

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

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RECEIVED AND FILED
COMMONWEALTH COURT
OF PA (PHILA)

IN RE: Settlement Agreement and General Release in the Matter of Kenneth P. Burres, M.D.'s Objection to Notice of Determination on Proof of Claim Number 1447198.

ORDER

AND NOW, this 20th day of July, 2006, upon consideration of the Settlement Agreement and General Release entered into between the Liquidator and Kenneth P. Burres, M.D.'s in the matter of Dr. Burres' Objection to Notice of Determination on Proof of Claim Number 1447198, and in consideration of Referee Russell M. Nigro's determination that the Agreement is in the best interests of the Reliance Estate, the Settlement Agreement and General Release, attached here as Exhibit "A", is APPROVED.

FURTHER, The Liquidator shall serve this Order upon those on the Master Service List, and shall file a certification of that service with the Philadelphia Filing Office of this Court in the Widener Building, 9th Floor, no later than 3:00 p.m. on July 27, 2006.



JAMES GARDNER COLINS, President Judge

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 TO NOTICE OF
DETERMINATION ON PROOF OF
CLAIM NUMBER 1447198**

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement ("Agreement") is entered into this 12th day of June 2006 by and between Dr. Kenneth P. Burres ("Burres") and M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Liquidator of Reliance Insurance Company ("Liquidator"), as follows:

WHEREAS, Burres filed an action against Reliance Insurance Company (In Liquidation) ("Reliance") captioned Kenneth P. Burres v. Reliance Insurance Company of Illinois, et al., Case no. RCV 28618, filed in the Superior Court of the State of California, County of San Bernardino (the "California Action"); and

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

WHEREAS, by Order of October 3, 2001, the Commonwealth Court terminated the Rehabilitation and placed Reliance into Liquidation; and

WHEREAS, in accordance with the Liquidation Order, the California Action has been stayed; and

WHEREAS, Reliance cross-claimed in the California Action for deductible amounts owed by Burres to Reliance, which claim was subsequently severed from the California Action; and

WHEREAS, a judgment was entered on behalf of Reliance in the amount of \$221,061.07 plus interest in an action captioned Reliance Insurance Company of Illinois v. Kenneth P. Burres, Case no. RCV 074058, filed in the Superior Court of the State of California, County of San Bernardino (“the Deductible Action”); and

WHEREAS, Burres filed Proof of Claim No. 1447198 (the “Claim”) dated April 26, 2002, in the Reliance Liquidation, attaching and incorporating the allegations in the First Amended Complaint in the California Action; and

WHEREAS, on September 19, 2005 the Liquidator issued her Notice of Determination (“NOD”) assigning Priority Level (e) to POC 1447198 pursuant to 40 P.S. §221.44. The NOD further provided that Reliance denied committing any wrongdoing as alleged in the California Action; and

WHEREAS, Burres filed a timely Objection to the NOD regarding POC 1447198, contending that the Claim was entitled to Priority Level (b) status and that he was entitled to a trial as to the merits of the damages he was claiming (the “Objection”); and

WHEREAS, the Liquidator filed a timely Response (the “Response”) to Burres’s Objection; and

WHEREAS, by Order of January 3, 2006, the Commonwealth Court of Pennsylvania (the “Court”) appointed the Honorable Russell M. Nigro, Esquire as Referee to hear the Objection and the Response, and issue a recommendation to the Court regarding same; and

WHEREAS, Burres and the Liquidator each recognize that there are costs and uncertainty in the Referee process, and each party desires to resolve the dispute over all of Burres’s claims against Reliance so as not to incur any additional costs; and

WHEREAS, after good faith negotiations, Burres and the Liquidator have agreed to resolve all of Burres's claims against Reliance on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties, intending to be legally bound, stipulate and agree as follows:

1. The above recital is incorporated herein as though fully set forth at length.
2. Upon entry of the Commonwealth Court's Order approving the Referee's recommendation to approve this Agreement, Burres's Objection will be deemed withdrawn, with prejudice.
3. Within 10 days of the signing of this Agreement, Burres shall dismiss the California Action with prejudice. Burres shall provide the Liquidator with a conformed copy of the dismissal with prejudice once it has been entered by the Court.
4. Within 10 calendar days of receipt of this Agreement signed by Burres, Reliance will dismiss the judgment lien on 9204 Almond Street, Rancho Cucamonga, CA 91737 by filing an Acknowledgement of Satisfaction of Judgment in the Superior Court of San Bernardino and recording a certified copy of the Acknowledgment of Satisfaction of Judgment with the San Bernardino County Recorder's Office. The Liquidator will provide Burres with a conformed copy of the Acknowledgment of Satisfaction of Judgment once it has been recorded.
5. In consideration of Reliance's performance of its promise as set forth herein, Burres, for himself, his heirs, executors, administrators, and assigns, hereby completely releases and forever discharges the Liquidator, Reliance and its parents, subsidiaries, related and affiliated companies, their predecessors, successors, assigns, present and past directors, attorneys, agents, employees, insureds and stockholders, both individually and in any other capacity and all other persons, firms, and corporations from any and all past, present, or future claims, demands, obligations, acts, causes of action, rights, damages, costs, losses of services, expenses, and compensation of any nature whatsoever, whether based on a tort, contract, or other

theory of recovery, which Burres now has, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, or which are the subject the California Action, the Claim, or Burres's Objection.

6. The parties agree to execute any and all documents and to do and perform any and all acts, upon request by the other, reasonably necessary or proper to effectuate or further evidence the terms and provisions of this Agreement.

7. Each party shall bear and be responsible for its own costs and attorneys' fees incurred in connection with the Claim, the California Action, and the Deductible Action.

8. Nothing in this Agreement shall be deemed to be an admission of liability or of any fact or legal principle asserted with respect to the Claim or the California Action.

9. 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. 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 may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one complete instrument.

11. The individuals executing this Agreement on behalf of each of the parties warrant that they have the authority to bind said Party to the terms and conditions of the Agreement.

12. This Agreement contains the entire Agreement between the parties hereto with respect to the transactions described herein and supersedes all previous negotiations, commitments, warranties, whether expressed 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.

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

14. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. The parties hereby consent 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. The parties further agree 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. The parties hereby jointly request that Referee Nigro recommend the approval of this Agreement by the Commonwealth Court.

In the presence of me, a
Notary Public, this 7th
Day of June, 2006.



S. EMY POULAD
Notary Public, State of New York
No. 02POS041439
Qualified in New York County
Certificate Filed in New York County
Commission Expires May 8, 2008

In the presence of me, a
Notary Public, this _____
Day of _____, 2006.

BY: 

DAVID BRIETLING
Chief Liquidation Officer
Three Parkway
Philadelphia, Pennsylvania 19102
On Behalf of the Diane M. Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania, in her
official capacity as Liquidator of
Reliance Insurance Company

KENNETH P. BURRET

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In the presence of me, a
Notary Public, this _____
Day of _____, 2006.

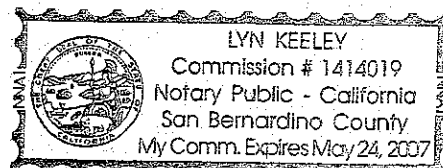
BY: _____

DAVID BRIETLING
Chief Liquidation Officer
Three Parkway
Philadelphia, Pennsylvania 19102
On Behalf of the Diane M. Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania, in her
official capacity as Liquidator of
Reliance Insurance Company

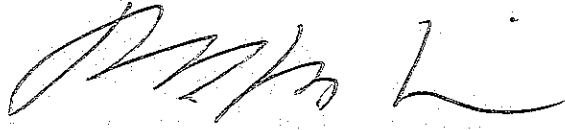
In the presence of me, a
Notary Public, this 12th
Day of June, 2006.

[Signature]

[Signature]
KENNETH P. BURRESS



After review of the foregoing Settlement Agreement, your Referee believes that the Settlement Agreement is fair and reasonable and recommends that it be approved by the Court.



RUSSELL M. NIGRO, ESQUIRE REFeree
241 South Seventh Street
Philadelphia, PA 19106