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COMMONWEALTH COURT
OF PA (PHILA)

2011 OCT 27 P 2:29

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE:

Reliance Insurance Company
In Liquidation

NO. 1 REL 2001

RE: LIQUIDATOR'S PETITION TO SUPPLEMENT
THE SECOND AGGREGATE ORDER

ORDER

AND NOW, THIS _____ day of _____, 2011, upon consideration of the Liquidator's Petition to Supplement the Court's February 23, 2010 Second Aggregate Order filed by Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania, in his official capacity as Statutory Liquidator ("Liquidator") of Reliance Insurance Company ("Reliance"), it is hereby ORDERED and DECREED that:

1. A decrease in the 40% Second Safety

Factor Percentage is approved and the new Third Safety Factor Percentage of 30% is approved for any future distributions on Aggregate NODs;

2. Claimants under Aggregate Policies who received a 30% distribution payment subject to the 40% Second Safety Factor Percentage will receive another distribution payment to compensate them for the reduction in the Safety Factor Percentage and any future distribution payments made to them thereafter will be subject to the Third Safety Factor Percentage; and

3. The calculation methodology approved in the First Aggregate Order of November 19, 2007, as amended by the Third Safety Factor Percentage will continue to be applied to any distribution on claims under Aggregate Policies.

Further, the Liquidator shall notify the Master Service List, the Objector's List, and all those listed on the Liquidator's Certificate of Service of this Order and shall file an affidavit with this Court affirming that service was so effected.

BY THE COURT:

BONNIE BRIGANCE LEADBETTER,
President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE:

**Reliance Insurance Company
In Liquidation**

NO. 1 REL 2001

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**LIQUIDATOR'S PETITION TO SUPPLEMENT
THE COURT'S FEBRUARY 23, 2010 SECOND AGGREGATE ORDER**

Petitioner, Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania, in his official capacity as Statutory Liquidator ("Liquidator") of Reliance Insurance Company ("Reliance or Estate"), petitions the Court for an Order to supplement the February 23, 2010 Order issued by this Court. In support of the Liquidator's Petition to Supplement the Court's February 23, 2010 Second Aggregate Order ("Third Aggregate Petition"), the Liquidator avers as follows:

Background Regarding the Liquidation of Reliance

1. On May 29, 2001, this Court entered a Rehabilitation Order with respect to Reliance pursuant to Article V of the Pennsylvania Insurance Department Act, 40 P.S. §§221.1 – 221.63 ("Act") and appointed the Pennsylvania Insurance Commissioner as Rehabilitator.
2. This Court subsequently terminated the rehabilitation of Reliance and, by Order dated October 3, 2001, declared Reliance to be insolvent; issued a Liquidation Order pursuant to 40 P.S. §§221.18 and 221.20; appointed the Pennsylvania Insurance Commissioner as Liquidator of Reliance; ordered the Liquidator to take possession of all Reliance property; and authorized the Liquidator to liquidate the business and affairs of Reliance.
3. The Liquidator is statutorily charged with the duties of identifying, marshaling and liquidating assets of the Estate; processing and evaluating claims to determine the liabilities

of the Estate; and distributing assets to the Claimants¹ of the Estate in accordance with the mandates set forth in the Act.

4. The Liquidator's Petition to Supplement the Court's September 9, 2002 Claims Procedures Order, filed on June 22, 2006, asked this Court for an Order requiring Claimants who had not yet received Notices of Determination ("NODs") to submit complete information about their Proofs of Claim ("POCs") within specific time frames and authorizing the Liquidator to subordinate to class (g) priority any POCs for which the required information was not provided timely. On May 1, 2007 and November 27, 2007, this Court issued two Orders ("Claims Information Orders") requiring Claimants to submit complete information regarding their POCs within specific time frames as requested by the Liquidator, and ultimately requiring the Liquidator to subordinate to class (g) priority any POC for which the information was not provided. The information submitted pursuant to those Claims Information Orders allowed the Liquidator to address several thousand pending POCs and to establish updated case reserves for individual claims. As of June 30, 2011, the Liquidator has now addressed more than 96% of the 160,102 POCs filed with Reliance.

5. On July 27, 2007, the Liquidator filed a Petition to Supplement the Court's December 9, 2002 Claims Procedures Order to Address Claims Under Aggregate Policies ("First Aggregate Petition") and this Court approved the First Aggregate Petition by its Order dated November 19, 2007 ("First Aggregate Order"). The First Aggregate Order approved the methodology outlined in the First Aggregate Petition for calculating any distribution to

¹ In this Petition, "Claimants" will be used to refer to policyholders, insureds, third party claimants and other creditors, collectively.

Claimants with POCs under Aggregate Policies² and approved a percentage to be applied in any distribution to Aggregate NODs to hold back a portion of the Aggregate Limits for any future claims development (“Safety Factor Percentage”).

6. On December 29, 2009, the Liquidator filed his Petition to Supplement the Court’s November 29, 2007 First Aggregate Order (“Second Aggregate Petition”) which decreased the Safety Factor Percentage from 60% to 40%. The decrease in the Safety Factor Percentage was approved by this Court on February 23, 2010 (“Second Aggregate Order”).

7. The Liquidator files quarterly status reports with the Commonwealth Court which provide detailed information regarding, among other things, the financial condition of Reliance and the claims process (“Quarterly Reports”). These Quarterly Reports are available on the Reliance Documents website at www.reliancedocuments.com.

8. Subject to the caveats regarding financial information in the Quarterly Reports and in the Notes to the Special Purpose Financial Statements attached as an exhibit to the Quarterly Reports, total estimated assets for Reliance as of June 30, 2011 were \$5.4 billion. Total estimated liabilities were \$8.9 billion, leaving an estimated net deficit of \$3.5 billion. The liquid investment portfolio, as of June 30, 2011, totaled \$2.2 billion which will provide sufficient cash for a reduction in the Safety Factor Percentage as proposed in this Petition.

9. In conjunction with this petition, the Liquidator is filing a petition for approval of an increase in the distribution percentage. The Liquidator has determined that the Petition for Third Interim Distribution will not adversely affect this recommendation for a reduction in the Safety Factor Percentage. The Liquidator believes that, based on current financial information,

² Many Reliance liability policies have an aggregate limit (“Aggregate Policies”). An “Aggregate Limit” is a provision in a policy that limits the maximum liability of an insurer under that policy. For example, if during the

both the increased distribution percentage and the decreased Safety Factor Percentage are achievable. As of March 31, 2011, \$200.7 million has been distributed to class (b) Claimants for approximately 5300 NODs; the total aggregate safety factor as applied to the distribution calculation was \$32.4 million.

First Safety Factor Percentage

10. The First Aggregate Order authorized the Liquidator to continue issuing NODs ("Aggregate NODs") to Claimants with claims under Aggregate Policies ("Aggregate POCs") advising the Claimants that any allowed amount stated in their Aggregate NOD is subject to 40 P.S. §221.40(d) which provides, in part, that:

(d) In the event several claims founded upon one policy are filed, whether by third parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, then each claim as allowed shall be reduced a proportionate amount so that the total equals the policy limit. . . .

This statutory provision does not allow any individual exceptions or exclusions as recognized by this Court which held that:

The degree of probability that additional claimants will seek recovery under the policy is not an inquiry that is permitted under either the statute or the Court's orders, which establish the Safety Factor Percentage and the manner of calculation in applying it to claims.

See In Re: Reliance Insurance Company In Liquidation No. 1 REL 2001 (Basketball Properties, Ltd. v Reliance Insurance Company In Liquidation; Proof of Claim No. 2164693 1 REL 2008 (Comm. Ct. Pa. 2011)). The relevant Order is attached hereto as Exhibit A.

policy term, there are losses totaling \$5,000,000 from several occurrences, but there is a policy aggregate limit of \$3,000,000, the insurer would not be liable for more than \$3,000,000 for that policy period.

11. The First Aggregate Order approved a 60% Safety Factor Percentage ("First Safety Factor Percentage") which would provide a safety margin for any future developments with pending Aggregate POC's and any late filed Aggregate POC's with good cause, as well as any development on claims handled by GAs under Aggregate Policies. The selection of the First Safety Factor Percentage was based on several factors, primarily:

a. a review of the distribution scenarios for Aggregate NODs under various Safety Factor Percentages;

b. the extent to which the Aggregate Limits had been eroded for all Aggregate Policies including related allowed amounts for Aggregate NODs;

c. the number of pending Aggregate POCs that reflect contingent claims or for which insufficient information has been provided;

d. the type and number of Aggregate POCs that are still being filed even after the claim filing deadline of December 31, 2003; and

e. the number of claims under Aggregate Policies which are being handled by insureds and for which the Liquidator may have limited information.

12. The First Aggregate Order also required the Liquidator to consider, for future distributions, whether the First Safety Factor Percentage should be adjusted. The Liquidator considered and recommended an adjustment of the Safety Factor Percentage through the filing of the Second Aggregate Petition at the time the Second Interim Distribution Petition was filed on December 29, 2009. The Second Aggregate Order decreased the First Safety Factor Percentage from 60% to 40% ("Second Safety Factor Percentage"). The reduction of the First Safety Factor was based on the original factors noted above as well as a number of additional considerations, primarily:

a. A reserve review and certification process conducted by the Reliance Claims Department during 2007 and 2008, with information obtained through the Claims Information Orders, resulted in updated case reserves for the Aggregate POCs which more accurately reflect ultimate exposures for these claims. Significant claims are now recertified on a regular basis.

b. The information provided by Claimants in response to the Claims Information Orders allowed the Reliance Claims Department to address many Aggregate POCs resulting in a substantial reduction in the number of open Aggregate POCs;

c. An independent actuarial review conducted as of September 30, 2008 by PricewaterhouseCoopers LLP ("PwC") indicated a small reduction in the overall expected ultimate liabilities and did not reveal new areas of significant concern;

d. The Pennsylvania Supreme Court confirmed the Liquidator's determination of priority classification for subrogation claims as class (g); and

e. An updated analysis of the extent to which the Aggregate Limits had been eroded for all Aggregate Policies, including related allowed amounts for Aggregate NODs, was reviewed. The analysis indicated some additional erosion of available coverage within the Aggregate Limits, but not an unexpected result.

Reduction of the Second Safety Factor Percentage

13. In connection with the analysis undertaken to recommend an increase in the interim distribution percentage to this Court, the Liquidator has once again considered whether an adjustment of the Safety Factor Percentage is appropriate and justified. The factors included in the above paragraphs were reviewed, along with subsequent actual claims experience and

current outstanding reserves, to determine whether the Second Safety Factor Percentage should be adjusted.

14. At this time, based on the previous factors as well as the following additional factors, the Liquidator is recommending a reduction in the 40% Second Safety Factor Percentage to 30% ("Third Safety Factor Percentage"):

a. The Reliance Claims Department has continued the reserve review and certification process, reflecting additional information obtained from insureds and claimants as required by the Claims Information Orders in the two years since the Second Aggregate Petition. Additionally, the Guaranty Associations ("GAs") have continued to resolve claims during that time. For example, the total number of open claims being handled by the GAs as of June 30, 2009 was 10,220 which decreased by 32% to 6,950 as of June 30, 2011.

b. Similarly, there has been a continuing reduction in the number of POCs which have not been resolved. The number of open POCs as of June 30, 2009 was 10,359 which decreased by 53% to 4,871 as of June 30, 2011.

c. An updated analysis of the extent to which the Aggregate Limits had been eroded for all Aggregate Policies, including related allowed amounts for Aggregate NODs was reviewed, indicated that there was some additional erosion of available coverage within the aggregate Limits, but not an unexpected result.

15. Despite the factors outlined above, there is still a risk that unanticipated development on Aggregate Policies will occur, and even despite the 30% Third Safety Factor Percentage, excess distributions could occur on particular Aggregate NODs which the Liquidator would not be able to recover. New Aggregate POCs will continue to be received, despite the

claims filing deadline; new information will continue to be received on pending Aggregate POCs; and unexpected developments could occur regarding the priority classification of Aggregate POCs. In addition, the GAs will continue to handle certain claims under Aggregate Policies and subsequent adverse development is possible for those claims. However, the Liquidator believes that the proposed reduction in the Safety Factor Percentage achieves a reasonable balance between the “expeditious completion of the liquidation and the protection of unliquidated and undetermined claims” set forth in 40 P.S. §221.46.

16. If this Court approves the Third Safety Factor Percentage, Claimants under Aggregate Policies who received 30% distribution payments subject to the 40% Second Safety Factor Percentage will receive another distribution payment to compensate them for the reduction in the Safety Factor Percentage. This will result in a further distribution of approximately \$13 million to those Claimants as of September 30, 2011. Claimants under Aggregate Policies who receive their first distribution payments after any Order approving the Third Safety Factor Percentage will receive a distribution based on the Third Safety Factor Percentage.

17. The distribution amounts for Aggregate NODs will continue to be calculated according to the methodology approved by the First Aggregate Order, except for the change in the Safety Factor Percentage, as demonstrated in Exhibit B³ to this Petition.

WHEREFORE, the Liquidator respectfully requests that this Court grant this Petition and Order as follows:

³ Exhibit B has been prepared using a 40% interim distribution percentage which is only recommended at this time and has not yet been approved by this Court.

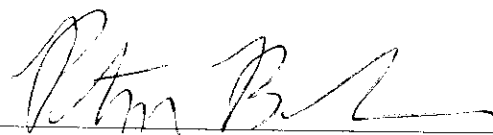
a) A decrease in the 40% Second Safety Factor Percentage is approved and the new Third Safety Factor Percentage of 30% is approved for any future distributions on Aggregate NODs;

b) Claimants under Aggregate Policies who received 30% distribution payments subject to the 40% Second Safety Factor Percentage will receive another distribution payment to compensate them for the reduction in the Safety Factor Percentage. Any future distribution payments to them thereafter will be subject to the Third Safety Factor Percentage;

c) The calculation methodology approved in the First Aggregate Order, as amended by the Third Safety Factor Percentage, will continue to be applied to all distributions on claims under Aggregate Policies.

Respectfully submitted:

By:



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Attorney for Michael F. Consedine,
Insurance Commissioner of the
Commonwealth of Pennsylvania, in his
official capacity as Liquidator of
Reliance Insurance Company


Dated: October 27, 2011

VERIFICATION

I, David S. Brietling, am authorized by the Insurance Commissioner of the Commonwealth of Pennsylvania, pursuant to 40 P.S. §221.23, to act on his behalf in his capacity as the Liquidator of Reliance Insurance Company and to supervise the daily operations as Chief Liquidation Officer for 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.

Date: October 27, 2011



David S. Brietling
Chief Liquidation Officer

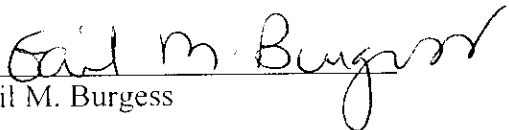
CERTIFICATE OF SERVICE

I, Gail M. Burgess, hereby certify that on or about this day, pursuant to the Court's Order of December 12, 2008, service of the foregoing Petition was provided 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 (www.reliancedocuments.com) to:

The attached Master Service List

The attached Claim Objector List

Dated: 10/27, 2011


Gail M. Burgess

Master Service List

IN RE: Reliance Insurance Company In Liquidation
No. 1 REL 2001 (Commonwealth Court of Pennsylvania)

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EXHIBIT A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Basketball Properties, Ltd.,	:	
Objector	:	Motion to Compel Partial Distribution
	:	
v.	:	Re: Proof of Claim No. 2164693
	:	
	:	No. 1 REL 2008
	:	
Reliance Insurance Company	:	
In Liquidation	:	
Respondent	:	
(Ancillary matter to In Re: Reliance Insurance Company In Liquidation No. 1 REL 2001)	:	

In the Matter of Arquitectonica International, Inc. – Basketball Properties, Ltd.; Proof of Claim No. 2164693

ORDER

AND NOW, this 6th day of July, 2011, upon consideration of the Motion to Compel the Liquidator to Issue Payment of partial distribution without reduction for the Safety Factor applicable to policies with aggregate limits and the

Proof of Claim No. 2164693
FILED
RECEIVED

Liquidator's Response thereto, it is hereby ORDERED that the Motion is DENIED.¹

Bonnie B. Leadbetter

**BONNIE BRIGANCE LEADBETTER,
President Judge**

¹ There is no dispute that the claim arises under a policy with aggregate limits. The Safety Percentage Factor has been established by this Court's Orders of November 19, 2007 and February 23, 2010, so that the Liquidator may make interim distributions to claimants under policies with aggregate limits without violating the statutory mandate at Section 540 of the Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789 added by the Act of December 14, 1977, P.L. 280, 40 P.S. § 220.40. Section 540(d), in pertinent part, provides:

In the event several claims founded upon one policy are filed, whether by third parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, then each claim as allowed shall be reduced a proportionate amount so that the total equals the policy limit.

40 P.S. § 220.40(d).

Claimant cannot avoid application of this provision on the grounds that no other claimants have, as yet, submitted Proofs of Claim. The degree of probability that additional claimants will seek recovery under the policy is not an inquiry that is permitted under either the statute or the Court's orders, which establish the Safety Factor Percentage and the manner of calculation in applying it to claims. The Liquidator's calculation in ascertaining the amount payable to the present Claimant shows no error. The Liquidator has appropriately applied an offset to the second distribution in order to adjust an overpayment in the first distribution. Litigation to resolve Objections to the Notice of Determination on the present Claim is proceeding in phases, as agreed to by the parties. Therefore, the first portion of the Claim was finally valued and became subject to interim distribution while the second portion was still in litigation. When distribution was made on the first portion of the claim, the Safety Factor calculation resulted in a payment to Claimant without a hold back of any safety factor amount. However, when the second portion of the claim became subject to interim distribution, the Liquidator appropriately applied the calculation to the full amount of distribution thus far (first and second portions of the claim) and adjusted appropriately.

Certified from the Record

JUL 07 2011

And Order Ent

EXHIBIT B

EXAMPLES OF DISTRIBUTIONS ON NODS UNDER AGGREGATE POLICIES

	POLICY A NOD Allowed Amounts Erode Aggregate 100%	POLICY B Total Incurred Amounts Erode Aggregate <u>Below</u> Aggregate Allocation Amount	POLICY C Total Incurred Amounts Erode Aggregate <u>Above</u> Aggregate Allocation Amount
<p>The aggregate limits originally available under the policy are first reduced by the dollar amount of claims paid prior to liquidation to determine the Aggregate Amount Remaining for post liquidation claims. The Safety Factor Percentage of 30% is then applied to the Aggregate Amount Remaining to determine the Safety Factor Amount to be held back from the distribution. This reserved amount provides a safeguard for the development of known and unknown claims against the Estate for each policy.</p>			
a. Aggregate amount per policy term	\$10,000,000	\$3,000,000	\$10,000,000
b. Claims paid by Reliance prior to liquidation	NONE	\$350,000	\$5,900,000
c. Aggregate Amount Remaining for post liquidation claims (a – b)	\$10,000,000	\$2,650,000	\$4,100,000
d. Safety Factor Percentage	30%	30%	30%
e. Safety Factor Amount (c x d)	\$3,000,000	\$795,000	\$1,230,000
f. Aggregate Allocation Amount (c – e)	\$7,000,000	\$1,855,000	\$2,870,000
<p>The following section shows all Post Liquidation Amounts incurred under the policy: claims that have been paid by the GAs; all outstanding reserves on the books of Reliance which includes pending GA claims and POCs not yet evaluated; and total NOD allowed amounts, whether or not approved by the Court.</p>			
g. Claims paid by GAs post liquidation	NONE	NONE	\$90,000
h. Outstanding reserve which includes pending GA claims, pending POCs and all outstanding reserves	NONE	\$75,000	\$54,000
i. Total NOD allowed amounts	\$10,000,000	\$425,000	\$4,750,000
j. Post Liquidation Amounts (g + h + i)	\$10,000,000	\$500,000	\$4,894,000
<p>The Aggregate Allocation Amount is then divided by the Post Liquidation Amounts to determine the Aggregate Pro Rata Percentage for each policy to be applied to each Aggregate NOD under that policy. Application of the Aggregate Pro Rata Percentage effectively holds back 30% of the Aggregate Amount Remaining for Unevaluated POCs and creates a Revised Allowed Amount for each Aggregate NOD.</p>			
k. Aggregate Pro Rata Percentage to be applied to each court approved NOD allowed amount under policy (f ÷ j)	70%	result is greater than 100%, so 100% is applied	58.64%
l. NOD allowed amounts	\$10,000,000	\$425,000	\$4,750,000
m. Revised Allowed Amounts (l x k)	\$7,000,000	\$425,000	\$2,785,554
<p>Then the overall distribution percentage, subject to approval by the Court, is applied to the class b NOD Revised Amount to result in the Distribution Amount for each Aggregate NOD. The Distribution Amount for each Aggregate NOD divided by the total Aggregate NOD allowed amounts under that policy will show the actual distribution percentage for each Aggregate NOD under each aggregate policy.</p>			
n. Overall distribution percentage approved by Court	40%	40%	40%
o. Distribution Amount (m x n)	\$2,800,000	\$170,000	\$1,114,221
p. Actual distribution percentage for Court approved NODs under specific aggregate policies, applying Safety Factor Percentage and depending on aggregate erosion (o ÷ l)	28%	40%	23.46%