

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE:

Reliance Insurance Company
In Liquidation

NO. 1 REL 2001

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

Claimant JDN Realty Corporation ("JDN"), hereby answers and responds to the Liquidator's Petition to Supplement the Court's February 23, 2010 Second Aggregate Order. JDN objects to the continued application of the Safety Factor Percentage to JDN's approved claim and those similarly situated.

Introduction

JDN requests that the Liquidator's Petition to continue to apply the Safety Factor Percentage be denied, at least as to claims under Aggregate Policies (i) where there are no outstanding claims or POCs, (ii) where all claims have been resolved or settled amounts known, (iii) where all relevant policies are "claims made" so that any unknown claims would be precluded and (iv) where there is no reasonable possibility of any valid or covered claims being presented in the future. JDN's request is identical to the Liquidator's position in the Legion insolvency proceedings. In Footnote 5 to the Liquidator's Petition for First Interim Distribution in the Legion insolvency proceedings, which is attached hereto as Exhibit A, the Liquidator stated: "Legion is not including in the Aggregate NODs those NODs under Aggregate Policies where there are no outstanding claims or POCs, all claims have been resolved or settled amounts known, all relevant policies are 'claims made' so that any unknown claims would be precluded and there is no reasonable possibility of any valid or covered claims being presented in the

future.” This request made sense because in that situation there is no realistic possibility, let alone probability, of future losses causing aggregate limits to be exceeded.

JDN discussed the Legion Petition with counsel for the Liquidator before filing this Answer, in the hope that the Liquidator would adopt the same common-sense position here that the Liquidator was advocating in Legion. Instead, the Liquidator decided to back-track in the Legion liquidation proceedings, stating its intention to withdraw its Petition in the Legion proceedings. The “equitable purpose of rehabilitation and liquidation is to protect *first of all* consumers of insurance.” See Grode v. Mutual Fire, Marine & Inland Ins. Co., 132 Pa. Commw. 196, 203 n.5, 572 A.2d 798, 801 n.5 (1990), aff’d in part, remanded in part sub nom. Foster v. Mutual Fire, Marine & Inland Ins. Co., 531 Pa. 598, 614 A.2d 1086 (1992). The Liquidation statute itself says that the “purpose of this article is the protection of the interests of insureds, creditors, and the public generally. . . .” See 40 P.S. § 221.1(c). Like other consumers of insurance, JDN “relies in the first place on the industry itself and then on its regulators for protection.” Grode, 132 Pa. Commw. at 215, 572 A.2d at 807. There is no reasonable basis to apply the aggregate-limits holdback where there are no outstanding claims or POCs, all claims have been resolved or settled amounts known, all relevant policies are “claims made” so that any unknown claims would be precluded and there is no reasonable possibility of any valid or covered claims being presented in the future. The Legion filing demonstrates that the Liquidator understands this, yet refuses to act accordingly.

Furthermore, the continued application of the Safety Factor Percentage is inconsistent with the statutory scheme in Pennsylvania and is not appropriately tailored to protect against any genuine risk of excess interim distributions on allowed amounts. In its Petition, the Liquidator has not justified the need for a 30% Safety Factor Percentage. New claims are minimal.

Outstanding POC's have been reduced substantially. The Liquidator has not disclosed how many, if any, open POC's relate to the Aggregate Policies where holdbacks are being implemented. In accordance with 40 P.S. 221.41(c) and 40 P.S. § 221.40(d), any holdback of interim distributions owed to priority (b) claimants must be based on probable losses that exceed the available aggregate limits in particular policies. JDN requests that the Aggregate Order be modified accordingly.

Answer

In response to the paragraphs of the Liquidator's Petition, JDN states as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. The Liquidator's Petition to Supplement the Court's September 9, 2002 Claims Procedures Order, filed on June 22, 2006, speaks for itself and any characterization of that filing is denied.
5. The Liquidator's Petition to Supplement the Court's December 9, 2002 Claims Procedure Order to Address Claims Under Aggregate Policies ("First Aggregate Petition"), filed on July 27, 2007, and this Court's Order of November 19, 2007, approving the First Aggregate Petition, speak for themselves. Any characterization of that Petition and the Court's Order is denied. According to the Introduction to the Liquidator's First Aggregate Petition, at page 2, the problem sought to be remedied by the Liquidator was the "risk of excess distributions for the pro

rata allowed amounts on any particular claim if additional claims are submitted under that policy or if there are adverse developments in existing claims under the policy.”

6. Admitted.

7. Admitted.

8. Admitted. By way of further response, it should be noted that more than \$1.2 billion of the \$3.5 billion shortfall between Reliance’s assets and liabilities is attributable to claims below priority level (b). Furthermore, the liquid assets of nearly \$2.2 billion provide far more than “sufficient cash” for the reduction in the Safety Factor Percentage, which the Liquidator avers will amount to \$13 million (Liquidator’s Petition to Supplement the Second Aggregate Order, ¶ 16). According to the Liquidator, a total of \$32.4 million (identified in the latest quarterly report as “reduction for aggregate policies”) is currently being withheld from priority (b) claimants due to the application of the Safety Factor Percentage. If the Liquidator’s Petition were granted, the Liquidator would continue to withhold more than \$1,000,000 from JDN’s distribution even though there is no reasonable possibility, let alone probability, of additional losses under that claims-made directors and officers liability policy.

9. Admitted. By way of further response, according to the Liquidator’s most recent quarterly report, the Liquidator has liquid assets of nearly \$2.2 billion and has approved priority (b) claims of \$835 million (not counting Guaranty Association claims).

10. The First Aggregate Order and 40 P.S. § 221.40(d) speak for themselves, as does this Court’s ruling in the Basketball Properties ancillary proceeding. Any characterization of

those documents is denied. The statutory language cited by the Liquidator bears repeating, but without the ellipsis:

(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 the limit, then each claim as allowed shall be reduced a proportionate amount so that the total equals the policy limit. Claims by the insured shall be evaluated as in subsection (c). If any insured's claim is subsequently reduced under subsection (c), the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection.

See 40 P.S. § 221.40(d). Subsection (c) of 40 P.S. § 221.40, which is referenced in 40 P.S. § 221.40(d), specifically requires the Liquidator to estimate the likely outcome of a claim and to make recommendations to the Court for approval based upon those estimates:

(c) The liquidator shall make his recommendations to the court under section 545 for the allowance of an insured's claim under subsection (b) after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense.

The Liquidator has not complied with the statutory provisions requiring the Liquidator to make his recommendations for approval based on the "probable" outcome, damages, and defense costs of any pending action. Rather, the Liquidator has waited for claims to be liquidated before valuing them and seeking approval from the Court.

After allowance of the claim, "the liquidator shall withhold any distributions payable on the claim, pending the outcome of litigation and negotiation with the insured." 40 P.S. § 221.40(c). The statute states that "as claims against the insured are settled, the claimant shall be paid from the amount withheld the same percentage distribution as was paid on claims of like priority. . . ." Id. Accordingly, the statute does not authorize an aggregate limits holdback.

Rather, the statutory scheme contemplates the estimation of claims by the Liquidator based upon probable liability and the distribution of claim amounts when liquidated in accordance with the priorities set forth in the statute. Under 40 P.S. § 221.40(d), where (1) several claims founded upon one policy are filed and (2) the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds the limit, then each claim as allowed shall be reduced a proportionate amount so that the total equals the policy limit. Thus, under the statutory language, there should only be a holdback or reduction in the distributions if the allowed amounts (including estimations of “probable” liabilities on “pending” actions) exceed the aggregate limits of an insurance policy.

11. It is admitted that the First Aggregate Order approved a 60% Safety Factor Percentage. JDN can neither admit nor deny the Liquidator’s basis for selecting the amount of the First Safety Factor Percentage.

12. It is admitted that the First Aggregate Order required the Liquidator to consider, for future distributions, whether the First Safety Factor should be adjusted: “For each partial interim distribution, the Liquidator shall propose an appropriate Safety Factor Percentage to provide a safety margin for any further developments with pending POCs and any late filed POCs with good cause under Aggregate Policies.” (11/19/07 Order at ¶ 2). It is admitted that the Second Aggregate Order reduced the Safety Factor Percentage from 60% to 40%. JDN can neither admit nor deny the Liquidator’s basis for selecting the amount of the Second Safety Factor Percentage. Notably, the Liquidator stated that a reserve review and certification process was completed in 2007 and 2008, with information obtained through the Claims Information Orders. The Liquidator states that the reserve review resulted in updated case reserves for the Aggregate POCs and that those updated case reserves more accurately reflect ultimate exposures

for those claims. In other words, the Liquidator has done the estimates required by 40 P.S. § 221.40(c). The Liquidator has not, however, sought court approval as required. JDN does not contest the Liquidator's statement that the number of open Aggregate POC's was reduced substantially.

13. JDN is without knowledge to admit or deny the Liquidator's basis for selecting the amount of the Third Safety Factor Percentage.

14. JDN is without knowledge to admit or deny the Liquidator's basis for selecting the amount of the Third Safety Factor Percentage. By way of further response, JDN notes that the Liquidator's Petition and most recent quarterly report state that the open claims are decreasing and that the reserve review and certification process has continued, again reinforcing that the Liquidator believes he has reliable estimates of ultimate exposures on known claims. According to the most recent quarterly report, only 20 new policyholder-level claims were filed in the second quarter of 2011. That figure is minimal compared to the 151,231 NODs issued, the 10,359 open POCs as of June 30, 2009, and the 4,871 open POCs as of June 30, 2011. Now that the liquidation is more than 10 years old, the number of claims that will be filed in the future and that are allowed as priority (b) claims is *de minimis*. The Liquidator has submitted no proof of a risk of future claims at a level that would justify the 30% Safety Factor Percentage proposed.

15. JDN can neither admit nor deny the Liquidator's statement that "there is still a risk that unanticipated development on Aggregate Policies will occur" and that "excess distributions could occur on particular Aggregate NODs which the Liquidator will not be able to recover." JDN can neither admit nor deny that new Aggregate POCs will continue to be received, that new information will continue to be received on pending Aggregate POCs, or that

unexpected developments could occur regarding the priority classification of Aggregate POCs. It does appear, however, that any such risks are low or non-existent on virtually all Aggregate Policies. This is particularly true for claims-made policies like JDN's.

Loss development factors are typically used in the insurance industry to estimate future adverse development of known claims and the impact of claims not yet known (incurred by not reported "IBNR" claims). The Liquidator has not supplied the Court with loss development factors or loss projections demonstrating that there is any real problem that remains to be addressed by the Safety Factor Percentage. Upon information and belief, the proposed Safety Factor Percentage of 30% is much higher than would be justified by loss development factors typically utilized in the insurance industry.

Furthermore, the facts suggest that the risk of excess interim distributions on allowed amounts due to unexpected claims exceeding aggregate limits has significantly diminished and likely applies to a small number of Aggregate NODs for the following reasons:

(a) Based on the trend in the liquidation thus far, it appears that some, but very few, new policyholder-level claims will be filed and allowed in the future. According to the Liquidator's most recent quarterly report, only 20 new policyholder-level claims were filed in the second quarter of 2011. Based on previous quarterly reports, 14 new policyholder-level claims were filed in the fourth quarter of 2010 and seven new policyholder-level claims were filed in the first quarter of 2011. It is unclear how many, if any, of those claims will be approved by the Liquidator as timely priority (b) claims.

(b) It is unclear whether any of the small number of newly filed claims are "Aggregate POCs" (i.e., filed under Aggregate Policies), whether any involve insurance policies

where previous Aggregate NODs were issued, and whether any are likely to exceed the aggregate limits under any Aggregate Policies.

(c) In many instances where aggregate limits would be exceeded by total losses, those losses may be paid by umbrella or excess insurance above the Reliance policies. For example, if there were a Reliance primary commercial general liability policy with \$1,000,000 in limits that is being triggered for a long-tail exposure (like asbestos or environmental liabilities), guaranty associations would likely pay the \$1,000,000 aggregate limit after all other available insurance was exhausted. If the policyholder has umbrella or excess insurance that applies upon the exhaustion of the Reliance policy, that insurance would then pay. For this reason, adverse loss development does not necessarily result in additional claims or losses under the Reliance policies. Furthermore, many of the liabilities with a long "tail" tend to trigger many years of coverage, thereby implicating solvent coverage that pays before the guaranty associations pay under Reliance's coverage. If there is sufficient solvent coverage, the guaranty associations and Reliance may never be called upon to pay.

(d) The risk of excess interim distributions on allowed amounts exists only where separate claimants are vying for the same limits. This will not typically occur. Third-party claimants must release the insured in order to press a claim in the proof of claim process. If the insured has other insurance or is able to pay, it is unlikely that the claimant would release the insured and seek recovery in the estate. If the aggregate limits are exceeded by claims from a single insured, then there are no competing claimants for the same pro rata distribution. For example, if a single insured received a 40% distribution on a \$1 million dollar claim under a policy with aggregate limits of \$1 million, but then had another \$9 million in claims approved in

the liquidation, that situation could be addressed in future distributions without the need for a holdback.

(e) The Liquidator has represented to the Court that it completed a reserve review and certification process with information obtained through the Claims Information Orders. This should decrease the risk of unanticipated loss development on existing claims.

(f) Because there will be future distributions from the estate, there is already some room for distributions to be adjusted in the future if there is unexpected development that results in multiple claimants having approved NODs in excess of aggregate limits.

Most importantly to JDN, there are no risks of future claims causing adverse development of losses where there are no outstanding claims or POCs, all claims have been resolved or settled amounts known, all relevant policies are "claims made" so that any unknown claims would be precluded, and there is no reasonable possibility of any valid or covered claims being presented in the future. That is why, in the Legion liquidation, the Liquidator proposed to omit that class of claims from the holdback. There are no outstanding claims under JDN's policy. All claims against JDN that were covered by Reliance's policy have long been resolved and the settlement amounts have been known for many years. JDN's insurance policy with Reliance was for directors and officers liability insurance and is a "claims-made" policy. In order to be covered, the claim had to be made in the policy period, which ended more than a decade ago. There is no reasonable possibility of any valid or covered claims being presented in the future under JDN's directors and officers liability policy. Yet, if the Liquidator's Petition were granted, the Liquidator would hold back over \$1,000,000 of JDN's distribution for the non-

existent risk that a future claim could arise and be approved by the Liquidator as a covered priority (b) claim. No such holdback is authorized by statute or equity.

16. JDN is without knowledge to either admit or deny that the reduction in the Safety Factor Percentage requested will result in a further distribution of approximately \$13 million to claimants that have been subjected to the holdback.

17. It is admitted that the distribution examples in Exhibit B of the Liquidator's Petition appear to be accurate. JDN's claim is most similar to the "Policy A" example. JDN has an approved priority (b) claim in the amount of \$10,000,000 under POC 2063629, and Reliance policy NAR0114593 has aggregate limits of \$10,000,000. According to Reliance, it had paid \$9,397 under JDN's policy with Reliance before Reliance went into liquidation. There are no other pending claims under policy NAR0114593 and there never will be any other claims. It is a claims-made policy that would have required the claim to have been made over a decade ago to be covered. The Liquidator recognized this reality in its filing in the Legion proceedings and specifically stated that it would exempt from the aggregate-limits holdback claims like JDN's.

Even though the distribution percentage approved by the Court is 40%, the policyholder in the Liquidator's "Policy A" example in Exhibit B to the Liquidator's Petition gets only a 28% distribution. (Liquidator's Petition, Ex. B). This is not consistent with 40 P.S. § 221.44 ("No subclasses shall be established within any class") or 40 P.S. § 221.46 ("Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims.") The Liquidator's actions have resulted in a sub-class of policyholders who are being treated differently. The

Liquidator cannot justify that differential treatment as “the protection of unliquidated and undetermined claims” when, for policyholders like JDN, there are no unliquidated and undetermined claims and never will be. The Liquidator has made no showing that a Safety Factor Percentage of 30% is necessary for the protection of unliquidated and undetermined claims.

The Liquidator’s treatment of claims under Aggregate Policies must be based on actual and probable losses. Subsection h of Exhibit B to the Liquidator’s Petition reflects the “outstanding reserve” which is akin to the estimate of probable liability required by 40 P.S. § 221.40(c).¹ Using the Exhibit B to the Liquidator’s Petition, the correct way to apply 40 P.S. § 221.40(d) would be to add subsection subsection g (claims paid by GA’s post liquidation), subsection h (outstanding reserves),² and subsection l (NOD allowed amounts). If the sum of those categories exceeds the aggregate limit in the policy that remains available for post-liquidation claims, then 40 P.S. § 221.40(d) applies to achieve a pro rata reduction. Of the Liquidator’s examples in Exhibit B to the Petition, only the Policy C example would meet the statutory criteria for reduction. The total paid and reserved post-liquidation claims in that example would equal \$4,894,000, while the aggregate limits available to pay post-liquidation claims equal \$4,100,000. Under 40 P.S. § 221.40(d), the approved NOD in the amount of

¹ If the Liquidator believes that there also needs to be some factor added for future claims, then the Liquidator should point to a statutory provision authorizing that consideration and submit evidence of an appropriate loss development factor based on accepted actuarial methods and practices. As for claims-made policies with no outstanding or unliquidated claims (like JDN’s), there is no reasonable possibility, let alone probability, of future approved priority (b) claims.

² The statute requires the estimates of probable liability to be submitted for approval of the Court and to be subject to the objection procedure. See 40 P.S. § 221.40(c).

\$4,750,000 would be reduced to 83.78%³ of its value, or \$4,400,593 for purposes of interim distribution. The 40% distribution on that adjusted amount would yield a distribution to the policyholder of \$1,760,237. Instead of the actual distribution percentage of 23.46% (\$1,114,221) contemplated by the Liquidator under the Policy C example in Exhibit B to the Liquidator's Petition, the correct distribution percentage for that example under Pennsylvania's statutory scheme would be 33.51% (\$1,591,820).

JDN has provided as Exhibit B to this Answer an alternative version of the Examples of Distributions on NODs under Aggregate Policies that had been submitted by the Liquidator as Exhibit B to its Petition. The manner of calculating the interim distributions in JDN's Exhibit B reduces the interim distributions to policyholders with aggregate policies if the *actual and probable losses exceed the available aggregate limits*, as required by the Pennsylvania statutes, instead of an arbitrary Safety Factor Percentage. While an arbitrary safety factor percentage may have been necessary several years ago before the reserves were established and verified by the Liquidator, there is no justification for an arbitrary 30% safety factor percentage today. Moreover, as recognized by the Liquidator in its Legion filing, the Aggregate Order serves no rational purpose when applied to Aggregate POCs like JDN's where (a) there are no outstanding claims or POCs under the Aggregate Policy at issue; (b) all claims under the Aggregate Policy have been resolved or settled amounts known; (c) all relevant policies are "claims made" so that any unknown claims would be precluded.

³ The policy limits available for post-liquidation claims of \$4,100,000 would be divided by the total post-liquidation liabilities of \$4,894,000 to reach that percentage. By applying that percentage to all outstanding liabilities, the pro rata reduction required by 40 P.S. § 221.40(d) would be achieved.

Conclusion

WHEREFORE, JDN respectfully requests that:

(1) the Liquidator be precluded from applying any Safety Factor Percentage or holdback under Aggregate POCs where:

(a) there are no outstanding claims or POCs under the Aggregate Policy at issue;

(b) all claims under the Aggregate Policy have been resolved or settled amounts known;

(c) all relevant policies are “claims made” so that any unknown claims would be precluded; and

(d) there is no reasonable possibility of any valid or covered claims being presented in the future;

(2) the methodology for applying the aggregate-limits holdback be modified to comply with Pennsylvania’s statutory requirements, such that:

(a) the “outstanding reserve” (Subsection h of Exhibit B to the Liquidator’s Petition) on any pending Aggregate POC, which is akin to the estimate of probable liability required by 40 P.S. § 221.40(c), be submitted to the Court for approval if it is used to calculate losses under an Aggregate Policy for purposes of the holdback;

(b) in accordance with 40 P.S. § 221.40(c) & (d), a holdback should be permitted only where the actual and probable post-liquidation liabilities under an Aggregate Policy exceed the remaining aggregate limits of liability available to pay post-liquidation priority (b) claims.

The probable post-liquidation liabilities can be determined with information already provided by the Liquidator to the holders of Aggregate NODs by adding subsection g (claims paid by GA's post liquidation), subsection h (outstanding reserves), and subsection l (NOD allowed amounts) of the Liquidator's Exhibit B. If the sum of those categories exceeds the remaining aggregate limit available to pay post-liquidation claims, then 40 P.S. § 221.40(d) applies to achieve a pro rata reduction of each Aggregate NOD for purposes of the interim distribution.

(c) if the Court decides that the Liquidator is permitted to consider the possibility of future claims under Pennsylvania's statutory scheme when making interim distributions and if the Liquidator reasonably believes that the probable liabilities under an Aggregate Policy include future claims that are likely to be approved as priority (b), the Liquidator must submit evidence of the existence of probable future claims and the amount of probable loss on such claims.

Respectfully submitted,

Dated: November 28, 2011

By:




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VERIFICATION

I, Eric Cotton, Associate General Counsel—Litigation/Operations for DDR Corp., the parent company of JDN Realty Corporation, hereby verifies that the statements made in the foregoing Answer are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Dated: November 28, 2011



Eric Cotton, Esq.

EXHIBIT A

proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, . . ." as required by 40 P.S. §221.46.

18. NODs that are approved by the Court in a NOD Order subsequent to August 25, 2011 will also receive a distribution based on the First Interim Distribution Percentage.

Special Considerations for Claims Under Aggregate Policies

19. Certain sections of the Act, such as 40 P.S. §221.40(d) ("Section 540"), provide specific guidance for processing claims under policies with a limit for all claims submitted under that policy ("Aggregate Policy[ies]").⁴ Section 540 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 amount 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 provision ensures that all claimants, including GAs, receive a proportional share of their allowed amount in any distribution related to an Aggregate Policy, rather than applying the "first-come, first-served" method where it would be possible for only one or two claims, which were determined and allowed earlier in the liquidation process, to exhaust the aggregate limits under the Aggregate Policy.

20. Although Legion's review indicates that very few NODs may be affected by aggregate limits, the Liquidator plans to issue final NODs and amended NODs under designated Aggregate Policies as set forth below (the "Aggregate NODs")⁵ to all affected claimants,

⁴ 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 policy term, there are losses totaling \$5,000,000 from several occurrences, but there is a policy aggregate limit \$3,000,000, the insurer would not be liable for more than \$3,000,000 for that policy period.

⁵ Legion is not including in the Aggregate NODs those NODs under Aggregate Policies where there are no outstanding claims or POCs, all claims have been resolved or settled amounts known, all relevant policies are

including GAs with final pro-rated allowed amounts. However, the Liquidator will not be able to do so until there is a final claims bar date and the Liquidator has received and evaluated all claims subject to the aggregate pro-ration.

Distribution to Claims Under Designated Aggregate Policies

21. Legion's latest review indicates that very few claimants might be affected by an aggregate limit, but if the Aggregate NODs are included in the First Distribution at their full allowed amount without any adjustment it is possible that the aggregate limits in some policies would be exhausted and claimants whose POCs have not yet been evaluated⁶ or claimants with good cause for filing late POCs would be excluded from any distributions (collectively, "Unevaluated POCs"). Final Aggregate NODs cannot be issued with totals more than the aggregate limits for any Aggregate Policy because Section 545 of the Act, 40 P.S. §221.45, provides that "[n]o claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits."

22. In order for Aggregate NODs to be included in the First Distribution, the Liquidator has developed and is proposing that a safety factor be established to hold back a certain portion of the aggregate limits to address any future developments with Unevaluated POCs. The alternative is that the Aggregate NODs would receive nothing until (1) a final distribution after a claim bar date has been proposed by the Liquidator and approved by the Court; (2) all POCs have been evaluated; (3) appropriate NODs are issued; (4) any objections resolved; and (5) all GA claims have been processed and resolved. The Liquidator believes that the Act supports including the Aggregate NODs in interim distributions as long as the

"claims made" so that any unknown claims would be precluded and there is no reasonable possibility of any valid or covered claims being presented in the future.

⁶ Unevaluated POCs would include contingent claims and those claims where sufficient information has not yet been provided.

EXHIBIT B

EXAMPLES OF DISTRIBUTIONS ON NODS UNDER AGGREGATE POLICIES

	POLICY A	POLICY B	POLICY C
The aggregate limits originally available under the policy are identified.			
a. Aggregate amount per policy term	\$10,000,000	\$3,000,000	\$10,000,000
The remaining aggregate limits available for post-liquidation claims are identified.			
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
The actual and probable post-liquidation losses are identified.			
d. Claims paid by GAs post liquidation	NONE	NONE	\$90,000
e. Outstanding reserve which includes pending GA claims, pending POCs and all outstanding reserves	NONE	\$75,000	\$54,000
f. Total NOD allowed amounts	\$10,000,000	\$425,000	\$4,750,000
g. Post-liquidation Incurred Losses (d + e + f)	\$10,000,000	\$500,000	\$4,894,000
A pro rata reduction is applied if post-liquidation incurred losses are greater than the limits available for post-liquidation claims.			
h. Aggregate Pro Rata Percentage to be applied to each court approved NOD allowed amount under policy (c ÷ g)	result is equal to 100%, so 100% is applied	result is greater than 100%, so 100% is applied	83.78%
i. NOD allowed amounts	\$10,000,000	\$425,000	\$4,750,000
j. Revised Allowed Amounts (h x i)	\$10,000,000	\$425,000	\$3,979,550
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.			
k. Overall distribution percentage approved by Court	40%	40%	40%
l. Distribution Amount (j x k)	\$4,000,000	\$170,000	\$1,591,820
m. Actual distribution percentage for Court approved NODs under specific aggregate policies, depending on aggregate erosion (l ÷ i)	40%	40%	33.51%

CERTIFICATE OF SERVICE

I, Timothy P. Law, hereby certify that on this day, I caused a true and correct copy of the foregoing JDN Realty Corporation's Motion In Opposition To Liquidator's Petition To Supplement The Court's February 23, 2010 Second Aggregate Order to be served upon the counsel of record on the attached Master Service List by regular U.S. mail, postage prepaid, on this 28th day of November 2011:

Dated: November 28, 2011



Timothy P. Law

Master Service List

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

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