

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOEL S. ARIO, acting Insurance Commissioner
of the Commonwealth of Pennsylvania,

Plaintiff

NO. 269 M.D. 2001

vs.

RELIANCE INSURANCE COMPANY,
Defendant

CLAIM OF SENIOR LIVING PROPERTIES, LLC, CLAIM NO. 2076849

RECOMMENDATION BY REFEREE

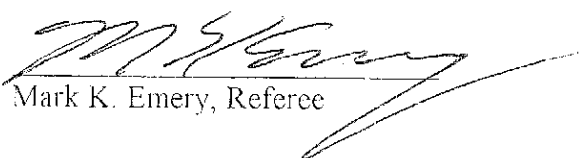
By Order of Court dated September 14, 2007 the undersigned was appointed to act as referee in the above-captioned matter. Through coordination with the parties, a case management schedule was adopted, including a discovery deadline. During the course of this schedule the parties engaged in discovery, as well as settlement negotiations.

The settlement negotiations have led the parties to an amicable resolution. That resolution has been set forth in the attached Stipulation in Support of Request for Approval of Settlement. The Referee has reviewed the Stipulation, and finds it to be acceptable, and in the best interests of the liquidation estate. As such, it is the recommendation of the Referee that the Commonwealth Court approve the Stipulation and enter the proposed Order.

The Referee has signed the Referee Recommendation attached to the Stipulation, and the parties shall submit the original Stipulation directly to the Court.

Respectfully submitted,

Date: April 7, 2008


Mark K. Emery, Referee

"REFEREE DECISION EXHIBIT A"

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOEL S. ARIO, Acting Insurance Commissioner
of the Commonwealth of Pennsylvania,

Plaintiff,

v.

RELIANCE INSURANCE COMPANY,

Defendant.

DOCKET NO. 269 MD 2001

OBJECTION OF Senior Living
Properties LLC Trust Relating to Proof of
Claim 2076849

**STIPULATION IN SUPPORT OF
REQUEST FOR APPROVAL OF SETTLEMENT**

Claimant, Senior Living Properties, LLC, ("SLP") by its successor in interest, Senior Living Properties LLC Trust, Dan Lain Trustee ("SLP Trust"), and Joel S. Ario, the Acting Insurance Commissioner of the Commonwealth of Pennsylvania, in his official capacity as Statutory Liquidator ("Liquidator") of Reliance Insurance Company in Liquidation ("Reliance") (collectively, the "Parties"), hereby enter into this Stipulation In Support of Request for Approval of Settlement (the "Stipulation") as follows:

STIPULATED FACTS

The Reliance Liquidation Proceedings

1. Reliance was placed into Rehabilitation by Order of the Commonwealth Court of Pennsylvania dated May 29, 2001, and by Order dated October 3, 2001, the Commonwealth Court terminated the Rehabilitation and Reliance was placed into Liquidation.
2. 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.

The SLP Bankruptcy Proceedings

3. On May 14, 2002 SLP filed a Chapter 11 proceeding in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, captioned *In Re Senior Living Properties, LLC*, Case No. 02-34243-SAF-11. The SLP Bankruptcy Court stayed all lawsuits against SLP and established a Claims Resolution Procedure. Claims were mediated and, if a liquidation of the claims was agreed upon by the claimant, SLP and other interested parties, including the insurers and the Creditor's Committee, the liquidated claim was submitted to the Court for approval.

4. One of the claims pending against SLP at the time of its bankruptcy was a suit filed by Georgia Ann Bailey Smith against SLP and others, including certain of SLP's agents and employees, alleging that her father, Dud Grover Bailey, suffered catastrophic injuries and ultimately death as a result of his lack of care at SLP's Electra, Texas facility (the "Bailey Claim").

5. Under both the Rehabilitation Order and, later, the Liquidation Order, all proceedings against Reliance, such as the Claims Resolution proceedings and other proceedings in the SLP Bankruptcy, were stayed as to Reliance. The Liquidation Order also provided, pursuant to 40 P.S. §221.38(c), that judgments entered as to Reliance or its insureds post-liquidation were of no binding effect as to the Liquidator or Reliance. The SLP Bankruptcy Court also entered an Order exempting Reliance from the Claims Resolution Procedure in the SLP Bankruptcy. The Claims Resolution Procedure continued as to SLP and its other insurers.

6. At a hearing in September, 2003, the SLP Bankruptcy Court approved the

settlement of numerous personal injury claims against the SLP Bankruptcy Estate including the Bailey Claim, for which a \$13.5 million liquidated value was approved.

The SLP Proof of Claim in the Reliance Liquidation

7. On or about December 18, 2003, SLP Trust, as successor to SLP pursuant to the Third Amended Joint Plan of Reorganization of Senior Living Properties LLC, et al., filed Proof of Claim 2076849 in the Reliance Liquidation seeking \$7.25 million, which it alleged was Reliance's share of the underlying settlement of \$13.5 million for the Bailey Claim (the "SLP Trust POC").

8. Reliance insured SLP under a Commercial Umbrella policy for the period February, 1999 to 2000. This policy, Policy No. NPB 0144058, comprised the second layer of excess coverage over underlying policies issued by Admiral Insurance Company or Caliber One Insurance Company, as primary, and Associated International Insurance Company, as first layer excess, providing coverages of \$1 million and \$5 million, respectively over a \$250,000 self-insured retention.

9. Reliance issued a Notice of Determination (the "SLP Trust NOD") assigning class (b) priority and an allowed amount of zero in light of various defenses. Reliance claimed that the SLP policy in issue was rescinded due to misrepresentations in the application and renewal process and that the liquidated claim amount of \$13.5 million was improper, particularly due to certain statutory damages caps that might have been applied to the liabilities in issue.

10. SLP Trust filed an Objection to the NOD with the Liquidator ("the SLP Trust Objection") on July 5, 2007 asserting that its claim should be valued in the full amount of \$7.25 million.

11. The Liquidator filed his Response to the SLP Trust Objection on or about August

28, 2007 and the matter was submitted to Referee Mark Emery for his review and recommendation.

12. Referee Emery issued a scheduling order setting certain case deadlines, including a deadline for fact discovery which was to be completed by April 15, 2008.

13. The Parties, after engaging in extensive document discovery and settlement discussions, recognize there are risks and costs inherent in further litigation, and therefore wish to fully and finally resolve all disputes, issues and claims between them, recognizing they are compromising disputed coverage and damages and related Texas statutory construction issues, and this settlement, as set forth herein in this Stipulation, is a compromise of those disputed issues and is not an admission of liability by either of the Parties.

14. The Parties have agreed to resolve their differences by entering into this Stipulation which will fully and finally resolve all disputes, issues and claims between SLP, SLP Trust, the Liquidator and the Reliance Estate. The Parties understand and agree that the proper procedure for obtaining approval of their settlement is (a) for the SLP Trust to submit the Stipulated Settlement to the SLP Bankruptcy Court for approval, and then (b) for the Referee to approve and submit to the Commonwealth Court the Stipulated Settlement for approval by the Commonwealth Court.

THE PARTIES' SETTLEMENT AND RELEASE AGREEMENT

NOW THEREFORE, for the consideration stated in this Stipulation, and intending to be legally bound, subject only to the respective Courts' approval of this Stipulation and entry of the proposed Orders attached as Exhibit "A" and "B" approving the settlement, it is further stipulated and agreed as follows:

15. The Parties agree that, subject to the above approvals, all disputes between them

regarding the SLP Trust POC, the SLP Trust NOD, and the SLP Trust Objection, as well as all matters pending before Referee Emery relating to the SLP Trust disputed claim are resolved as follows:

- (a) Within 10 days of the execution of this Stipulation, as a compromise of the disputed coverage and damages issues, Reliance will issue an Amended Notice of Determination assigning class (b) priority and an allowed amount of \$4,250,000.00 to the SLP Trust POC, conditioned upon final approval by the Commonwealth Court of the SLP Trust Amended Notice of Determination (the "SLP Trust Amended NOD") and approval of this Stipulated Settlement by the SLP Bankruptcy Court. If Court approval is not obtained for the Stipulated Settlement and the Amended NOD, as required herein, then the Amended NOD will be inactivated and will be of no force and effect and the original NOD issued on May 22, 2007 and the Objection and Response to it will remain in effect.
- (b) After this Stipulated Settlement is approved by the SLP Bankruptcy Court and within 10 days of the Commonwealth Court's approval of this Stipulated Settlement and the SLP Trust Amended NOD, SLP Trust will file a Praecipe to Withdraw the Objection, in the form attached hereto as Exhibit "C", withdrawing with prejudice SLP Trust's Objection to the SLP Trust NOD, and will file no further objections with regard to the SLP Trust Amended NOD issued or with regard to the SLP Trust NOD previously issued.

16. The Parties agree that the SLP Trust POC is the only Proof of Claim filed by or on behalf of it or by or on behalf of any other party relating to the personal injury claims or any other claims against SLP, including but not limited to the Bailey Claim. SLP Trust, for itself and SLP, covenants and agrees not to file any additional Proofs of Claim. SLP Trust, for itself and SLP, warrants and represents that there are no outstanding claims or liabilities against SLP for which a POC could be filed, or any other known claims or potential claims for coverage under the policies issued to SLP by Reliance. Reliance represents and warrants that there are no claims currently filed against the Reliance Estate by any third party claimant or insured relating to SLP, other than the Bailey Claim, which is being fully and finally settled and resolved by this Stipulation.

17. SLP Trust agrees to accept payment pursuant to the SLP Trust NOD in accordance with applicable procedures for court approval, distribution and payment for similarly situated class (b) claimants, and applicable provisions of the Pennsylvania Insurance Department Act, as a full and final settlement of all claims against Reliance, the Reliance Estate and the Statutory Liquidator. SLP Trust recognizes and accepts that both the amount which will actually be distributed pursuant to the NOD and the timing of that distribution or distributions are uncertain and that it is not expected that there will be a distribution of 100% of all approved class (b) claims.

18. In consideration of and conditioned upon payment of any and all interim or final distributions approved by the Commonwealth Court with regard to the SLP Trust Amended NOD, SLP Trust for itself (and any affiliated companies, agents, officers, directors, shareholders, employees, predecessors, successors, subsidiaries, assigns and also all persons or entities who are insured under the policy) waives, releases, acquits and forever discharges any claim or cause of

action against Reliance (and any related insurance companies or exchanges, together with its affiliates, subsidiaries, predecessors, successors, assigns, reinsurers, officers, directors, agents, servants, employees, attorneys, legal representatives, heirs, executors, administrators and Liquidators) it has, owns, holds or claims to have, own or hold, or at any time heretofore had, owned, held or claimed to have owned or held, which arose from, were based upon, or were related to any facts, actions or circumstances which formed the basis for the SLP Trust POC, whether such claims are known or unknown. SLP Trust intends for the release to apply to claims grounded in law or in equity, in contract, tort or statute, "extra-contractual" or otherwise, whether past, present or future, known or unknown, direct or indirect, fixed or contingent.

19. SLP Trust acknowledges the risk that, subsequent to the execution of this Stipulation, it may discover, incur or suffer damages based upon claims which were unknown or unanticipated at the time this Stipulation was executed, including, without limitation, unknown or unanticipated claims which arose from, are based upon, or are related to fact and circumstances giving rise to the Bailey Claim which may have presented a possibility of coverage under the policy, and which, if known by SLP Trust on the date this Stipulation was executed may have materially affected its decision to execute this Stipulation. SLP Trust acknowledges it is assuming the risk of such unknown and unanticipated claims and agrees that this Stipulation applies to such unknown and unanticipated claims.

20. SLP Trust represents and warrants that as of the effective date hereof, it has not assigned or transferred, nor purported to assign or transfer, any claim or any portion thereof, as released in this Stipulation, nor any interest therein.

21. The Parties acknowledge that they have had the opportunity to seek, and have sought, the advice of their own attorneys in connection with the negotiation and execution of this

Stipulation, that they specifically discussed with chosen counsel the meaning and effect of this Stipulation, and that their own attorneys further participated in the drafting of this Stipulation. Accordingly, the Parties understand the scope and effect of each and every provision contained herein.

22. It is expressly understood and agreed that this Stipulation contains the entire agreement between the Parties hereto. It is expressly understood and agreed that there have been no promises, agreements, or inducements not expressed herein, and that this Agreement supersedes all prior negotiations and proposed agreements, written or oral. The Parties acknowledge that they have read this Stipulation and have executed it without relying upon any statements, representations or warranties, written or oral, not expressly set forth herein.

23. This Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, all of which together shall constitute but one and the same document. Facsimile signatures are acceptable.

24. This Stipulation, and any ambiguities or uncertainties herein, shall be equally and fairly interpreted and construed, without reference to the identity of the party drafting this document or any part of it, upon the express understanding and agreement that the Parties participated equally in the negotiation and preparation of this Stipulation, or have had equal opportunity to do so.

25. This Stipulation is governed by, and shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania. Notwithstanding any provision herein to the contrary, the parties agree that the Commonwealth Court of Pennsylvania has exclusive jurisdiction over SLP Trust's POC and the resolution of SLP Trust's POC, including approval of the Amended NOD and this Stipulated Settlement.

26. Each party executing this Stipulation warrants that it is competent and authorized to enter into the agreements set forth therein and that the appropriate representatives of his client have taken all necessary steps to approve and authorize this Stipulation.

27. This Stipulation shall be binding upon and inure to the benefit of each of the Parties and their respective assigns, successors-in-interest, and legal representatives.

28. No provision in this Stipulation may be waived, modified or amended except by written agreement executed by all Parties hereto.

29. The Parties, without further consideration, agree to take such other actions as may be necessary to consummate the subject matter hereof.

30. This Stipulation shall be effective upon execution by the last of the Parties.

31. 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.

32. 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 and specifically to "...comport, compromise or in any other manner negotiate the amount for which claims will be recommended to the court." See 40 P.S. §221.45(a)

33. The Pennsylvania Supreme Court has recognized that the General Assembly conferred broad discretion upon the Insurance Commissioner, in his capacity as a statutory liquidator, 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

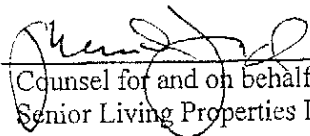
insolvent insurer's] assets or property, including the power to . . . compromise . . . any bad or doubtful debt.]" See 40 P.S. §221.23(6).

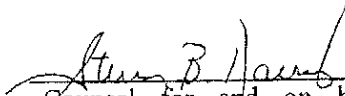
34. The Liquidator has determined that (1) this stipulated settlement is fair and reasonable and is in the best interest of the Estate of Reliance, its policyholders and other creditors and (2) the terms of the Stipulation are consistent with the provisions of the Act and the Court's Orders. The Liquidator further believes that the Stipulation will assist him 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 further litigating the SLP Trust Action.

WHEREFORE, the Liquidator and SLP Trust, through their respective counsel, respectfully request that the Referee approve this Stipulation, and that he favorably recommend to the Commonwealth Court that it (1) approve the terms of the Stipulated Settlement as set forth herein; and (2) authorize the Parties to perform the Stipulated Settlement.

BY: J. Michael Jordan
Gardere Wynne Sewell LLP
1000 Louisiana, Suite 3400
Houston, TX 77002-5007

BY: Steven Burgess Davis
Stradley Ronon Stevens & Young, LLP
2600 Commerce Square
Philadelphia, PA 19103-7098


Counsel for and on behalf of Claimant
Senior Living Properties LLC Trust


Counsel for and on behalf of the
Statutory Liquidator of Reliance
Insurance Company (In Liquidation)

REFEREE RECOMMENDATION

It is hereby recommended that the Court approve the foregoing Stipulation as being in the best interests of the Reliance Estate, the other policyholders and Estate creditors, and the parties to this dispute for the reasons set forth in the Stipulation. It is further recommended that the Court enter the Order attached as Exhibit "A" to the Stipulation.

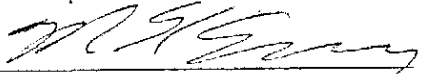

Mark K. Emery

EXHIBIT "A"

JOEL S. ARIO, Acting Insurance Commissioner
of the Commonwealth of Pennsylvania,

Plaintiff,

v.

RELIANCE INSURANCE COMPANY,

Defendant.

DOCKET NO. 269 MD 2001

OBJECTION OF Senior Living
Properties, LLC Relating to Proof of
Claim 2076849

ORDER

AND NOW, this ___ day of _____ 2008, upon consideration of the Stipulation of Counsel for Claimant Senior Living Properties, LLC, by its successor in interest, Senior Living Properties Trust, Dan Lain, Trustee and Joel S. Ario, In His Official Capacity As Statutory Liquidator of Reliance Insurance Company, In Support of Request for Approval of Settlement, and the Recommendation of Referee Mark Emery, Esquire that the Stipulation be approved by the Court, it is hereby ORDERED and DECREED that the Stipulation is APPROVED.

BY THE COURT

James Gardner Colins, Judge

Exhibit "C"

JOEL S. ARJO, Acting Insurance Commissioner
of the Commonwealth of Pennsylvania,

Plaintiff,

v.

RELIANCE INSURANCE COMPANY,

Defendant.

DOCKET NO. 269 MD 2001

OBJECTION OF Senior Living
Properties, LLC Relating to Proof of
Claim 2076849

PRAECIPE

TO THE PROTHONOTARY:

The undersigned counsel for Objector Senior Living Properties, LLC, by its successor in interest, Senior Living Properties LLC Trust, Dan Lain, Trustee here requests that the Objection of Senior Living Properties LLC Trust to Notice of Determination in Proof of Claim No. 2076849 that was filed with the Court on July 5, 2007 be withdrawn with prejudice in view of the issuance on this date of the Amended Notice of Determination issued by the Liquidator in place of the Notice of Determination as to which the Objection was filed.

J. Michael Jordan, Esquire
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Houston, TX 77002-5011