

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff,

v.

RELIANCE INSURANCE COMPANY,

Defendant.

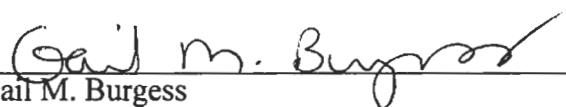
DOCKET NO. 269 MD 2001

RECEIVED AND FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
2005 DEC 13 P 3:08

AFFIDAVIT OF SERVICE

Pursuant to the Court's Order of December 8, 2005, the undersigned, on behalf of M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania in her capacity as the Statutory Liquidator of Reliance Insurance Company hereby deposes and says that service of the Order which approved the Recommendation and the Stipulation of Counsel in Support of Recommended Approval of Settlement Agreement and which deems the Objections listed therein as withdrawn was made on December 12, 2005 via first class U.S. mail on the claimant, Archer Norris.

Dated: December 13, 2005


Gail M. Burgess

Vice President, Associate General Counsel
Reliance Insurance Company (In Liquidation)
Three Parkway
Philadelphia, PA 19102
Telephone: (215) 864-4210
Facsimile: (215) 864-4141
On behalf of the Statutory Liquidator of
Reliance Insurance Company

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania,
Plaintiff

v.

Reliance Insurance Company,
Defendant

No. 269 M.D. 2001

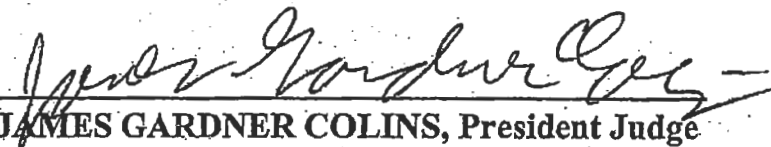
2005 DEC - 8 P 12: 56

RECEIVED AND FILED
COMMONWEALTH COURT
OF PA (PHIL A)

IN RE: Order Approving Referee Innelli's Recommendation regarding Archer
Norris Objections to Notice(s) of Determination

ORDER

AND NOW, this 8th day of ^{December} ~~November~~ 2005, upon
consideration of Referee John Innelli's Recommendation in this matter, reached
after discussions with the parties and after consideration of the parties' written
submissions, it is ORDERED that the Recommendation attached hereto and
marked as Exhibit A is APPROVED; the Objections of Archer Norris to the
Notices of Determination filed by the Liquidator are deemed withdrawn.


JAMES GARDNER COLINS, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN
Insurance Commissioner of the
Commonwealth of Pennsylvania,

DOCKET NO. 269 MD 2001

Plaintiff

OBJECTIONS OF ARCHER NORRIS

v.

(Before Referee John F. Innelli)

RELiance INSURANCE COMPANY

Defendant

**STIPULATION OF COUNSEL IN SUPPORT OF RECOMMENDED
APPROVAL OF SETTLEMENT**

Claimant, Archer Norris, a California law firm ("Archer Norris"), and the Honorable M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Liquidator ("the Liquidator") of Reliance Insurance Company in Liquidation ("Reliance"), through their respective attorneys, hereby stipulate and agree as follows:

1. Reliance was placed into Rehabilitation by Order of the Commonwealth Court of Pennsylvania dated May 29, 2001.
2. By Order of October 3, 2001, the Commonwealth Court terminated the Rehabilitation and Reliance was placed into Liquidation.
3. By Order of September 9, 2002, the Commonwealth Court established claims filing procedures and directed that referees be appointed by the Court to hear claim disputes

and outstanding Objections to Notices of Determination issued by the Liquidator and to make recommendations to the Commonwealth Court regarding such claims and Objections.

4. Archer Norris filed thirty-one (31) Proofs of Claim ("POCs") for unpaid attorneys fees and expenses, as to which the Liquidator issued Notices of Determination.

5. On or about June 16, 2003, Archer Norris filed Objections to twenty-seven (27) of the Notices of Determination, objecting to the Class (e) priority assigned to those Notices of Determination ("the Archer Norris Objections").

6. On or about July 17, 2003, the Liquidator filed a Response to the Archer Norris Objections.

7. The Commonwealth Court assigned each of the Archer Norris Objections to Referee John F. Innelli ("Referee Innelli") for hearing and recommendation. This dispute is styled *Koken v. Reliance Insurance Company, Docket No. 269 M.D. 2001, In the Matter of Objections to Notices of Determination by Archer Norris* (the "Archer Norris Action").

8. The Liquidator and Archer Norris have agreed to settle the Archer Norris Action and all matters pending before Referee Innelli and any and all Proofs of Claim, claims and causes of action between the respective parties pursuant to a Settlement Agreement which has been executed by the authorized representatives of the parties. A true and correct copy of the Settlement Agreement is attached as Exhibit "A" and is incorporated by reference herein as though fully set forth at length.

9. The Pennsylvania Insurance Department Act of 1921 ("the Act") confers broad powers on the Liquidator to administer the affairs of an insolvent insurer's estate and to achieve the purposes of liquidation under the Act. See 40 P.S. §§221.1, 221.23.

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10. Sections 221.23, 221.43, 221.44 and 221.45 of the Act confer upon the Liquidator the express authority to settle claims against the insolvent insurer's estate.

11. The Pennsylvania Supreme Court has recognized that the General Assembly conferred broad discretion upon the Insurance Commissioner, in her capacity as a statutory receiver, to achieve the public policy and legislative goals of the Act. See Foster v. Mutual Fire Marine and Inland Ins. Co., 614 A.2d 1086 (Pa. 1992). The Act specifically authorizes the Liquidator, "to do such . . . acts as are necessary or expedient to collect, conserve or protect [the insolvent insurer's] assets or property, including the power to . . . compromise . . . any bad or doubtful debt." See 40 P.S. §221.23(6).

12. The Liquidator has determined that (1) the Settlement Agreement is fair and reasonable and is in the best interest of the estate of Reliance, its policy holders and other creditors and (2) the terms of the Settlement Agreement are consistent with the provisions of the Act and the Court's Orders. The Liquidator further believes that the Settlement Agreement will assist her in achieving the objectives of liquidation under the Act, in that it will assist the Liquidator in conserving the assets of the estate, one of the primary objectives of liquidation, by eliminating the need for protractive and expensive litigation over the rights and obligations of the parties to the Settlement Agreement, saving the estate substantial costs and expenses that would be incurred in litigating the Archer Norris Action.

13. The Liquidator and Archer Norris respectfully request that the Referee favorably recommend to the Commonwealth Court that it (1) approve the terms of the Settlement Agreement as set forth in Exhibit "A"; (2) authorize and ratify the execution and delivery of the Settlement Agreement on behalf of Reliance by the Liquidator or her designee;

and (3) authorize the Liquidator to perform the Settlement Agreement pursuant to her authority under 40 P.S. §221.23 and other relevant provisions of the Act.

ARCHER NORRIS

ROSENN, JENKINS & GREENWALD, LLP

BY: 

SEAN WHITE, ESQUIRE

2033 North Main Street, Suite 800
Walnut Creek, California 94596-3759
Telephone (925)930-6600
Facsimile (925)930-6620

BY: 

ROBERT N. GAWLAS, JR., ESQUIRE

15 South Franklin Street
Wilkes-Barre, Pennsylvania 18711
Telephone (570)826-5681
Facsimile (570)831-7211
Attorneys for M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania, in her
official capacity as the Statutory
Liquidator of Reliance Insurance
Company

After review of the Stipulation of Counsel in Support of Recommended Approval of Settlement, as well as the Settlement Agreement attached thereto as Exhibit "A," your Referee believes that the Settlement Agreement is fair and reasonable and should be approved by the Court.

JOHN F. INNELLI, ESQUIRE
8 Valley View Road
Rose Valley, Pennsylvania 19063-4234

10/06/2000 MON 11:41 PAA 010 041 4114 N.O.S. G. AV. CH 11000

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made this 10th day of September, 2004, between the Honorable M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Liquidator (the "Liquidator") of Reliance Insurance Company in Liquidation ("Reliance"), on the one hand, and Archer Norris, a California law firm ("Archer Norris"), on the other hand.

RECI-TALS

Whereas, by Order of the Commonwealth Court of Pennsylvania dated May 29, 2001, Reliance was placed into Rehabilitation;

Whereas, by Order of the Commonwealth Court of Pennsylvania dated October 3, 2001, the Rehabilitation was terminated and Reliance Insurance Company was placed into Liquidation;

Whereas, by Order of the Commonwealth Court of Pennsylvania dated October 3, 2001, the Honorable M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, was appointed Liquidator and was directed to take possession of Reliance's property, business and affairs and to liquidate Reliance in accordance with Article V of the Insurance Department Act of 1921, as amended (40 P.S. §§ 211 et seq.) (the "Act");

Whereas, by Order of the Commonwealth Court of Pennsylvania dated October 3, 2001, the Honorable M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, as Liquidator, was vested with title to all property, assets, contracts and rights of action of Reliance, of whatever nature and wherever located, whether held directly or indirectly, as of the date of the filing of the Petition for Liquidation;

Whereas, by Order of the Commonwealth Court of Pennsylvania dated October 3, 2001, the Honorable M. Diane Koken, Insurance Commissioner of the Commonwealth of

Pennsylvania, as Liquidator, was vested with all of the powers, rights and duties authorized under the Act and other applicable law;

Whereas, by Order of the Commonwealth Court of Pennsylvania dated October 3, 2001, all assets of Reliance were found to be in *custodia legis* of the Commonwealth Court; and the Commonwealth Court specifically asserted, to the fullest extent of its authority: (a) *in rem* jurisdiction over all assets of Reliance wherever they may be located and regardless of whether they are held in the name of Reliance or any other name; (b) exclusive jurisdiction over all determinations of the validity and amount of claims against Reliance; and (c) exclusive jurisdiction over the determination of the distribution priority of all claims against Reliance;

Whereas, by Order of the Commonwealth Court of Pennsylvania dated September 9, 2002, the Commonwealth Court established claims filing procedures and directed that referees be appointed by the Court to hear claim disputes and outstanding objections to notices of determination issued by the Liquidator and to make recommendations to the Commonwealth Court regarding such claims and objections;

Whereas, Archer Norris filed thirty-one (31) Proofs of Claim for unpaid attorneys fees and expenses as to which the Liquidator issued Notices of Determination, which are listed and attached hereto as Exhibit "A" (the "Archer Norris Proofs of Claim");

Whereas, on or about June 16, 2003, Archer Norris filed Objections to the twenty-seven (27) of the Notices of Determination objecting to the Class (e) priority assigned to those Notices of Determination; which are listed and attached hereto as Exhibit "B" (the "Archer Norris Objections");

Whereas, on or about July 17, 2003, the Liquidator filed a Response to the Archer Norris Objections;

Whereas, the Commonwealth Court of Pennsylvania assigned each of the Archer Norris Objections to Referee John F. Innelli ("Referee Innelli") for hearing and recommendation.

This dispute is styled *Koken v. Reliance Insurance Company*, Docket No. 269 M.D. 2001, In the *Matter of Objections to Notices of Determination by Archer Norris* (the "Archer Norris Action");

Whereas, the Liquidator and Archer Norris have agreed to settle the Archer Norris Action and all matters pending before Referee Innelli and any and all Proofs of Claim, claims and causes of action between the respective parties hereto;

NOW THEREFORE, for good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. The Archer Norris Proofs of Claim listed on the attached Exhibit "A" are all of the Proofs of Claim for Archer Norris currently pending with the Liquidator. Archer Norris covenants and agrees not to file any additional Proofs of Claim. Archer Norris certifies that it has not received payment from any other source, including the insured or any state guaranty association, of the fees and expenses for which it has submitted the Archer Norris Proofs of Claim.

2. The Archer Norris Objections listed on the attached Exhibit "B" are all of the Proofs of Claim as to which Archer Norris has filed Objections. Archer Norris covenants and agrees that it will not file any other Objections with regard to any Notices of Determination or Amended Notices of Determination issued or to be issued with regard to the Archer Norris Proofs of Claim. Within five (5) days of the execution of this Agreement, Archer Norris shall file with the Commonwealth Court individual Praecipes to Withdraw, with prejudice, each Objection in the form attached hereto as Exhibit "C". In addition, Archer Norris agrees to file whatever

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documents are required to effect dismissal of the proceedings before Referee Innelli and the Commonwealth Court. The parties hereby agree that Referee Innelli shall issue a recommendation to the Commonwealth Court that, based on the resolution of the Archer Norris Action between the parties, the Archer Norris Action should be marked as dismissed, with prejudice. Each party shall bear its own costs, including, without limitation, attorney's fees and any and all costs associated with the Archer Norris Action and all matters pending before Referee Innelli.

3. Notwithstanding the above, if there is a determination, judicial or otherwise, that any Class (e) creditors similarly situated to Archer Norris, i.e., law firms that performed legal services on behalf of Reliance insureds prior to Rehabilitation, shall be entitled to Class status higher in priority than Class (e) on Proofs of Claims filed in the Reliance Liquidation based on legal services rendered to Reliance insureds prior to Rehabilitation, then such determination shall inure to the benefit of Archer Norris, and the Archer Norris Proofs of Claim assigned Class (e) priority status shall be issued Amended Notices of Determination to reflect the foregoing priority determination and to provide for allowed amounts of such Proofs of Claim.

4. Archer Norris hereby covenants and agrees not to challenge, object or bring any claim or cause of action pertaining to the Notices of Determination or Amended Notices of Determination issued or to be issued, with regard to the Archer Norris Proofs of Claim, including but not limited to, the priority status assigned to the Archer Norris Proofs of Claim, except that the terms and conditions of paragraph "3" shall remain in full force and effect and Archer Norris shall be entitled to object to any of the allowed amounts which may be provided by such Amended Notices of Decision as may be issued pursuant to paragraph "3." Archer Norris hereby warrants and represents that there are no Proofs of Claim, claims or causes of action against, or

debts claimed due from, the Liquidator or Reliance, other than those set forth in this Agreement, and Archer Norris hereby covenants and agrees not to bring or assert any Proof of Claim, claim or cause of action against, and hereby releases, the Liquidator and Reliance, except as provided for in this Agreement.

5. The Liquidator and Reliance hereby covenant and agree not to raise any preference defense in connection with the Archer Norris Proofs of Claim and covenant and agree not to bring any affirmative preference action against Archer Norris for monies received by Archer Norris prior to the Rehabilitation of Reliance. Notwithstanding the foregoing, this Agreement is not intended to release, and the Liquidator and Reliance specifically reserve, any and all rights and defenses of the Liquidator and Reliance in connection with Archer Norris's defense of Reliance insureds, including, without limitation, all claims, causes of action or controversies arising out of or relating to said defense and/or coverage issues arising therein. The foregoing reservation of rights by the Liquidator and Reliance is not restricted, limited or confined to Archer Norris's defense of Reliance insureds upon which the Archer Norris Proofs of Claim are based.

6. Each party signing this Agreement on behalf of any person, or entity, warrants and represents that he/she has full authority to execute this Agreement.

7. This Agreement has been negotiated between the parties, with each party having the opportunity to obtain the advice of its own counsel, and this Agreement shall not be construed as having been drafted by any particular party or parties.

8. It is understood and agreed that this Agreement is a compromise of a disputed claim and the payment made and/or other consideration set forth herein is not to be construed as an admission of liability by any party hereto.

9. The parties hereto represent and warrant that they have thoroughly reviewed this Agreement with their counsel, and have thoroughly considered existing and/or potential claims which are or may be covered by this Agreement.

10. This Agreement shall be effective only after all parties hereto have signed this Agreement.

11. This Agreement contains the entire Agreement between the parties hereto with respect to the transactions described herein and supersedes all previous negotiations, commitments, warranties, express or implied, statements and representations whether written or verbal, pertaining thereto, all of which shall be deemed merged into this Agreement. All changes or amendments to this Agreement must be in writing and signed by the parties to be binding on the parties. If any provision in this Agreement is deemed invalid or unenforceable under applicable law, the remaining provisions shall continue in full force and effect, and the invalid or unenforceable provision shall be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision.

12. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

13. This Agreement may not be modified or terminated orally, and no modification, termination or attempted waiver shall be valid, unless in writing, signed by the parties against whom the same is sought to be enforced.

14. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. Archer Norris hereby consents to the sole and exclusive jurisdiction of the Commonwealth Court of Pennsylvania in determining any claim, dispute, cause of action or controversy arising out of or relating to the terms, conditions and obligations

set forth in this Agreement. Archer Norris hereby agrees that the exclusive venue for any such claim, dispute, cause of action or controversy arising out of or relating to the terms, conditions and obligations set forth in this Agreement shall be the Commonwealth Court of Pennsylvania.

15. This Agreement may be executed in several counterparts, each of which shall be deemed an original, all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates set forth below their signatures.

Attest:

Archer Norris

By:

Date:

[Handwritten Signature]

9/10/04

Attest:

Reliance Insurance in Liquidation

By:

[Handwritten Signature]
David Brietling, Liquidation Operations
Officer for Reliance Insurance in Liquidation

Date:

10/29/04

Exhibit A

Exhibit A

Detailed List of Proofs of Claim
Pertaining to Archer Norris

Proof of Claim No.	Court No.
1926393	133
1926405	134
1926443	135
1926440	136
1926441	137
1926424	138
1926404	139
1926446	140
1926418	141
1926394	142
1926409	143
1926396	144
1926408	145
1926411	146
1626425	147
1926403	148
1926392	149
995826	150
1926438	151
1926386	152
1926420	153
1926387	154
1926436	155
1926388	156
1926391	157
1926429	158
1926433	159
995825	
995824	
1901348	
1926399	

Exhibit B

Exhibit B

Detailed List of Objections Filed by Archer Norris

<u>POC#</u>	<u>Claimant</u>	<u>Insured</u>	<u>Postmark Date</u>	<u>Date Objection Received by Liquidator</u>	<u>Date Objection Filed with Court</u>
995826	Archer Norris	Master Protection Corp.	6/17/03	6/23/03	6/19/03
1926386	Archer Norris	Jefferson State Rock Products	6/17/03	6/23/03	6/19/03
1926387	Archer Norris	All-Luminum Products, Inc.	6/17/03	6/23/03	6/19/03
1926388	Archer Norris	Marin County Certified	6/17/03	6/23/03	6/19/03
1926391	Archer Norris	De Jean & Co.	6/17/03	6/23/03	6/19/03
1926392	Archer Norris	Bill Holloman dba Bill Holloman Transportation	6/17/03	6/23/03	6/19/03
1926393	Archer Norris	The Hill Company	6/17/03	6/23/03	6/19/03
1926394	Archer Norris	Garage Doors, Inc.	6/17/03	6/23/03	6/19/03
1926396	Archer Norris	Hill Companies dba Coast Insulation Contractors	6/17/03	6/23/03	6/19/03
1926403	Archer Norris	Davidson Iron Works	6/17/03	6/23/03	6/19/03
1926404	Archer Norris	Total Tire Recycling, LLC	6/17/03	6/23/03	6/19/03
1926405	Archer Norris	Wherehouse Entertainment, Inc. ***	6/17/03	6/23/03	6/19/03
1926408	Archer Norris	Total Tire Recycling, LLC	6/17/03	6/23/03	6/19/03
1926409	Archer Norris	Total Tire Recycling, LLC	6/17/03	6/23/03	6/19/03
1926411	Archer Norris	Total Tire Recycling, LLC	6/17/03	6/23/03	6/19/03
1926418	Archer Norris	Terry Johnson Trucking	6/17/03	6/23/03	6/19/03
1926420	Archer Norris	Encore Glass, Inc.	6/17/03	6/23/03	6/19/03
1926424	Archer Norris	Christmas Tree Insurance	6/17/03	6/23/03	6/19/03
1926425	Archer Norris	All-Luminum Products, Inc.	6/17/03	6/23/03	6/19/03
1926429	Archer Norris	Container Storage, Inc.	6/17/03	6/23/03	6/19/03
1926433	Archer Norris	Marr Steel Engineering, Inc.	6/17/03	6/23/03	6/19/03
1926436	Archer Norris	Peerless Products, Inc.	6/17/03	6/23/03	6/19/03
1926438	Archer Norris	Spear, Ray	6/17/03	6/23/03	6/19/03
1926440	Archer Norris	Stoneridge Place at Pleasanton	6/17/03	6/23/03	6/19/03
1926441	Archer Norris	Meris Laboratories	6/17/03	6/23/03	6/19/03
1926443	Archer Norris	Galardi Group	6/17/03	6/23/03	6/19/03
1926446	Archer Norris	Rehabicare	6/17/03	6/23/03	6/19/03

Exhibit C

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff

DOCKET NO. 269 MD 2001

v.

RELIANCE INSURANCE COMPANY,

Defendant

PRAECIPE TO MARK OBJECTION
WITHDRAWN

TO THE PROTHONOTARY:

Archer Norris, a California law firm, hereby files the following Praecipe to Mark Withdrawn the
Objection it filed on _____, 2003 to the Notice of Determination on Proof of Claim
No. _____.

DATED: _____

[insert name of signor]
[insert title of signor]
Archer Norris
[insert address]

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff

DOCKET NO. 269 MD 2001

v.

RELIANCE INSURANCE COMPANY,

Defendant

CERTIFICATE OF SERVICE

I, [insert signor's name], [insert signor's title & firm name], on behalf of Archer Norris, a California law firm, do hereby certify that this day a true and correct copy of the foregoing Praecipe to Mark Objection to Proof of Claim Number. _____ Withdrawn was served on Reliance Insurance Company (In Liquidation) by first class U.S. Mail, postage prepaid.

DATED: _____

[insert name of signor]
[insert title of signor]
Archer Norris
[insert address]

MODE = MEMORY TRANSMISSION

START=DEC-12 15:26

END=DEC-12 15:42

FILE NO. -545

STN NO.	COMM.	ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
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002	OK	8	915708317211	020/020	00:05:55

-RELIANCE INSURANCE -

***** -LAW DEPT. - ***** 12158641544- *****

Reliance Insurance Company (In Liquidation)
Three Parkway
Philadelphia, PA 19102-1376

Gail M. Burgess
Vice President, Associate General Counsel



December 12, 2005

VIA FIRST CLASS MAIL AND FACSIMILE 925-930-6620

Sean D. White, Esquire
Archer Norris
2033 North Main Street, Suite 800
Walnut Creek, CA 94596-3728

Re: December 8, 2005 Order of the Commonwealth Court of Pennsylvania
regarding Proof of Claim Numbers Listed Therein
Claimant: Archer Norris

Dear Mr. White:

In accordance with the enclosed Order, the Statutory Liquidator hereby serves by first class mail and facsimile a copy of the Order of the Commonwealth Court of Pennsylvania which approves the recommendation of Referee Innelli. The Order also indicates that the Objections to the Notices of Determination to the Proofs of Claim are deemed withdrawn.

Very truly yours,

Gail M. Burgess
Gail M. Burgess

GB:lm

Enclosure

cc: Robert N. Gawlas, Jr., Esquire (via facsimile and regular U.S. mail w/encl.)