

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Joel S. Ario,	:	
Acting Insurance Commissioner of the	:	
Commonwealth of Pennsylvania,	:	
Plaintiff	:	
	:	
v.	:	
	:	
Reliance Insurance Company,	:	No. 269 M.D. 2001
Defendant	:	

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IN RE: Order Approving Referee O’Keefe’s Decision in POC No. 1549678

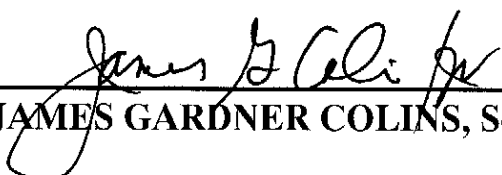
**ORDER**

**AND NOW**, this 28<sup>th</sup> day of April 2008, the Court has given consideration to the decision of Referee O’Keefe recommending approval of the parties agreement as follows:

1. Claimant shall withdraw his objection to the Liquidator’s NOD;
2. The Liquidator shall inactive the NOD pending the outcome of settlement discussions pending with Matar and the New York Liquidation Bureau, further, upon rendering of a final decision by the New York Liquidation Bureau, or earlier if both Matar and the Liquidator agree, an amended NOD shall be issued, and Mata shall be allowed 60 days from the date of service of the amended NOD in which to file an objection, if any. The Court does **ACCEPT** the decision of Referee O’Keefe attached hereto and marked as “Referee Decision Exhibit A.”

A copy of this Order shall be served by the Liquidator upon all listed on the Master Service List. Thereafter, an affidavit of service shall be filed with the Court.

By the Court:

  
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**JAMES GARDNER COLINS, Senior Judge**

# In The Commonwealth Court of Pennsylvania

JOEL S. ARIO, INSURANCE : DOCKET NO. 269 MD 2001  
COMMISSIONER OF THE COMMON- :  
WEALTH OF PENNSYLVANIA :  
Plaintiff :  
V. :  
RELIANCE INSURANCE COMPANY :  
Defendant : Proof of Claim No. 1549678

## REFEREE'S REPORT AND RECOMMENDATION

### PROCEDURAL HISTORY

This matter arises out of a claim by Rotem Madar ("Madar") a twelve year old boy, by his father and natural guardian, Itschak Madar against the Reliance Insurance Company, as a result of an automobile accident on July 2, 2001. On May 29, 2001, the Commonwealth Court placed Reliance into Rehabilitation, and into Liquidation on October 3, 2001. Madar initiated an action for personal injury on December 2, 2002. Madar timely filed a Proof of Claim. On October 26, 2007, the Liquidator filed a Notice of Determination denying Madar's claim.

Madar filed an Objection to the Notice of Determination on December 19, 2007 and the undersigned was selected as Referee.

### DISCUSSION

This claim arises out of an automobile accident occurring in New York on July 2, 2001. Claimant, 6 years old at the time, was a pedestrian at 51<sup>st</sup> Street and 13<sup>th</sup> Avenue in New York when he was struck by a vehicle insured by Reliance Insurance Company.

"Referee Decision Exhibit A"

Claimant was taken from the scene by ambulance and remained in the hospital for a week. Claimant avers substantial and continuing pain and impairment as a result of the accident.

After suit was initiated, Claimant was contacted by an agent of the Liquidation Bureau of the Insurance Department of the state of New York, who represented that the policy limits were \$25,000.00 and that they were tendering that amount. Based on that representation, Claimant agreed to settle the matter and an Infant's Compromise was entered by the Honorable Leon Ruchelsman, Justice of the Supreme Court, Kings County, New York. On August 25, 2005, pursuant to the agreement, \$25,000.00 was paid to Claimant.

On November 7, 2006, Claimant was advised, by the Superintendent of Insurance of the State of New York that the policy limits were not \$25,000.00 but \$250,000.00. Claimant filed a Proof of Claim for the policy limits, which was denied by the Liquidator as paid in full by a state guaranty association.

The parties have agreed to reopen Matar's claim for further review and evaluation. Claimant has agreed to withdraw his objection to the Notice of Determination without prejudice. The parties have further agreed that the Notice of Determination will be inactivated pending the outcome of the settlement discussions with the New York Liquidation Bureau and that once the New York Liquidation Bureau renders a final decision, that an Amended Notice of Determination will be issued and claimant shall have 60 days therefrom to object, if he chooses to do so.

**RECOMMENDATION**

Based on the foregoing, it is recommended that Matar should be permitted to withdraw his Objection to the Notice of Determination without prejudice and the Notice of Determination inactivated until resolution by the New York Liquidation Bureau. Thereafter an Amended Notice of Determination shall be issued by Plaintiff and Claimant shall have 60 days thereafter to file an objection if he so desires.

Notice is hereby given that any objections to this Report and Recommendation must be filed with the Commonwealth Court within thirty days of the date of this Report.

Respectfully submitted,

Date: April 24, 2008

  
\_\_\_\_\_  
J. Scott O'Keefe, Referee

# In The Commonwealth Court of Pennsylvania

M. DIANE KOKEN, INSURANCE : DOCKET NO. 269 MD 2001  
COMMISSIONER OF THE COMMON- :  
WEALTH OF PENNSYLVANIA :  
Plaintiff :  
V. :  
RELIANCE INSURANCE COMPANY :  
Defendant : Proof of Claim No. 701160

## CERTIFICATE OF SERVICE

J. Scott O'Keefe, Esquire hereby certifies that he caused to be mailed, by first class mail, a copy of the Report and Recommendation regarding Proof of Claim Number 701160 to the persons listed below, this 24<sup>th</sup> day of April, 2008.

Mark J. Elder, Esquire  
Gorayeb & Associates  
100 Williams Street, 12<sup>th</sup> Floor  
New York, NY 10038

Gail M. Burgess, Esquire  
Reliance Insurance Company  
Three Parkway  
Phila., PA 19102



J. Scott O'Keefe  
Referee