

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOEL S. ARIO,  
Insurance Commissioner of the  
Commonwealth of Pennsylvania,  
in his official capacity as Liquidator  
of Reliance Insurance Company,

Plaintiff,

v.

RELiance INSURANCE COMPANY,

Defendant.

No. 269 M.D. 2001

2009-11-15 PM 12:41  
CLERK OF COURT

*IN RE: Commutation, Settlement Agreement and Release between  
Reliance Insurance Company (In Liquidation) and  
XL Reinsurance America, Inc.*

**ORDER**

AND NOW, this \_\_\_ day of \_\_\_\_\_, 2009, the Court upon consideration of the  
Liquidator’s Petition for Leave to File Confidential Affidavit Under SEAL (“Petition for  
Leave”), orders that the Petition is **GRANTED**; further the Liquidator is permitted to file under  
seal the confidential affidavit marked as “Sealed Exhibit A” to the Petition for Leave and as  
“Sealed Exhibit B” to the Liquidator’s Petition For Approval Of Commutation, Settlement

Agreement And Release (“Commutation Petition”); and **FURTHER**, the Chief Clerk is directed to file the confidential affidavit marked as “Sealed Exhibit A” to the Petition for Leave and as “Sealed Exhibit B” to the Commutation Petition **UNDER SEAL**, and to maintain the document as **SEALED** as well as take all necessary and appropriate precautions to prevent the public disclosure of the confidential affidavit until further Order of this Court.

Further, counsel for the Liquidator is directed to serve a copy of this Order upon those listed on the Master Service List and file an affidavit that service has been effectuated with the Court.

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**BONNIE BRIGANCE LEADBETTER**  
**President Judge**

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOEL S. ARIO,  
Insurance Commissioner of the  
Commonwealth of Pennsylvania,  
in his official capacity as Liquidator  
of Reliance Insurance Company,

Plaintiff,

v.

RELIANCE INSURANCE COMPANY,

Defendant.

No. 269 M.D. 2001

2001 JUN 15 PM 12:42

**IN RE:** *Commutation, Settlement Agreement and Release between  
Reliance Insurance Company (In Liquidation) and  
XL Reinsurance America, Inc.*

**LIQUIDATOR'S PETITION FOR LEAVE TO  
FILE CONFIDENTIAL AFFIDAVIT UNDER SEAL**

Petitioner Joel S. Ario, Insurance Commissioner of the Commonwealth of Pennsylvania, in his capacity as Statutory Liquidator ("Liquidator") of Reliance Insurance Company ("Reliance" or "Estate"), respectfully requests that this Court grant the Liquidator leave to file the Confidential Affidavit of Keith Kaplan ("Confidential Affidavit") under seal (attached hereto as Sealed Exhibit A), and enter an Order directing the Chief Clerk of the Commonwealth Court to file the Confidential Affidavit under seal. The Confidential Affidavit is submitted in support of the Liquidator's Petition for Approval of Commutation, Settlement Agreement and Release ("Commutation Petition"). In support of this Petition, the Liquidator avers the following:

1. Simultaneously with this Petition, the Liquidator is filing the Commutation Petition which seeks an Order approving the Commutation, Settlement Agreement and Release (“Settlement Agreement”) between Reliance and XL Reinsurance America, Inc. This Petition is unrelated to the petition approved by this Court on July 2, 2009 regarding the commutation between Reliance and XL Reinsurance America, Inc., as successor in interest to NAC Reinsurance Corporation.

2. The Commutation Petition is supported in part by the Confidential Affidavit which is attached as Sealed Exhibit B to the Commutation Petition.

3. Preserving the confidentiality of the information contained in the Confidential Affidavit will serve important governmental interests, including maximizing the assets of the Estate, enhancing the efficiency and economy of liquidation, and facilitating the Liquidator’s efforts to “protect ... the interests of insureds, creditors and the public generally ...” 40 P.S. §221.1(c); see 40 P.S. §221.23.

4. The Confidential Affidavit contains sensitive information regarding the Liquidator’s reasons for entering into the Settlement Agreement and how the parties arrived at the final commutation amount. It would be highly prejudicial to the Liquidator, and the creditors and policyholders of Reliance, if details of the Liquidator’s strategies, business valuations, and rationale behind the Settlement Agreement were disclosed to the public and particularly to other reinsurers of Reliance.

5. The Liquidator has been and will be negotiating settlements or commutations with a number of Reliance’s reinsurers. If the analysis supporting the amounts the Liquidator is willing to accept from a particular reinsurer is made public, other reinsurers will be able to use that information in determining their own negotiating positions. This is likely to set a

ceiling on the amounts the Liquidator will be able to collect from other reinsurers, thereby hampering efforts to maximize the recovery of Estate assets. Settlement agreements between insurers, even outside of the liquidation process, often contain confidentiality provisions for this very reason.

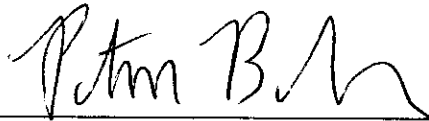
6. Consistent with the foregoing, if any Reliance policyholder or creditor (other than another reinsurer of Reliance, including affiliates) with a demonstrable and not adverse interest in the subject matter of the Settlement Agreement wishes to review the Confidential Affidavit, the Liquidator, subject to the Court's approval, will provide it to that person or entity upon their execution of a confidentiality agreement limiting the use of and prohibiting disclosure of the information contained therein. This represents the least restrictive means of accomplishing the necessary purpose of maintaining the confidentiality of these materials.

7. The Liquidator requests that, in resolving this Petition, the Court review the Confidential Affidavit in camera, grant the Petition, and direct the Chief Clerk to file the Confidential Affidavit under seal. Should the Court be inclined to deny the Petition, the Liquidator respectfully requests that the Court permit the Liquidator the opportunity to withdraw this Petition, the Commutation Petition and the Confidential Affidavit to avoid any prejudice which may befall the Liquidator, the Estate, and its creditors and policyholders from premature public disclosure of the information contained in the Confidential Affidavit.

WHEREFORE, the Liquidator respectfully requests that this Court enter an Order in the form attached hereto (1) granting the Liquidator leave to file the Confidential Affidavit of Keith

Kaplan under seal as Sealed Exhibit A to this Petition and as Sealed Exhibit B to the  
Commutation Petition, and (2) directing the Chief Clerk of the Commonwealth Court to file the  
Confidential Affidavit under seal as Sealed Exhibit A to this Petition and as Sealed Exhibit B to  
the Commutation Petition.

Respectfully submitted,



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PRESTON BUCKMAN (I.D. #57570)  
Special Funds Counsel  
Pennsylvania Insurance Department  
Capitol Associates Building  
Office of Chief Counsel  
901 North 7<sup>th</sup> Street  
Harrisburg, PA 17102  
(717) 787-6009

Attorney for Plaintiff, Joel S. Ario, Insurance  
Commissioner of the Commonwealth of  
Pennsylvania, in his official capacity as Liquidator  
of Reliance Insurance Company

Dated: July 16, 2009

VERIFICATION

I, David S. Brietling, Chief Liquidation Officer for Reliance Insurance Company, in liquidation, am authorized by Joel S. Ario, Insurance Commissioner of the Commonwealth of Pennsylvania, pursuant to 40 P.S. §221.23, to act on his behalf in his capacity as the Statutory Liquidator of Reliance Insurance Company. I hereby verify that the facts set forth in the foregoing pleading are true and correct to the best of my knowledge, information and belief.

I understand that this Verification is made subject to the penalties of 18 P.S. §4904 relating to unsworn falsification to authorities.

Executed on July 16, 2009

  
\_\_\_\_\_  
DAVID S. BRIETLING

**CERTIFICATE OF SERVICE**

I, Marilyn K. Kincaid, hereby certify that on or about this day, pursuant to the Court's Order of December 12, 2008, service of the foregoing was made on the attached Master Service List through the transmission of a Notice of Filing and through posting of a true and correct copy in PDF file format on the Reliance Documents website at [www.reliancedocuments.com](http://www.reliancedocuments.com).

Dated: July 16, 2009

  
\_\_\_\_\_  
MARILYN K. KINCAID

## Master Service List

Joel S. Ario, Insurance Commissioner of the Commonwealth of Pennsylvania

v.

Reliance Insurance Company

No. 269 M.D. 2001 (Commonwealth Court of Pennsylvania)

Preston M. Buckman, Esquire, (717) 787-6009  
Department Counsel for Insurance  
Governor's Office of General Counsel  
Commonwealth of Pennsylvania  
Insurance Department  
Office of the Chief Counsel  
Capitol Associates Building  
901 North 7<sup>th</sup> Street  
Harrisburg, PA 17102  
Phone: (717) 787-6009  
Fax: (717) 772 4543  
E-mail: [pbuckman@state.pa.us](mailto:pbuckman@state.pa.us)  
(Attorneys for the Pennsylvania  
Insurance Department)

Marilyn K. Kincaid, Esquire, (215) 864-4205  
Reliance Insurance Company  
(in Liquidation)  
Three Parkway  
5<sup>th</sup> Floor  
Philadelphia, PA 19102  
Phone: (215) 864-4205  
Fax: (215) 864-4105  
E-mail: [marilyn.kincaid@relianceinsurance.com](mailto:marilyn.kincaid@relianceinsurance.com)  
(Attorney for Reliance Insurance  
Company (in Liquidation))

Richard F. McMenamin, Esquire, (215) 963-5751  
David L. Harbaugh, Esquire  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Phone: (215) 963-5751  
Fax: (215) 963-5001  
E-mail: [धारबाugh@morganlewis.com](mailto:धारबाugh@morganlewis.com)  
[rmcmenamini@morganlewis.com](mailto:rmcmenamini@morganlewis.com)  
(Attorneys for Fuji Bank)

Richard F. McMenamin, Esquire, (215) 963-5596  
Erica Smith Klocek, Esquire  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Phone: (215) 963-5596  
Fax: (215) 963-5001  
E-mail: [esklocek@morganlewis.com](mailto:esklocek@morganlewis.com)  
[rmcmenamini@morganlewis.com](mailto:rmcmenamini@morganlewis.com)  
(Attorneys for Milliken & Company)

Richard F. McMenamin, Esquire, (215) 963-5596  
Marc A. Shapp, Esquire  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Phone: (215) 963-5596  
Fax: (215) 963-5001  
E-mail: [mshapp@morganlewis.com](mailto:mshapp@morganlewis.com)  
[rmcmenamini@morganlewis.com](mailto:rmcmenamini@morganlewis.com)  
(Attorneys for The Bank of New York Mellon  
(Formerly Mellon Bank, N.A.))

P. Kevin Brobson, Esquire, (717) 237-4845  
Buchanan Ingersoll  
One South Market Square  
213 Market Street, 3<sup>rd</sup> Floor  
Harrisburg, PA 17101  
Phone: (717) 237-4845  
Fax: (717) 233-0852  
E-mail: [Kevin.brobson@bipc.com](mailto:Kevin.brobson@bipc.com)  
(Attorneys for Federal Insurance Company)

Rowe W. Snider, Esquire, (312) 443-0700  
Steven T. Whitmer, Esquire  
Julie L. Young, Esquire  
Locke Lord Bissell & Liddell LLP  
111 S. Wacker Drive  
Chicago, Illinois 60606  
Phone: (312) 443-0700  
Fax: (312) 443-0336  
E-mail: [rsnider@lockelord.com](mailto:rsnider@lockelord.com)  
[swhitmer@lockelord.com](mailto:swhitmer@lockelord.com)  
[jyoung@lockelord.com](mailto:jyoung@lockelord.com)  
(Attorneys for Illinois Insurance Guaranty Fund)

Daryn E. Rush, Esquire, (215) 446-6220  
Gibbons PC  
1700 Two Logan Square  
18<sup>th</sup> & Arch Streets  
Philadelphia, PA 19103-2769  
Phone: (215) 446-6220  
Fax: (215) 446-6336  
E-mail: [drush@gibbonslaw.com](mailto:drush@gibbonslaw.com)  
(Attorney for Baptist Health South Florida, Inc.,  
Palm Springs General Hospital, and Travelers  
Casualty and Surety Co.)

Amy Daubert, (717) 787-2567  
Chief Counsel  
Pennsylvania Insurance Department  
Office of Chief Counsel  
1341 Strawberry Square  
Harrisburg, PA 17120  
Phone: (717) 787-2567  
Fax: (717) 772-1969  
E-mail: [adaubert@state.pa.us](mailto:adaubert@state.pa.us)  
(Counsel for Joel S. Ario,  
Insurance Commissioner of the Commonwealth of  
Pennsylvania)

Timothy P. Law, (215) 851-8100  
Matthew D. Rosso  
Toki Rehder  
Reed Smith LLP  
2500 One Liberty Place  
1650 Market Street  
Philadelphia, PA 19103  
Phone: (215) 851-8100  
Fax: (215) 851-1420  
E-mail: [tlaw@reedsmith.com](mailto:tlaw@reedsmith.com)  
[mrosso@reedsmith.com](mailto:mrosso@reedsmith.com)  
[trehder@reedsmith.com](mailto:trehder@reedsmith.com)  
(Counsel for Unisys Corporation and Tribune  
Company, Lincoln National Corporation, Warrantech  
et. al)

Samuel M. Danskin, (714) 918-7000  
Green & Hall, APC  
1851 E. First Street  
10<sup>th</sup> Floor  
Santa Ana, CA 92705  
Phone: (714) 918-7000  
Fax: (714) 918-6996  
E-mail: [sdanskin@greenhall.com](mailto:sdanskin@greenhall.com)  
(Counsel for Brian and Sarah Chisick)

Henry M. Sneath, (412) 288-4000  
Bridget M. Gillespie, (412) 288-4017  
Picadio Sneath Miller & Norton, P.C.  
4710 US Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219-2702  
Phone: (412) 288-4000  
(412) 288-4017  
Fax: (412) 288-2405  
E-mail: [hsneath@psmn.com](mailto:hsneath@psmn.com)  
[bgillespie@psmn.com](mailto:bgillespie@psmn.com)  
(Counsel for Washington Mutual Bank ("WAMU"),  
as successor to Hawthorne Financial Corp. and  
Hawthorne Saving, F.S.B.)

Stephen A. Loney, Jr., (267) 675-4600  
Hogan & Hartson LLP  
1835 Market Street  
29<sup>th</sup> Floor  
Philadelphia, PA 19103  
Phone: (267) 675-4600  
Fax: 267-675-4601  
e-mail: [saloney@hhlaw.com](mailto:saloney@hhlaw.com)  
(Counsel for Genworth Life Insurance Company and  
Genworth Life and Annuity Insurance Company  
(formerly General Electric Capital Assurance  
Company, First Colony Life Insurance Life Insurance  
Company, Federal Home Life Insurance Company,  
and GE Life and Annuity Assurance Company) and  
National Structured Settlements Trade Association)

Frank P. DeGiulio, (215) 625-9900  
Charles P. Neely  
Palmer Biezup & Henderson LLP  
956 Public Ledger Building  
620 Chestnut Street  
Philadelphia, PA 19106-3409  
Phone: (215) 625-9900  
Fax: (215) 625-0185  
e-mail: [fpd@pbh.com](mailto:fpd@pbh.com)  
[cneely@pbh.com](mailto:cneely@pbh.com)  
(Counsel for Republic Western Insurance Company)

# Exhibit A

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Joel Ario  
Acting Insurance Commissioner of the  
Commonwealth of Pennsylvania,

Plaintiff,

v.

RELIANCE INSURANCE COMPANY,

Defendant.

DOCKET NO. 269 MD 2001

IN RE: Commutation, Settlement Agreement and Release between  
Reliance Insurance Company (In Liquidation) and  
XL Reinsurance America, Inc.

SEALED EXHIBIT A TO THE PETITION  
TO FILE CONFIDENTIAL AFFIDAVIT UNDER SEAL

THIS ENVELOPE IS SEALED AND CONTAINS INFORMATION DESIGNATED  
CONFIDENTIAL IN THIS CASE. IT IS NOT TO BE OPENED OR THE CONTENTS  
THEREOF TO BE DISPLAYED OR REVEALED EXCEPT BY OR UPON ORDER OF  
THE COURT OR PURSUANT TO STIPULATION OF BOTH PARTIES TO THIS ACTION.