documents, which the parties stipulated constituted a single agreement, where the first document required the OIGA to make an immediate payment and the second – while repeating that obligation – eliminated the claimant’s risk in the underlying liquidation proceedings through the guarantee of a precise additional payment to the claimant. If the claimant received more than the guaranteed payment amount during the liquidation proceedings,

she contractually obligated herself to refund it to the OIGA, but if she received less, the OIGA was contractually obligated to make up the difference. However, apparently based on nothing more than the order in which the documents were signed, the lower court announced that the OIGA lacked the statutory authority to sign the second document, because it had already signed the first and thereby turned any claim addressed in the second document into an uncovered claim under the Act.

The OIGA, like any litigant, is sometimes faced with difficult litigation choices, adversaries whose positions are entrenched, and spiraling litigation costs. Recognizing that, the Ohio General Assembly empowered the OIGA not only to litigate claims, but also to negotiate and to settle them. The alternative would be bleak: the OIGA would be compelled to litigate every case to conclusion, regardless of the consumption of judicial and private resources that would require. The decision below imposes an undue restriction on the OIGA's statutory authority, and this Court should take jurisdiction of this appeal to restore to the OIGA the power granted to it by the Ohio General Assembly to resolve cases through creative, complex settlements where appropriate.

II. STATEMENT OF THE CASE AND FACTS

A. Procedural History.

In 1997, Defendants Bonnie Pikkell, Hank Pikkell, Stephanie Pikkell, and Ryan Pikkell (the "Pikkells") commenced a medical malpractice action. P.I.E. Mutual Insurance Company ("PIE") insured the defendant medical provider. In 1998, the Franklin County Court of Common Pleas found PIE to be insolvent and ordered it into liquidation. In 2001, the Pikkells filed a Supplemental Complaint against PIE and the Ohio Insurance Guaranty Association (the "OIGA") to collect on a \$6,200,000 consent judgment they had taken against their medical provider.

In August 2002, the Pikkels and the OIGA entered into a comprehensive settlement agreement related to the medical malpractice action. The single settlement was documented in two written agreements: the Liquidation Claim Allowance and the OIGA Guaranty. The Liquidation Claim Allowance provided that the OIGA was immediately to pay the Pikkels \$600,000 and that the Pikkels' Class II claim against the PIE liquidation estate would be allowed in the amount of \$700,000. The OIGA Guaranty added a further, substantial benefit to the Pikkels. According to the plain language of the OIGA Guaranty, if the Pikkels received less than \$400,000 from the PIE liquidation on their Class II claim, the OIGA was obligated to pay the difference to the Pikkels. If the Pikkels received more than \$400,000 from the PIE liquidation, the Pikkels were obligated to pay the difference to the OIGA. As a result, the Pikkels were guaranteed to receive precisely \$1 million as a result of the settlement.

Four years later, the PIE Liquidator made a partial distribution to Class II claimants, including a payment of \$245,000 to the Pikkels. In 2008, the Pikkels sold and assigned the remainder of their Class II claim to MCS Capital, LLC ("MCS"). In consideration for the assignment, MCS paid the Pikkels \$227,500.

In December 2009, the PIE Liquidator made a final distribution to Class II claimants from the PIE liquidation proceedings, resulting in a payment of \$329,988.40 to MCS, as assignee of the Pikkels. In total, the Pikkels and their assign, MCS, received \$574,988.40 from the PIE liquidation. Neither the Pikkels nor MCS paid the OIGA the balance of \$174,988.40 owed under the settlement agreement. The OIGA subsequently filed its Complaint in the Cuyahoga County Court of Common Pleas seeking to recover from the Pikkels and MCS and alleging claims for breach of contract, unjust enrichment, constructive trust, tracing, rescission, and fraud. The OIGA and the Pikkels filed cross motions for Summary Judgment.

The trial court denied the OIGA's motion for summary judgment and granted summary judgment in favor of the Pikkels. It also dismissed the OIGA's claims against MCS on the ground that they were "moot," although MCS had not moved for summary judgment. The OIGA timely appealed that Order; the Eighth District Court of Appeals affirmed, holding that the OIGA lacked the statutory authority to enter the OIGA Guaranty and that as a result both the Pikkels and MCS were entitled to summary judgment. (A copy of the Eighth District's Journal Entry and Opinion is attached hereto as Ex A.)

B. Statement of Facts.

1. Bonnie Pikkel's Malpractice Action.

After Bonnie Pikkel was unfortunately injured, allegedly by a medical mistake, she filed a medical malpractice action against Dr. Donald Spaner of Lakeland Emergency Associates. PIE provided malpractice coverage to Dr. Spaner and his practice group. After Ms. Pikkel filed her lawsuit, PIE was adjudicated to be insolvent and was forced into liquidation proceedings in the Franklin County Court of Common Pleas, Ohio. The Pikkels then obtained a consent judgment against Dr. Spaner's practice group in the amount of \$6,200,000.

2. The Stacking Question.

The Pikkels subsequently filed a Supplemental Complaint against the OIGA and PIE to collect the medical malpractice judgment. The OIGA was established by the Ohio Insurance Guaranty Act, R.C. 3955.06. Under the Act, when a member insurer of the OIGA becomes insolvent, the OIGA pays "covered claims" as defined by and limited by the Act.

At the time the Pikkels filed their Supplemental Complaint, Ohio law was unsettled regarding whether a claim for bodily injury resulted in a single claim for \$300,000 against the OIGA – regardless of the number of derivative claims, such as loss of consortium, that might exist – or instead, whether multiple claims for a single injury could be "stacked." In the Pikkels'

case, a single claim allowance would result in a potential liability of \$300,000, while stacking the collective claims of the four Pikkels would result in a potential liability of \$1,200,000.

While the OIGA and the Pikkels were negotiating settlement, the Cuyahoga County Court of Common Pleas ruled that unpaid “covered claims” against the OIGA fund could be stacked as a matter of law. *Witt v. OIGA*, Cuyahoga C.P. No. 414915 (Oct. 18, 2001). That matter was appealed to the Eighth District Court of Appeals and that appeal was still pending when the Pikkels and the OIGA entered into a settlement agreement. *Witt v. OIGA*, 8th Dist. No. 80509, 2003-Ohio-278, *overruled by Witt v. OIGA*, 103 Ohio St.3d 557, 2004-Ohio-5846; 817 N.E.2d 76. Through amendment to the Ohio Insurance Guaranty Act in March 2007, the Ohio legislature has now clarified that, in fact, claims arising out of a single injury cannot be stacked. R.C. 3955.01(D)(2)(b).

3. The Settlement Agreement.

On August 9, 2002, the Pikkels entered into a comprehensive settlement agreement, documented through two written agreements, both of which were executed on the same day; *the parties stipulated before the trial court that there was a single settlement agreement, consisting of two documents.* One of the written agreements is entitled “Settlement, Release, and Indemnity Agreement,” and the Pikkels, the OIGA, and the Liquidator were signatories (the “Liquidation Claim Allowance”). The other written agreement is entitled “Agreement,” and the Pikkels, the OIGA, *and their respective counsel* were signatories (the “OIGA Guaranty”).¹

¹ The Court below referred to this as the “Additional Agreement.”

a. *The Liquidation Claim Allowance.*

The Pikkels, the OIGA, and the PIE Liquidator entered into the Liquidation Claim Allowance. Among other things, the Liquidation Claim Allowance provides:

- The OIGA would pay the Pikkels \$600,000.00
- The PIE Liquidator would fully allow the Pikkels' Class II claim for \$700,000; and
- The Pikkels released the OIGA from claims related to the medical malpractice action.

The parties to the Liquidation Claim Allowance acknowledged that the agreement was a compromise of a disputed claim. The Liquidation Claim Allowance required the OIGA to pay the Pikkels \$600,000, and the OIGA did so.

b. *The OIGA Guaranty.*

Contemporaneously with entering into the Liquidation Claim Allowance, and as part of the comprehensive settlement agreement, the Pikkels and the OIGA entered into the OIGA Guaranty. The OIGA Guaranty contains provisions similar to the Liquidation Claim Allowance regarding the maximum allowable payment and the Pikkels' Class II claim. The OIGA Guaranty also states:

If the Plaintiffs have not received a total of \$400,000 from the PIE estate on their allowed Class II claim after the final distribution by the Liquidator of the PIE estate, OIGA will pay the Plaintiffs the difference between the total amount recovered from the PIE estate and \$400,000 within 30 days. If the Plaintiffs receive more than \$400,000 on their Class II claim from the Liquidator of the PIE estate, it will forward the amount received in excess of \$400,000 to the OIGA within 30 days.

The Pikkels and the OIGA acknowledged in the OIGA Guaranty that:

- “the execution of this Agreement is the result of compromise and extensive negotiations between [the parties]”;
- “the Agreement is entered into in good faith”;

- “Both Plaintiffs and OIGA view this settlement as advantageous”;
- “Plaintiffs and OIGA each face numerous and substantial risks in litigation of the dispute between them”; and
- “Plaintiffs and OIGA . . . wish to avoid lengthy, costly and time-consuming litigation, and to obtain full, final and complete settlement of all of Plaintiffs’ possible claims against OIGA.”

(*Id.*) The OIGA Guaranty also states: “Each party has had the opportunity to revise, comment upon and redraft this Agreement.” The Pikkels and all three of their lawyers separately executed the OIGA Guaranty.

c. Performance And Assignment.

Pursuant to the terms of the settlement agreement as documented through the Liquidation Claim Allowance and the OIGA Guaranty, the OIGA paid the Pikkels \$600,000 in 2002. In 2006, the PIE Liquidator issued a partial distribution to Bonnie Pikkel pursuant to her allowed Class II claim in the amount of \$245,000.

In 2008, unbeknownst to the OIGA, the Pikkels assigned their remaining rights to their Class II claim to MCS by executing a false affidavit, notarized by one of her attorneys. MCS paid the Pikkels \$227,500 for the assignment of their claim. The Pikkels thus received a total of \$472,500 on the guaranteed claim of exactly \$400,000.

Roughly one year later, the PIE Liquidator made a final distribution to Class II claimants in the PIE liquidation, resulting in a payment of \$329,988.40 to MCS. The total amount received from the PIE Liquidator by the Pikkels and their assign, MCS, was \$574,988.40. Neither the Pikkels nor MCS forwarded the \$174,988.40 received in excess of the guaranteed \$400,000 to the OIGA.

III. PROPOSITION OF LAW AND ARGUMENT IN SUPPORT

Proposition of Law: R.C. 3955.08(A)(4) grants the OIGA broad power to negotiate and enter complex settlements, even if the settlements are evidenced by multiple documents and even if the settlements require performance at various times.

A. It Is Uncontested That The OIGA Had Statutory Authority To Settle With The Pikkels.

The OIGA is a non-profit unincorporated association organized under the Act. The Act specifically grants the OIGA the power to “*adjust, compromise, settle, or pay covered claims to the extent of the association’s obligation*” and to “[n]egotiate and become a party to such contracts as are necessary to carry out the purposes of sections 3955.01 to 3955.20 of the Revised Code.” *Id.* (emphasis added). Further, the Ohio Administrative Code grants the OIGA the power to “perform such other acts as are necessary or proper to effectuate the purposes of the [Act].” Ohio Adm.Code 3901:1-25(E)(8).

Ohio courts favor settlement. *See, e.g., DePalmo v. DePalmo*, 78 Ohio St.3d 535, 540, 679 N.E.2d 266 (1997) (“The law favors settlements.”); *Countrywide Petroleum Co. v. Huntington Capital Investment Co.*, 8th Dist. No. 92778, 2010-Ohio-155, ¶ 13 (“Ohio law favor[s] the voluntary settlement of disputes.”). It would be incongruous, then, to suggest that the OIGA acts outside its statutory power – which expressly includes the power to settle claims – when it does precisely that.

B. The Settlement Agreement Must Be Read Comprehensively.

This Court has made it quite clear that writings executed as part of the same transaction should be read together. *Mantua Mfg. Co. v. Commerce Exchange Bank*, 75 Ohio St.3d 1 (1996), 5, 661 N.E.2d 161 (“Multiple documents should be construed together if they are part of the same transaction.”). The Liquidation Claim Allowance and OIGA Guaranty were entered into as part of the same comprehensive settlement, through which the OIGA and the Pikkels

settled the disputes between them. Read together, the two agreements provide the narrative of the entire transaction:

- (1) the Pikkels entered into a consent judgment on their medical malpractice claim in the amount of \$6,200,000;
- (2) the insurer, PIE, was forced into liquidation;
- (3) the OIGA was statutorily required to pay “covered claims” against PIE with respect to the Pikkels’ malpractice claim, but with a cap on payment of \$300,000 per claim;
- (4) Ohio law was unsettled regarding whether the claims of the four Pikkels could be stacked;
- (5) the Pikkels entered into a settlement with the OIGA to recover at least a portion of the consent judgment;
- (6) at the time of the Liquidation Claim Allowance and the OIGA Guaranty, PIE’s liquidation was ongoing and involved thousands of potential claims against the OIGA;
- (7) the Pikkels and the OIGA agreed that the OIGA would pay the Pikkels \$600,000, and the PIE Liquidator would allow the Pikkels’ Class II claim for \$700,000;
- (8) at the time of the Liquidation Claim Allowance and the OIGA Guaranty, it was unknown to all parties how much money, if any, the PIE estate would be able to distribute on outstanding claims, since the settlement was seven years prior to the PIE estate’s final distribution; and
- (9) to guarantee that the Pikkels would receive \$1,000,000, regardless of how much money was available for distribution in the PIE liquidation, the OIGA agreed to guarantee that the Pikkels would receive at least \$400,000 from the PIE liquidation *even if that meant the OIGA would pay it itself, in addition to the \$600,000 it had already agreed to pay*, and agreed to forego its argument that the OIGA was liable for a maximum of \$300,000 on the Pikkels’ claim. In exchange, the Pikkels agreed that if they received more than \$400,000 from the PIE liquidation, they would return the excess to the OIGA.

When read together as part of a single, comprehensive settlement involving three parties, the Liquidation Claim Allowance and the OIGA Guaranty establish that the OIGA settled the Pikkels’ claims for a guaranteed \$1,000,000 payment to the Pikkels. In exchange, the Pikkels agreed to forego a potential additional recovery of \$200,000 (to which they would have been

entitled had they prevailed on their claim against the OIGA, based on their argument that all four of them had a stackable \$300,000 claim).

C. **The OIGA Had The Authority To Enter The OIGA Guaranty Because It Had The Authority To Enter The Settlement Agreement Of Which The OIGA Guaranty Was A Part.**

The lower court held that “OIGA lacked the authority to enter into the Additional Agreement.” *Order* at ¶ 16. In doing so, the lower court simply assumed that what it called the “Additional Agreement” was, in fact, “additional,” rather than a part of a comprehensive settlement agreement. This was error. The lower court offers no rationale for its refusal to consider the Liquidation Claim Allowance and the OIGA Guaranty as part of a single contract. It appears from the decision that this may be based on the order in which the documents were executed. If so, this is simply wrong. First, the parties had stipulated below that the two documents were part of a single settlement agreement. Second, as a practical matter, one document had to be signed first. If that could preclude the near-but-not-quite simultaneous execution of the second document, this Court’s previous ruling that courts must read multiple documents together when they are part of the same transaction would have little meaning.

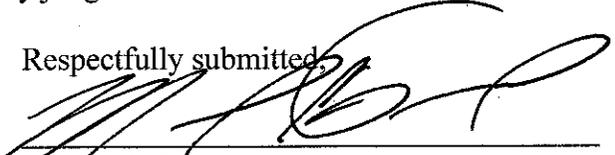
The lower court’s decision rests entirely on its flawed conclusion that the OIGA had already paid the only “covered claim” when the parties executed the OIGA Guaranty. That reasoning is at odds with the fact that the parties had stipulated at the trial court – and the Pikkels themselves had argued – that the parties entered a single settlement agreement, of which both the Liquidation Claim Allowance and the OIGA Guaranty were a part. It was only pursuant to the *same agreement* that OIGA paid the Pikkels \$600,000 and entered the OIGA Guaranty.

The lower court erred when it failed to read the Liquidation Claim Allowance and the OIGA Guaranty together as part of a single transaction. The OIGA did not lose its statutory authority to settle and compromise the Pikkels’ claims simply because the settlement involved

two documents, one of which was signed before the other. Nothing in the OIGA's statutory authority prohibits it from entering into "complex" settlement agreements, and nothing prevents it from settling with claimants (who were represented by three competent and aggressive lawyers who actively participated in the negotiations, and even executed the OIGA Guaranty to show their approval of it) on terms that ultimately benefit the OIGA.

Because the OIGA acted within its statutory authority when it entered the OIGA Guaranty, this Court should accept jurisdiction of this appeal and reverse the order of the Eighth District affirming the lower court's grant of summary judgment to the Pikkels and MCS.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing was sent via regular U.S. mail, postage prepaid, this ¹⁹16 day of

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Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 97263

OHIO INS. GUARANTY ASSN.

PLAINTIFF-APPELLANT

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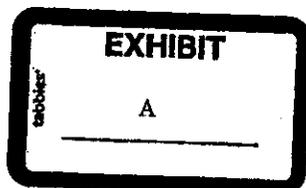
DEFENDANTS-APPELLEES

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-726612

BEFORE: Sweeney, J., Boyle, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: March 8, 2012



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FILED AND JOURNALIZED
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MAR 08 2012

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JAMES J. SWEENEY, J.:

{¶1} Plaintiff-appellant Ohio Insurance Guaranty Association (“OIGA”) appeals the court’s granting summary judgment to defendants-appellees Bonnie Pikkell and her family (“the Pikkels”) and MCS Capital, LLC (“MCS”) in this dispute over a settlement agreement. After reviewing the facts of the case and pertinent law, we affirm.

{¶2} The Pikkels filed a medical malpractice claim against Lakeland Emergency Associates. OIGA became involved in the litigation because Lakeland’s insurance company was adjudicated insolvent and forced into liquidation proceedings. In August 2002, OIGA, the Pikkels, and the liquidator entered into a settlement agreement (“the Agreement”), the relevant terms of which are as follows: 1) the reasonable settlement value of the claim was \$1,300,000; 2) OIGA agreed to pay the Pikkels \$600,000 immediately; 3) the liquidator agreed to allow a claim for the remaining \$700,000 “in any final pro-rata distribution of* * * assets”; and 4) the Pikkels agreed to release any and all claims against OIGA and the liquidator. The parties do not dispute that OIGA paid the Pikkels \$600,000 as promised.

{¶3} On the same day, the Pikkels and OIGA entered into an additional confidential agreement (“the Additional Agreement”), of which the liquidator was unaware. The Additional Agreement guaranteed the Pikkels \$400,000 from

the liquidation proceedings — if the Pikkels received less, OIGA agreed to pay the Pikkels the difference; if the Pikkels received more, the Pikkels agreed to pay OIGA the surplus.

{¶4} In October 2006, the liquidator paid the Pikkels \$245,000 as a partial distribution of the proceedings. In September 2008, the Pikkels sold and assigned the remainder of their liquidation claim to MCS for \$227,500. The Pikkels did not disclose the existence of the Additional Agreement to MCS.

{¶5} In December 2009, the liquidator made a final distribution of \$329,988 on the Pikkel matter to MCS. The total amount the liquidator paid on the Pikkel claim was \$574,988.

{¶6} On May 13, 2010, OIGA filed a complaint against the Pikkels and MCS, seeking to recover \$174,988 (the amount the liquidator paid on the Pikkel claim in excess of \$400,000) under the Additional Agreement. On August 8, 2011, the court denied OIGA's summary judgment motion and granted the Pikkel's summary judgment motion, finding that the Additional Agreement was void and unenforceable as a matter of law.

{¶7} OIGA appeals and raises three assignments of error for our review.

I.

The trial court erred in granting summary judgment in favor of [the Pikkels].

II.

The trial court erred in denying [OIGA's] motion for summary judgment.

III.

The trial court erred in entering judgment as a matter of law in favor of [MCS].

{¶8} Appellate review of summary judgment is de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). The Ohio Supreme Court set forth the test for determining whether summary judgment is appropriate in *Zivich v. Mentor Soccer Club*, 82 Ohio St.3d 367, 369–370, 696 N.E.2d 201 (1998), as follows:

Pursuant to Civ.R. 56, summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor. *Horton v. Harwick Chem. Corp.* (1995), 73 Ohio St.3d 679, 653 N.E.2d 1196, paragraph three of the syllabus. The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292–293, 662 N.E.2d 264, 273–274.

{¶9} In the instant case, the trial court issued a 24-page opinion detailing its reasoning behind granting summary judgment to the Pikkels. In essence, the court concluded that the Additional Agreement was void and unenforceable for the following reasons: 1) the Additional Agreement amounted to champerty and

maintenance under *Rancman v. Interim Settlement Funding Corp.*, 99 Ohio St.3d 121, 2003-Ohio-2721, 789 N.E.2d 217; 2) OIGA acted outside the scope of its limited statutory power in entering into the Additional Agreement; 3) OIGA's actions contradicted the purpose for which OIGA was created; 4) OIGA's promise in the Additional Agreement was illusory; and 5) the Additional Agreement violated a court order approving the liquidation distribution.

{¶10} Upon review, we find that OIGA lacked the statutory authority to enter into the Additional Agreement. As such, we limit our focus to this point of law.

An administrative agency has no authority beyond the authority conferred by statute and it may exercise only those powers that are expressly granted by the General Assembly. *State ex rel. Lucas Cty. Bd. of Commrs. v. Ohio Environmental*, 88 Ohio St.3d 166, 171, 724 N.E.2d 411 (2000). This court has held that a contract entered into by a county board was void when "the Board acted in contravention of the applicable statute when awarding the contract * * *." *Cuyahoga County Bd. of Commissioners v. Richard L. Bowen & Associates, Inc.*, 8th Dist. No. 81867, 2003-Ohio-3663, ¶20. *See also Bohach Advery*, 7th Dist. No. 00CA265, 2002-Ohio-3202, ¶18 (holding that a zoning inspector's promise, which was made outside the scope of his statutory authority, amounted to an ultra vires act).

{¶11} The purpose of OIGA is "to provide a mechanism for the payment of covered claims * * *, avoid excessive delay in payment and reduce financial loss to claimants * * * because of the insolvency of an insurer * * *." R.C. 3955.03. In *PIE Mut. Ins. Co. v. Ohio Ins. Guar. Assoc.*, 66 Ohio St.3d 209, 212, 611 N.E.2d 313 (1993), the Ohio Supreme Court stated that OIGA was "created

to provide a means to compensate insureds or third-party claimants when an insurance company is unable to meet its obligations.”

{¶12} The statutory powers and duties of the OIGA are expressed in R.C. 3955.08, which states in pertinent part that OIGA shall:

(A)(1) Be obligated to the extent of the covered claims existing prior to the determination that an insolvent insurer exists * * *.

(2) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

* * *

(4) Investigate claims brought against [OIGA] and adjust, compromise, settle, or pay covered claims to the extent of [OIGA's] obligation and deny all other claims * * *.

{¶13} Pursuant to R.C. 3955.01(D), a covered claim is “an unpaid claim, * * * which arises out of and is within the coverage of an insurance policy * * * when issued by an insurer which becomes * * * insolvent * * *.”

{¶14} The *PIE Mut. Court* also expanded on what it means have an unpaid claim. “An unpaid claim is one which arose from an insured event and has yet to be satisfied either by the insolvent carrier or by OIGA.” *Id.* at 213. The court determined that a subrogation cause of action was not a “covered claim” under R.C. Chapter 3955, because “the claim has been converted from an unpaid claim to a paid claim through settlement.” *Id.*

{¶15} Although we are not concerned with subrogation rights in the instant case, we analogize the issue at hand with the court's holding in *PIE Mut.* OIGA settled its claim with the Pikkels when the parties entered into the Agreement and OIGA paid the Pikkels \$600,000. Paragraph 4(A) of the Agreement states that:

[i]n consideration of the payment made by the OIGA and the allowance of a * * * claim by the Liquidator, [the Pikkels] hereby [agree] * * * [t]o release, settle, cancel and forever discharge and acknowledge to be fully and fairly satisfied, any and all claims, demands, rights and causes of action * * * which [the Pikkels] * * * may have or assert against * * * OIGA * * *.

{¶16} Pursuant to R.C. 3955.08, OIGA had no obligation to pay the Pikkels more than \$600,000. When this was paid, the Pikkel matter was no longer a covered claim as envisioned by R.C. Chapter 3955. Not only does OIGA have no duty regarding claims that are not covered, when it comes to uncovered claims, OIGA has no power to take any action at all. *Compare Lake Hosp. Sys., Inc. v. Ohio Ins. Guar. Assn.*, 69 Ohio St.3d 521, 526, 634 N.E.2d 611 (1994) (holding that

[t]he language of R.C. 3955.08(A) is mandatory and does not provide any discretion on the part of [OIGA] to entertain claims that have been filed after the final date set for filing claims in a liquidation proceeding. * * * OIGA, as a creature of statute, must comply with the clear provisions of the Act that defines its powers and duties).

{¶17} Accordingly, under the unique facts of the case at hand, OIGA lacked the authority to enter into the Additional Agreement. Therefore, it is

unenforceable and the Pikkels, along with MCS, are entitled to summary judgment as a matter of law. OIGA's three assignments of error are overruled.

{¶18} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.


JAMES J. SWEENEY, JUDGE

MARY J. BOYLE, P.J., and
SEAN C. GALLAGHER, J., CONCUR