

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

In Re: Reliance Insurance Company	:	
in Liquidation	:	
	:	No. 1 REL 2001
	:	

***IN RE: Liquidator's Petition to Supplement the Court's February 23, 2010  
Second Aggregate Order***

**ORDER**

**AND NOW**, this 9th day of December, 2011, upon consideration of the Liquidator's Petition to Supplement the Court's February 23, 2010 Second Aggregate Order ("Petition") and the answer thereto filed by JDN Realty Corporation, it is hereby **ORDERED**:

1. A decrease in the 40% Second Safety Factor Percentage is approved and the new Third Aggregate Factor Percentage of 30% is approved for any future distributions on claims subject to aggregate limits;

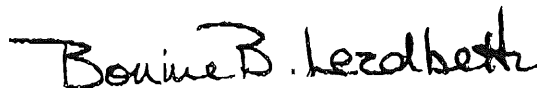
2. Claimants under policies subject to aggregate limits who received a 30% distribution payment subject to the 40% Second Safety Factor Percentage shall receive another distribution payment to compensate them for the reduction in the Safety Factor Percentage and any future distribution payments made to them thereafter shall 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 shall continue to apply to any distribution on claims under policies with aggregate limits.<sup>1</sup>

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<sup>1</sup> In its answer, JDN Realty Corporation contends that an exception to the application of the Safety Factor Percentage should be provided for claimants under aggregate policies where there exists a very low or negligible

Further, the Liquidator shall provide notice of this Order to the Master Service List and shall file an affidavit affirming that such service was effectuated.



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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

**Certified from the Record**

**DEC 12 2011**

**And Order Exit**

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probability that the aggregate limit will be exceeded. The Court has previously ruled on such a request, stating that neither the statutory provision at Section 540(d) of The Insurance Department Act of 1921, Act of May 17, 1921, added by the Act of December 14, 1977, 40 P.S. § 220.40(d) nor this Court's orders regarding the Safety Factor Percentage authorize a distribution to a claimant under an aggregate policy based on the probability that additional claims may not exceed an aggregate limit. *Basketball Properties, Ltd. v. Reliance Ins. Co.*, No. 1 REL 2008, Order filed July 6, 2011. A focused inquiry as to the probability of additional claims under particular aggregate policies is not warranted in view of the additional time and administrative expense necessary to such an endeavor. This is particularly true in view of the fact that claimants subject to the holdback will not ultimately be deprived of their full distribution and, meanwhile, they receive partial interim distributions even where the Liquidator could argue that he is acting well within his discretion to withhold the interim distribution entirely. See Section 546, 40 P.S. § 221.46.

Section 540(c) does not, as JDN Realty asserts, require an estimation of probable losses before interim distribution to policyholders under aggregate policies. Rather, it directs a process for assessing the probability of success and the estimated amount of third party claims and further directs that such estimated amounts be withheld from any distribution until claims against the insured are resolved. In short, Section 540(c) is not applicable to the determination to apply a Safety Factor Percentage to calculate interim distribution on claims under aggregate policies. Rather, the Liquidator's recommendation to apply the Safety Factor Percentage and the Court's approval thereof is an exercise of sound discretion under Section 546.