



**MIKE DEWINE**

★ OHIO ATTORNEY GENERAL ★

Public Utilities Section

Office 614.466.4395

Fax 614.644.8764

30 East Broad Street, 16<sup>th</sup> Floor

Columbus, OH 43215-3414

[www.ohioattorneygeneral.gov](http://www.ohioattorneygeneral.gov)

August 1, 2017

Barcy McNeal, Director  
Docketing Division  
Public Utilities Commission of Ohio  
180 East Broad Street, 11<sup>th</sup> Floor  
Columbus, OH 43215-3793

Re: Case No. 17-1534-HC-UNC

Dear Ms. McNeal:

Please see the attached Entry to be submitted and filed on behalf of the Staff of the Public Utilities Commission of Ohio in the above-captioned docket.

Respectfully submitted,

**Michael DeWine**  
Ohio Attorney General

**William L. Wright**  
Section Chief

*/s/ Thomas W. McNamee*

**Thomas W. McNamee**  
Assistant Attorney General  
Public Utilities Section  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, OH 43215-3793  
614.466.4395 (telephone)  
614.644.8764 (facsimile)  
[thomas.mcnamee@ohioattorneygeneral.gov](mailto:thomas.mcnamee@ohioattorneygeneral.gov)

**On behalf of the Staff of  
The Public Utilities Commission of Ohio**

cc: Parties of Record

No. 5309 P. 2  
CLERK OF COURTS  
MAHONING COUNTY, OHIO  
AUG - 1 2017  
FILED  
ANTHONY VIVO, CLERK

IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

State of Ohio *ex rel.* Public Utilities  
Commission of Ohio,  
180 East Broad Street  
Columbus, Ohio 43215

Case No. 17 CV 1743

Judge R. Scott Kirchbaum

Relator,

v.

Youngstown Thermal Cooling, LLC  
205 North Avenue  
Youngstown, Ohio 44502,

and

Youngstown Thermal, LLC  
205 North Avenue  
Youngstown, Ohio 44502.

Respondents.

ENTRY

Based upon the State of Ohio's Motion for Appointment of a Receiver filed herein, the Court finds that there is clear and convincing evidence that the immediate appointment of a receiver is necessary, that the conditions for the appointment of a receiver under R.C. 2735.01 are also satisfied and that the receiver appointed hereby is qualified to act as receiver in this action and therefore the Motion is GRANTED. It is hereby ORDERED, ADJUDGED AND DECREED by the Court, as follows:

1. Reg Martin (the "Receiver"), is appointed as Receiver of all the businesses and assets of Youngstown Thermal Cooling, LLC, and Youngstown Thermal, LLC, and

is authorized to engage Ken Goldberg, and the law firm of Strip, Hoppers, Leithart, McGrath & Terlecky Co., LPA, as counsel for the Receiver.

2. The Receiver is required to file with the Clerk of this Court a bond in the amount of \$ 500.00 to assure the full and faithful performance of his obligations herein.

3. The Receiver is appointed pursuant to R.C. 2735.01. The Receiver shall be given the full authority permitted by law to carry out the duties of such Receiver. Further, as provided for in R.C. 4905.02(A) and 4905.03(H), the Receiver is a public utility subject to the jurisdiction of the Public Utilities Commission of Ohio (PUCO). Nothing in this Entry shall alter or interfere with the legal obligations of the Receiver to abide by the Title 49 of the Ohio Revised Code or other applicable law, or the PUCO's jurisdiction, including but not limited to the rules promulgated or orders issued by the PUCO. Additionally, the Receiver has the duty under R.C. 4905.22 to furnish necessary and adequate service and facilities.

4. The Receiver is authorized to enter, take possession of, manage, operate, protect, and have complete and exclusive charge and control of all of the assets, business and operations of Youngstown Thermal Cooling, LLC, and Youngstown Thermal, LLC, without limitation, all real property, inventory, equipment, accounts, Revenues (as defined below), general intangibles, investment property, instruments, documents, bank accounts and amounts therein and any other property of any nature whatsoever of Youngstown Thermal Cooling, LLC, and Youngstown Thermal, LLC, whether held by Youngstown Thermal Cooling, LLC, and/or Youngstown Thermal, LLC, or jointly with

another, now or hereafter in the possession of, in transit to or from or under the custody or control of Youngstown Thermal Cooling, LLC, and/or Youngstown Thermal, LLC, and the proceeds and products of the foregoing in whatever form the same may be, wherever located, now existing and hereafter arising or coming into existence (collectively the "Assets").

5. The Receiver is authorized to collect the profits, rents, revenues, and all other income of any nature whatsoever from the Assets and/or the operation of the businesses of the Youngstown Thermal Cooling, LLC, and Youngstown Thermal, LLC, (collectively, the "Revenues").

6. The Receiver is required and authorized to maintain and ensure compliance with all state and federal regulations and laws, including but not limited to orders of the Public Utilities Commission of Ohio. The Receiver shall take all steps necessary to maintain public utilities service subject to Title 49 of the Ohio Revised Code and shall have the authority to make all filings and conduct business before the PUCO, including but not limited to taking any necessary action before the PUCO to establish rates, defend or participate in a complaint or investigation into service under R.C. 4905.26, issue debt or borrow funds, transfer or sell any jurisdictional Assets, and otherwise ensure compliance with utilities regulatory requirements.

7. The Receiver is granted control of Youngstown Thermal Cooling, LLC, and Youngstown Thermal, LLC, and shall have full authority to allow or deny access to the site including, but not limited to, taking precautions to protect the site and preventing

trespassers from entering the site, subject to the PUCO's authority of entry and inspection provided for in R.C. 4905.06 and other provisions in Title 49 of the Ohio Revised Code.

8. The Receiver is authorized to do all things and to take all actions, in his judgment, that are necessary or appropriate to preserve, protect and maintain the Assets including, but not limited to, continuing operation of the businesses, completing all works-in-progress, or to assign said projects to third parties, and further to take necessary steps to provide a reasonable and efficient plan for document retention and preservation of records.

9. With regard to any leases or executory contracts of Youngstown Thermal Cooling, LLC, and/or Youngstown Thermal, LLC, the Receiver shall be empowered to cancel said leases or contracts if the performance of same would not be beneficial to the receivership estate, and cancellation of same shall be effective upon notice by the Receiver to the affected parties.

10. With regard to pending litigation, the Receiver shall be authorized to direct same on behalf of Youngstown Thermal Cooling, LLC, and/or Youngstown Thermal, LLC, and make all decisions with regard to said litigation.

11. The Receiver is authorized to incur and to pay out of the Assets, including, without limitation, Revenues, such expenses and obligation coming due after the date of the Receiver's appointment as, in his judgment, may be necessary or appropriate for such maintenance, protection, preservation or operation of the Assets (collectively, the "Receivership Expenses"), including, without limitation, all taxes and assessments, insurance premiums for property, casualty, liability and other essential insurance thereon;

utilities expenses; the Receiver's compensation as set forth below. No expenses, obligations, liabilities, or risks incurred by the Receiver in connection with the maintenance, preservation or operation of the Assets or in the performance or fulfillment of his duties shall be the personal expense, obligation, liability, or risk of the Receiver but shall be exclusively the expense, obligation, liability, and risk of the receivership estate.

12. The Receiver shall also be authorized to pay all payroll obligations, and all health claims accruing prior to the appointment of the Receiver, so as to secure the continued cooperation of the staff of Youngstown Thermal Cooling, LLC, and/or Youngstown Thermal, LLC.

13. The Receiver shall not be liable for any expenses or accounts payable with regard to the Assets incurred prior to Receiver taking possession of the Assets, nor shall Receiver be required to use any Revenues collected after Receiver takes possession of the Assets for payment of any expenses or accounts payable with regard to the Assets incurred prior to the Receiver's taking possession of the Assets. Notwithstanding the foregoing, in the Receiver's sole and absolute discretion, the Receiver is authorized to (but is not obligated to) pay those expenses and accounts payable incurred in the normal and ordinary course of business prior to Receiver taking possession of the Assets, including, without limitation, tax obligations attributable to the receivership property, to the extent that the payment of any such pre-existing expense or account payable is necessary and desirable to the preservation of the Assets, or essential to the filing of this action. Except as otherwise noted herein, Receiver shall pay no expenses or accounts payable incurred prior to the Receiver's taking possession of the Assets. Further, nothing in this

Order shall require the Receiver to advance funds other than from Revenues generated from the Assets without a bond or security for payment satisfactory to Receiver.

14. The Receiver shall have the authority to maintain or purchase insurance from any agent or carrier, of any type reasonably necessary, on all the Assets, subject to maintaining adequate coverage.

15. In the event that Revenues or other assets of the receivership estate are not sufficient or available to pay any Receivership Expenses, the Receiver is authorized to borrow funds that are reasonably necessary, in the Receiver's discretion, to preserve and protect the Assets and to undertake and complete his duties. The borrowing of any funds shall be evidenced by the Receiver's Certificate of Indebtedness, or other instrument, and will constitute a first administrative charge and lien on the Assets in the custody of the Receiver and shall be repaid as soon as practicable by the Receiver.

16. The Receiver is authorized to take possession of all books and records of or relating to the Assets, wherever located, as the Receiver deems necessary for the proper administration, management or control of the receivership estate. Any party in possession of such books and records is ordered to turn them over to the Receiver, including, without limitation, any and all financial information and documents related to the Assets, documentation regarding bank accounts, and such other documents as may be necessary for the Receiver to take custody of and manage the Assets in accordance herewith.

17. The Receiver is authorized to use Youngstown Thermal Cooling, LLC's and/or Youngstown Thermal, LLC's existing bank accounts or to open and maintain bank accounts in his own name, as Receiver, at such financial institutions as he may deem

advisable in which he shall deposit money received by him, and from which he shall disburse such funds as may be required to pay the expenses of the receivership.

18. The Receiver shall have the right to invest any excess cash in one or more interest-bearing accounts with a state or national financial institution, so long as all amounts (including, without limitation, accrued interest thereon) in such account(s) are fully insured by the Federal Deposit Insurance Corporation.

19. The Receiver shall hold and preserve all excess cash subject to the further order of this Court.

20. The Receiver is authorized to employ and to pay from the Assets such managers, agents, employees, servants and others, and to delegate tasks as, in his judgment, may be advisable or necessary in the management, conduct, control or custody of the Assets and business affairs of Youngstown Thermal Cooling, LLC, and Youngstown Thermal, LLC, each upon such terms and conditions as the Receiver determines to be in the best interests of the receivership estate.

21. Youngstown Thermal Cooling, LLC, Youngstown Thermal, LLC, and all of their, officers, directors, trustees, managers, agents, employees and representatives shall all cooperate with the Receiver in the discharge of the Receiver's duties.

22. The Receiver is authorized to take a complete inventory and appraisal of the assets of Youngstown Thermal Cooling, LLC, and Youngstown Thermal, LLC, and report same to the Court as required by applicable law. The Receiver shall serve a copy of the report upon any interested party who has filed an appearance in this case.



23. The Receiver is directed to make such reports to this Court, at least quarterly or upon request of the Court setting forth the Receiver's receipts, disbursements and other matters regarding the performance of his duties as required by this Order this Court and applicable law.

24. The Receiver is ordered, upon a determination of all outstanding creditors as provided herein, to send a notice to all such persons or entities having a claim or demand against Youngstown Thermal Cooling, LLC, and/or Youngstown Thermal, LLC, or who is claiming any right, interest or lien in or upon any of the Assets, that they must file a claim no later than forty-five (45) days from the date of mailing of such Notice. Each claim must include the name and address of the Claimant, the basis for the amount of the claim, and the date or dates upon which the claim arose. If the claim purports to be secured by any property or assets of Youngstown Thermal Cooling, LLC, and/or Youngstown Thermal, LLC, it should also include evidence of such security interest and its perfection. All such claims shall be mailed to the Receiver at the address provided in the Notice.

25. At such time as moneys are available for distribution to creditors, as determined in the Receiver's discretion, the Receiver shall review and validate the claims, and make a recommendation to the Court as to treatment of the claims, and distribution as amongst the creditors.

26. Due to volume of creditors, and administrative expense, the Receiver shall not be obligated to serve each and every pleading, motion, or other filing upon all creditors, but shall serve any person or entity filing an appearance in the case, or has

otherwise specifically requested service of all matters. The Receiver shall serve upon all creditors any motion, application or other filing which recommends distribution of funds or treatment of creditor claims, and same shall be permitted reasonable opportunity to respond to same.

27. Based upon the complex nature of the matters, the Receiver shall be compensated at the rate of \$150 per hour and shall be entitled to administrative expense priority on any claim for compensation. Counsel for Receiver shall be compensated at the rate of \$300 per hour and shall be entitled to administrative expense priority on any claim for compensation.

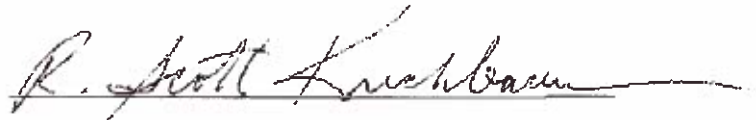
28. The Receiver is authorized to undertake all other actions, including, without limitation, executing documents on behalf of the receivership estate that are, in his judgment, necessary or appropriate to accomplish the foregoing.

29. In the event the Receiver determines the best use of the receivership estate would be the disposition of some or all of the Assets, then the Receiver may make application to the Court for authorization to sell the property, after notice and an opportunity to object has been given to all interested parties. However, the Receiver shall be empowered to liquidate, without further notice or approval, any Assets which he reasonably determines to have a value of less than \$2,000.00, and shall further be authorized to otherwise dispose of those items it determines to have a "*de minimus*" value to the receivership by way of donation to various charitable organizations or casual sales, as he may deem reasonable. The Receiver is required and authorized to take any steps or actions necessary under R.C. 4905.20 and 4905.21 to abandon utility service.

30. All creditors, claimants, bodies politic, parties in interest, and all sheriffs, marshals, and other officers, and their respective attorneys, servants, agents, and employees and all other firms, persons and corporations are hereby jointly and severally enjoined and stayed from commencing or continuing any action at law or proceeding in equity to foreclose any lien or enforce any claim against the Assets, or against the Receiver in any court. Without further order from this Court, all such entities or individuals are further stayed from executing or issuing or causing the execution or issuance out of any Court of any writ, process, summons, attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or enforcing any claim or lien upon the Assets or any property owned by or in the possession of the Receiver, and from doing any and all things whatsoever to interfere with the Receiver in the discharge of the Receiver's duties in this proceeding with the exclusive jurisdiction of this Court over the Assets and the Receiver. Cases or actions pending before the PUCO are excluded.

31. All persons and entities are hereby enjoined from interfering with the Receiver performing the Receiver's powers and duties as Receiver, as granted and imposed in this Order. However, any action taken by the PUCO, including but not limited to the PUCO's entries and orders, rules and regulations, or other actions taken by the Commissioners, Attorney Examiners, or Staff to exercise the PUCO's supervisory jurisdiction, shall not constitute interference with the Receiver.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Receiver's appointment shall remain in effect subject to further order of this Court.

  
Judge R. Scott Kirchbaum

  
Thomas W. McNamee (001735)  
Assistant Attorneys General  
Public Utilities Section  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, OH 43215-3414  
614.466.4397 (telephone)  
614.644.8764 (fax)  
[thomas.mcnamee@ohioattorneygeneral.gov](mailto:thomas.mcnamee@ohioattorneygeneral.gov)

*Kenneth R. Goldberg / s. Turner per email*  
Kenneth R. Goldberg (658724) *authorization: 7/28/17*  
575 S. Third Street  
Columbus, OH 43215  
Telephone: (614) 228-6345  
Facsimile: (614) 228-6369  
Direct Dial: (614) 545-7729  
[kr@columbuslawyer.net](mailto:kr@columbuslawyer.net)  
[www.columbuslawyer.net](http://www.columbuslawyer.net)

Attorney for Relator,  
The Public Utilities Commission of Ohio

Attorney for Receiver Reg Martin

*Leonard D. Schiavone / s. Turner per email*  
Leonard D. Schiavone (006481) *authorization: 7/28/17*  
Friedman and Rummel Co., LPA  
3801 Starrs Centre Drive  
Canfield, Ohio 44406  
330.744.4137 (telephone)  
330.744.9962 (fax)  
[lschiavone@fandrlaw.com](mailto:lschiavone@fandrlaw.com)

Attorney for Carl E. Avers

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**8/1/2017 12:49:11 PM**

**in**

**Case No(s). 17-1534-HC-UNC**

Summary: Correspondence Entry issued on August 1, 2017 by the Court of Common Pleas of Mahoning County in Case No. 17 CV 1743, appointing a receiver for the Youngstown Thermal companies. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio