

Honorable Russell M. Nigro
(Retired Justice)
241 South 7th Street
Philadelphia, PA 19106
(215) 922-2561

February 27, 2006

Honorable James Gardner Collins
President Judge
Commonwealth Court of Pennsylvania
Suite 900, Widener Building
1339 Chestnut Street
Philadelphia, PA 19107

Re: Objection of Barry McTiernan and Moore

Dear President Judge Collins:

On January 3rd of 2006, you appointed me as Referee in the above-captioned matter.

I am pleased to report that the parties have stipulated to a global settlement of all the claims pending regarding this matter. I have attached a copy of the stipulation for your review.

I have reviewed the stipulation, and the previously-forwarded documents supporting Claimants' objections, and am of the opinion that you should approve the settlement.

If you have any questions, please do not hesitate to contact me.

Yours truly,


Russell M. Nigro

Enc/jf

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

OBJECTION OF BARRY MCTIERNAN &
MOORE

(Before Justice Russell M. Nigro, Referee

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

Claimant, the law firm of Barry McTiernan & Moore, a New York law firm ("the McTiernan Firm"), and the Honorable M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Statutory 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. The McTiernan Firm filed 337 Proofs of Claim ("POCs") for claimed unpaid attorneys fees and expenses, as to which the Liquidator issued 325 Notices of Determination

" EXHIBIT A "

("NODs"). The remaining 12 POCs are still awaiting the issuance of NODs. The parties agree that all 337 POCs are resolved pursuant to the terms of this Stipulated Settlement.

5. On or about December 21, 2005, the McTiernan Firm filed a consolidated Objection to the Notices of Determination, asserting that certain of the claimed fees and expenses were incurred during the period of Reliance's Rehabilitation and were, thus, entitled to be paid as class (a) claims. ("the McTiernan Firm Consolidated Objection").

6. Before the Liquidator's Response was due, the Court assigned the McTiernan Firm Consolidated Objection to Justice Russell M. Nigro ("Justice Nigro"), as Referee 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 The Barry McTiernan Law Firm* (the "McTiernan Action").

7. With the approval of Justice Nigro, the parties agreed that the Liquidator could have an extension of time until January 30, 2006 to file her Response, to allow the parties to attempt to resolve the dispute, if possible.

8. On January 27, 2006, the parties reported to Justice Nigro that, subject to his approval and recommendation and the Court's approval, they had settled all disputes between them.

9. Specifically, the parties have agreed that, subject to the Court's approval, all disputes between them regarding the McTiernan Firm Consolidated Objection, all POCs filed by the McTiernan Firm, identified on Exhibit A hereto, and any NODS issued or to be issued as to them, as well as all matters pending before Justice Nigro relating to the McTiernan Action are resolved as follows:

- Within 10 days of the Court's approval of this Stipulated Settlement, Reliance will issue payment of \$50,919.59 to the McTiernan Firm to pay for fees and expenses

incurred by the firm during the period of Reliance's Rehabilitation (The Rehabilitation Services). This amount is based on a detailed review and accounting by Reliance of each of the POCs and accompanying invoices submitted by the McTiernan Firm, in conjunction with the appropriate application of the retainer paid to the McTiernan Firm prior to Reliance's liquidation.

- The parties agree that the Proofs of Claim listed on the attached Exhibits "A" and "B" are all of the Proofs of Claim for the McTiernan Firm currently pending with the Liquidator. The McTiernan Firm covenants and agrees not to file any additional Proofs of Claim and further 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 Proofs of Claim.
 - The parties agree that all NODs previously issued with regard to the POCs identified on Exhibit "A" hereto, will retain the priority and allowed amounts indicated thereon. Within 10 days of the Court's Approval of this Stipulated Settlement, Reliance will issue NODs on the 12 POCs identified on Exhibit "B" assigning the priority and allowed amounts specified on Exhibit "B".
 - Within 10 days of the Court's Approval of this Stipulated Settlement, the McTiernan Firm will file a praecipe to withdraw its Consolidated Objection to the POCs, in the form attached hereto as Exhibit "C", and will file no further objections with regard to any NODs issued or to be issued on the POCs filed by the McTiernan Firm as identified on Exhibits "A" and "B".
10. This will fully and finally resolve all disputes, issues and claims between the McTiernan firm, the Liquidator and the Reliance Estate.

11. 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.

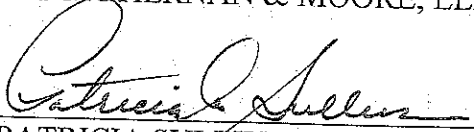
12. Sections 221.23, 221.43, 221.44 and 221.45 of the Act confer upon the Liquidator the express authority to settle claims against the insolvent insurer's estate.

13. 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).

14. The Liquidator has determined that (1) this Stipulated Settlement is fair and reasonable and is in the best interest of the estate of Reliance, its policyholders and other creditors and (2) the terms of the Stipulated Settlement are consistent with the provisions of the Act and the Court's Orders. The Liquidator further believes that the Stipulated Settlement 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 costs and expenses that would be incurred in litigating the McTiernan Action.

15. The Liquidator and the McTiernan Firm respectfully request that the Referee favorably recommend to the Commonwealth Court that it (1) approve the terms of the Stipulated Settlement as set forth herein; and (3) authorize the Parties to perform the Stipulated Settlement.

BARRY MCTIERNAN & MOORE, LLP

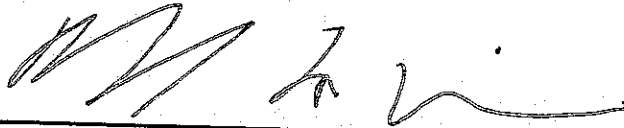
BY: 
PATRICIA SULLIVAN

BY: 
GAIL M. BURGESS

Partner
On Behalf of Barry McTiernan & Moore, LLP

Vice President, Associate General
On Behalf of Counsel
On Behalf of M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania, in
her official capacity as the Statutory
Liquidator of Reliance Insurance
Company

APPROVED:



Justice Russell M. Nigro, Referee

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

**PRAECIPE TO MARK WITHDRAWN THE OBJECTIONS TO NOTICES OF
DETERMINATION AS TO THE FIRM OF BARRY McTIERNAN & MOORE**

TO THE PROTHONOTARY:

Patricia A. Sullivan, Esquire, of Barry McTiernan & Moore, the claimant, hereby files the following Praecipec to Mark Withdrawn the Objections of Barry McTiernan & Moore filed on December 19, 2005 to the Notices of Determination issued by the Statutory Liquidator of Reliance Insurance Company (In Liquidation).

Dated: _____

Patricia A. Sullivan, Esquire
Barry, McTiernan & Moore
2 Rector Street
New York, NY 10006
Telephone: 212-608-8999
Facsimile: 212-608-8901

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

CERTIFICATE OF SERVICE

I, Patricia A. Sullivan, Esquire, of Barry McTiernan & Moore, the claimant, do hereby certify that this day a true and correct copy of the Praecepto to Mark Withdrawn the Objections of Barry McTiernan & Moore filed on December 19, 2005 to the Notices of Determination issued by the Statutory Liquidator of Reliance Insurance Company (In Liquidation), was served on Reliance Insurance Company (In Liquidation) by regular U.S. mail, postage prepaid.

Dated: _____

Patricia A. Sullivan, Esquire
Barry, McTiernan & Moore
2 Rector Street
New York, NY 10006
Telephone: 212-608-8999
Facsimile: 212-608-8901

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

Gail M. Burgess
Vice President, Associate General Counsel



Reliance

February 23, 2006

Justice Russell M. Nigro, Referee
2 Independence Place
233 South Sixth Street
Unit 907
Philadelphia, PA 19106

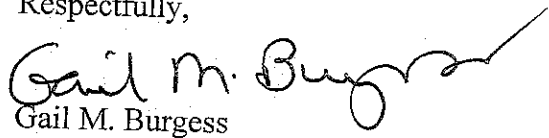
Re: Objection of Barry McTiernan and Moore

Dear Justice Nigro:

Enclosed for your review is the original, executed Stipulation of Counsel in which we seek your Honor's Recommendation approving the parties' settlement of the Objection filed by the law firm of Barry McTiernan and Moore. The firm filed a consolidated Objection to 325 Notices of Determination issued by the Liquidator pertaining to the firm's claims for fees and expenses. We are pleased to report that the parties have amicably resolved this matter on the terms set forth in the Stipulation, subject to your Recommendation and the Court's approval.

Ms. Sullivan and I are available to address any questions or to provide any further information you may require. Thank you.

Respectfully,


Gail M. Burgess

GB:lm

Enclosure

cc: Patricia A. Sullivan, Esquire (w/enclosure)