

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE:
Reliance Insurance Company
In Liquidation

NO. 1 REL 2001

RECEIVED AND FILED
COMMONWEALTH COURT
OF PA (PHILA)
2012 SEP 10 A 11:52

IN RE: *Application For Approval To Transfer Ownership
of Structured Settlement Annuity Contracts*

ORDER

This matter having come before the Court on the Application for Approval to Transfer Ownership of Structured Settlement Annuity Contracts submitted by the Statutory Liquidator ("Liquidator") of Reliance Insurance Company ("Reliance" or "Estate"),

The Court concludes that the transfer of ownership of the structured settlement annuity contracts from Reliance to the payees, who are receiving payments from such annuity contracts, in exchange for the discharge of Reliance's obligation to pay future amounts remaining due under the structured settlement agreements related to the annuity contracts is in the best interests of the Estate as the transfer allows for an orderly and timely closure of the Estate and discharge of the Liquidator in accordance with 40 P.S. § 221.48(a).

Accordingly, it is on the _____ day of _____, 2012 hereby

ORDERED that:

1. The Application is GRANTED;
2. Effective as of the date of this Order, ownership of the structured settlement annuity contracts is transferred from Reliance to the payees receiving periodic payments under such annuity contracts; and
3. In exchange for the transfer, effective as of the date of this Order, Reliance's obligation to pay future amounts remaining due under the structured settlement agreements related to the structured settlement annuity contracts is discharged.

BONNIE BRIGANCE LEADBETTER, Judge

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**Application For Approval To Transfer
Ownership of Structured Settlement Annuity Contracts**

Applicant Michael F. Consedine, 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 enter an Order approving the transfer of ownership of structured settlement annuity contracts that are property of the Estate to the payees receiving payments under such contracts. In support of this Application, the Liquidator avers the following:

1. On October 3, 2001, this Court found Reliance insolvent and issued its Order of Liquidation which appointed the Commissioner as Liquidator of Reliance pursuant to Article V of the Insurance Department Act of 1921, 40 P.S. §§ 221.1 *et seq.* (“Act”). The Order of Liquidation (paragraphs 3 and 5) and 40 P.S. ¶ 221.20(c) of the Act confer broad powers on the Liquidator and vest the Liquidator with title to all the property and contracts of the insolvent insurer.

2. The Act authorizes the Liquidator to “transfer, abandon or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable.” See 40 P.S. § 221.23(9).

3. In accordance with the authority granted by § 221.23(9) of the Act, the Liquidator seeks approval to transfer the ownership of structured settlement annuity contracts from the Estate to the payees, who are receiving payments under such contracts from the life insurers that issued the annuity contracts, in exchange for the discharge of Reliance’s obligation to pay remaining amounts under the structured settlement agreements.¹ The Liquidator seeks such approval to allow for an orderly and timely closure of the Estate and the discharge of the Liquidator in accordance with 40 P.S. § 221.48(a).

The Structured Settlement Annuity Contracts Are Property of the Estate

4. Reliance currently owns approximately 3,400 structured settlement annuity contracts. Structured settlements are used in settlement agreements involving personal physical injury or sickness claims or workers’ compensation claims and allow the claimant to receive damages or compensation in the form of payments made over a period of time rather than in one lump sum. Because of the time value of money, the claimant will receive more, in total, over time than in a single up-front payment.

5. The structured settlement annuity contracts that Reliance owns arose out of two types of structured settlements. Under the first type, another insurer assigned to Reliance that insurer’s obligations under a settlement agreement to make future periodic

¹ As explained more fully in paragraph 8 below, Reliance, as owner of the annuities, instructed the annuity issuers to make future periodic payments directly to the payee(s). However, the underlying obligation to make the payments to the payees remains with Reliance.

payments to the claimant and Reliance assumed those obligations pursuant to a qualified assignment agreement. Reliance, in turn, purchased annuity contracts to satisfy the payment obligations that Reliance assumed from other insurers. Reliance undertook these obligations as an accommodation to enable a life insurer that it owned and from which it purchased over 95 % of such annuity contracts (United Pacific Life Insurance Company) to increase its business which indirectly benefitted Reliance. These annuity contracts are known as “qualified assignment” annuity contracts. Under the second type, Reliance settled a claim against a Reliance insured by means of a structured settlement and purchased an annuity contract to fund the settlement payments which Reliance was obligated to make under its policy. Annuity contracts that Reliance purchased to satisfy its policy obligation to its own insured are called “buy and hold” annuity contracts.

6. Under either “qualified assignment” annuity contracts or “buy and hold” annuity contracts, Reliance is the owner of the annuity contracts and they are, thus, property of the Estate. Again, under either “qualified assignment” contracts or “buy and hold” contracts, the annuity payments correspond to the required periodic payments that are obligations of the Estate under the settlement agreements.

7. The Liquidator estimates that over 85% of the structured settlement annuity contracts that are property of the Estate are “qualified assignment” annuity contracts. The rest are of the “buy and hold” variety.

8. Regardless of whether the annuity contracts were of the “qualified assignment” or “buy and hold” variety, Reliance instructed the life insurers issuing the annuity contracts to make future periodic payments directly to the payee(s) named in the settlement agreement and the annuity application rather than to Reliance. While the

underlying obligation to make the payments to the payees ultimately remains with Reliance, Reliance's obligation is merely contingent provided, as here, the payments continue to be made to the payees by the insurers that issued the annuity contracts.²

9. The vast majority of the structured settlement annuity contracts that are property of the Estate were purchased by Reliance prior to 1993 from a former Reliance subsidiary, United Pacific Life Insurance Company. In 1993 Reliance sold United Pacific Life Insurance Company which is now known as Genworth Life Insurance Company.

10. The Liquidator estimates that over 95% of the structured settlement annuity contracts that are property of the Estate were issued by United Pacific Life Insurance Company. Thus, Genworth Life Insurance Company has the primary obligation as the annuity issuer to make all payments due under the annuity contracts. Genworth Life Insurance Company has made and continues to make those payments.

11. Whether they are "qualified assignment" contracts or "buy and hold" contracts, the structured settlement annuity contracts generally provide that all rights of ownership and control under the contract are vested in the owner, which is Reliance. For example, the qualified assignment contracts entered into by another insurer, as assignor, and Reliance, as assignee, generally provide that "[a]ll rights of ownership and control

² With only two exceptions (based on the liquidation of the annuity issuers), all payments have been made by the annuity issuers. One involves Executive Life Insurance Company (California) ("ELIC") which was placed into liquidation in the early 1990s. Another life insurer assumed less than 100% of the obligations due under the ELIC annuities and Reliance directly funded the shortfall amounts on ELIC annuities it owned until liquidation. After Reliance was placed in liquidation, 11 ELIC annuitants filed Proofs of Claim in the Reliance liquidation with respect to the shortfall. Of those 11, 7 have been resolved by issuance of Notices of Determination without objection. The other 4 are pending. The other involves the very recent liquidation of Executive Life Insurance Company (New York) ("ELNY"). The Liquidator has determined that Reliance owns two annuities issued by ELNY. No Proofs of Claim have been filed to date by any ELNY annuitants.

[of the annuity contract] shall be and remain vested in the Assignee [Reliance] exclusively.”

12. One of the rights retained by Reliance, as the owner of the annuity contracts, is the right to transfer the ownership upon notice to the annuity issuer.³ The Liquidator has concluded that it is in the best interest of the Estate to exercise that right and to transfer ownership of the annuity contracts to the current payees under those contracts.

Payments under the Structured Settlement Annuity Contracts

13. Current payees under the Reliance-owned structured settlement annuity contracts are not limited to the original claimant. They also include individuals that the original claimant named as beneficiaries, the estate of the original claimant if named as a beneficiary and, in a significant number of cases, factoring companies and their assignees. Factoring companies enter into purchase agreements with payees and agree to purchase the right to receive future payments due the payee on a highly discounted basis. In addition, factoring companies often assign their rights to receive such future payments to other third parties.

14. Periodic payments under the Reliance-owned structured settlement annuity contracts take a variety of forms. Examples include:

- A specific number of guaranteed lump sum payments in stated amounts which will be paid regardless of whether the claimant is alive or not (e.g., \$10,000 due every 5 years, commencing 1/1/1990 through and including 1/1/2040);
- Guaranteed lump sum payments as described above, plus monthly

³ For example, the structured settlement annuity contracts issued by United Pacific Life Insurance Company generally provide that the owner “may request us [the annuity issuer] to transfer the ownership of the Contract by sending Notice to us.”

payments of a specific amount, commencing on a date certain, with a certain number of months guaranteed and thereafter payments becoming life-contingent;

- Monthly payments of a specific amount, commencing on a date certain, with a certain number of months guaranteed and thereafter payments becoming life-contingent, with the monthly payments increasing by a stated percentage on an annual basis (e.g., \$1,500/month commencing 1/1/1990, increasing 3% annually, guaranteed for 480 months and thereafter payments becoming life-contingent).

15. The Liquidator estimates that many of the structured settlement annuity contracts have guaranteed future payments that are to be paid many years into the future. By way of example, approximately one-third of the annuity contracts have payments due through the year 2029. Indeed, the duration of guaranteed future payments under some structured settlement annuity contracts currently extends more than 35 years into the future. The Liquidator also estimates that, based on life expectancy assumptions, some of the structured settlement annuity contracts that provide for life-contingent payments will likely continue to be paid beyond the duration of the guaranteed payments.

16. The length of the stream of future payments described above means that the estimated present value (i.e., on a discounted basis) of the structured settlement annuity contracts is substantially less than the total amount expected to be paid out over time on an undiscounted basis. The Liquidator estimates the present discounted value of the annuity contracts at \$951 million.

17. Since liquidation (and except as noted above in footnote 2), annuity payees have continued without interruption to receive payments from the annuity issuers under the respective structured settlement annuity contracts.

Disposition of the Structured Settlement Annuity Contracts

18. While it is uncertain at this time precisely when the Liquidator will be discharged and Reliance dissolved, it is neither feasible nor fair to the Reliance claimants and creditors, or the Court, to keep the Estate open for the entire duration of the structured settlement annuity payments, some of which will continue for many decades. To avoid that undesirable outcome, the Liquidator considered options for the ultimate disposition of the structured settlement annuities “in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims.” See 40 P.S. § 221.46.

19. After careful consideration, in conjunction with advisors and experts, the Liquidator determined that transfer of ownership of the structured settlement annuities to the payees, with simultaneous discharge of Reliance’s contingent obligations, is the only viable option and the one that advances the best interests of the Reliance Estate.⁴ The Liquidator explored several other options, including either transferring the annuity contracts (a) to a newly-formed entity such as a subsidiary corporation or (b) to a trust owned by Reliance (the Liquidator recognizes, of course, that either option would require prior court approval to expend Estate assets for such purpose). The Liquidator concluded that neither alternative option accomplished the goals of finality and expense reduction.

⁴ In instances where the sole payee has already transferred or sold all of his/her rights to future periodic payments to a factoring company, ownership of the annuity contract would be transferred to the factoring company. Such structured settlement annuities have no present or future value to such payees since the payees have no right to any future payments. Instead, they have already received from the factoring companies lump sum payments at discounted values.

Either option would require an initial infusion of cash from Estate assets to create the entity and continuing cash expenditures to staff and maintain the entity for many decades into the future, not to mention the professional fees required to prepare tax returns on at least an annual basis. Moreover, as either owner of the stock of the subsidiary or owner of the trust, Reliance would still have to remain in existence during the decades that the annuity payments continue to be paid. The transfer of ownership of the annuity contracts to the payees, on the other hand, provides finality and closure as to this contingent obligation of the Estate. While precautionary Proofs of Claim have been filed on behalf of a number of the payees by certain annuity issuers, their claims against the Estate remain contingent as long as the payments are made by the annuity issuers.⁵ Thus, the transfer of ownership of the annuity contracts clears the way for final estate distributions to all Reliance claimants, at the relatively modest cost of eliminating inchoate, contingent, class (e) claims against Reliance by annuitants who are being fully satisfied on a current basis. After transfer of ownership to the payees, the payees will have the same right to receive payments directly from the annuity issuers as they currently have.

20. The Liquidator has concluded that there will be no federal income tax liability to Reliance arising as a result of the proposed transfer, and that the transfer under the terms outlined in this Application is in the best interests of the Reliance Estate. With

⁵ As noted, the Liquidator estimates that over 85% of the annuity contracts are “qualified assignment” contracts. Thus, the vast majority of these payees are receiving payments pursuant to a qualified assignment. The contingent Proofs of Claim submitted by annuity issuers on behalf of payees wrongly assert entitlement to class (a) priority. The Liquidator has determined that should the annuity issuers fail to satisfy their primary obligation to make the required payments under the annuities, a claim against the Estate under “qualified assignment” contracts by either the payees directly or by the annuity issuers on behalf of the payees under the contingent Proofs of Claim would warrant no higher than class (e) priority as a claim for breach of a contractual obligation owed by Reliance to another insurer (assuming the payees even had standing to assert a claim as nonparties to that contract). Any such potential claim would not be entitled to class (b) priority, because it is not a claim under a Reliance policy for loss. Of course, it is not anticipated that there will be a distribution to creditors with claim priority below class (b).

respect to potential tax consequences to the thousands of payees, some of whom are individuals, some factoring companies and some beneficiaries or assignees of original payees, each has unique circumstances that make it impossible and imprudent for the Liquidator to make predictions or provide payees with tax or other advice with respect to the tax consequences to them of the transfer. Payees may want to consult a tax advisor or accountant with respect to the transfer.

Notice of this Application

21. As required by Rule 3780 of the Rules of Appellate Procedure, the Liquidator has sent the requisite Notice to all non-parties on the Master Service List and has served a copy of this Application on all parties on the Master Service List. The Liquidator has also served a copy of this Application on the annuity issuers that submitted contingent Proofs of Claim on behalf of payees. See Certificate of Service.

22. Reliance did not retain copies of either the annuity contracts or other documents related to the structured settlement annuities issued by United Pacific Life Insurance Company when it sold the subsidiary in 1993. As a result, the Liquidator does not have a list of the current names and addresses of payees receiving periodic payments under the annuities or the documents related to each structured settlement annuity contract and therefore is not in a position to provide individual notice to the payees. Presumably, annuity issuers have the annuity contracts and other documents related to the annuity contract and have the ability to furnish individual notice.

23. In addition to the notice described in paragraph 21 above, the Liquidator has made arrangements to publish notice in a number of regional and national newspapers

informing all persons who may have an interest in this matter that a copy of this Application may be obtained from the Reliance Documents website (www.reliancedocuments.com), or by calling or emailing Reliance. Below is the text of the notice to be published by the Liquidator:

**NOTICE OF FILING BY THE LIQUIDATOR
OF RELIANCE INSURANCE COMPANY**

Reliance Insurance Company (“Reliance”) was placed in Liquidation by Order of the Commonwealth Court of Pennsylvania dated October 3, 2001. The Liquidation Order appointed the Insurance Commissioner of the Commonwealth of Pennsylvania and any successors as statutory Liquidator of Reliance, vesting the Liquidator with title to all property, contracts and rights of action of Reliance and to transfer or otherwise dispose of or deal with any property of Reliance on such terms as are fair and reasonable. All references to “Reliance” include: Reliance National Indemnity Company, Reliance National Insurance Company, United Pacific Insurance Company, Reliance Direct Company, Reliance Surety Company, Reliance Universal Insurance Company, United Pacific Insurance Company of New York and Reliance Insurance Company of Illinois.

On September 10, 2012, the Liquidator sought Court approval for his recommendation to transfer the ownership of structured settlement annuity contracts that are property of Reliance to the payees receiving periodic payments under such contracts in exchange for the discharge of Reliance’s obligation to pay future amounts remaining due under the structured settlement agreements.

THE FOLLOWING PERSONS MAY HAVE RIGHTS IMPLICATED BY THE LIQUIDATOR’S FILING WHETHER RELIANCE EITHER ASSUMED THE PAYMENT OBLIGATION FROM ANOTHER INSURER OR SETTLED A CLAIM AGAINST ONE OF ITS OWN INSURED. SUCH PERSONS MAY WANT TO CONSULT A TAX ADVISOR OR ACCOUNTANT WITH RESPECT TO THE TRANSFER:

- 1. PERSONS WHO ARE RECEIVING PERIODIC PAYMENTS UNDER A STRUCTURED SETTLEMENT ANNUITY DUE TO SETTLEMENT OF A CLAIM FOR DAMAGES BASED ON PERSONAL INJURIES OR SICKNESS; and**

2. **A WORKERS' COMPENSATION CLAIMANT RECEIVING PERIODIC PAYMENTS, BY STATUTE, AS COMPENSATION FOR PERSONAL INJURIES OR SICKNESS.**

ALL INTERESTED PARTIES MAY OBTAIN A COPY OF THE LIQUIDATOR'S FILING FROM:

(1) WWW.RELIANCEDOCUMENTS.COM; (2) BY CALLING RELIANCE AT 215-864-4000; OR (3) BY EMAIL INQUIRY TO LIQUIDATOR@RELIANCEINSURANCE.COM. PLEASE REFER TO THE "STRUCTURED SETTLEMENT ANNUITY FILING".

24. The above notice will be published in USA Today, The Wall Street Journal (national edition), The New York Times (national edition), the Philadelphia Inquirer, the Pittsburgh Post Gazette, and the Harrisburg Patriot News once within ten days after the filing of this Application

RELIEF SOUGHT

25. Accordingly, pursuant to the authority conferred by 40 P.S. § 221.23(9) and this Court's Orders, including the Liquidation Order, the Liquidator respectfully requests that this Court enter an Order: (1) approving the Liquidator's recommendation to transfer the ownership of structured settlement annuity contracts from Reliance to the payees receiving periodic payments under such contracts; (2) effective as of the date of this Order, transferring ownership of the structured settlement annuity contracts to the payees; and (3) effective as of the date of this Order, discharging Reliance's obligation to pay future amounts remaining due under the structured settlement agreements.

WHEREFORE, the Liquidator respectfully requests that this Court grant the Application, enter an Order in the form attached hereto, and order such other relief as this Court deems necessary and appropriate.

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Respectfully submitted,



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



BLANK ROME LLP
ANN B. LAUPHEIMER
SHEILA E. BRANYAN
One Logan Square
Philadelphia, PA 19103-6998
(215) 569-5500

Attorneys for Applicant, Michael F.
Consedine, Insurance Commissioner of the
Commonwealth of Pennsylvania, in his
capacity as Statutory Liquidator of Reliance
Insurance Company

Dated: September 10, 2012

VERIFICATION

I, David S. Brietling, am authorized by Michael F. Consedine, 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.

Executed on September 10, 2012



DAVID S. BRIETLING

CERTIFICATE OF SERVICE

I, Marilyn K. Kincaid, hereby certify that I am this day serving the foregoing document upon the persons indicated below and in the manner indicated below in accordance with Pa. R.A.P. Nos. 121, 3780 and 3784(a):

Upon the attached Master Service Parties List by first class U.S. Mail or e-mail.

Upon the attached Master Service Non-Parties List by a Notice of Filing.

Upon the attached list of Annuity Issuers by a Notice of Filing.

Dated: September 10, 2012


Marilyn K. Kincaid

**Master Service List
Parties**

IN RE: Reliance Insurance Company In Liquidation
No. 1 REL 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 7th Street
Harrisburg, PA 17102
Phone: (717) 787-6009
Fax: (717) 772 4543
E-mail: pbuckman@pa.gov
(Attorneys for the Pennsylvania
Insurance Department)

Frank P. DeGiulio, (215) 625-9900
Charles P. Neely
Palmer Biezup & Henderson LLP
190 North Independence Mall West
Suite 401
Philadelphia, PA 19106
Phone: (215) 625-9900
Fax: (215) 625-0185
e-mail: fpd@pbh.com
cneely@pbh.com
(Counsel for Republic Western Insurance Company)

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

**Master Service List
Non-Parties**

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

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: dharbaugh@morganlewis.com
rmcmenamin@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
rmcmenamin@morganlewis.com
(Attorneys for Milliken & Company)

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

Jayson R. Wolfgang, Esquire, (717) 237-4852
Buchanan Ingersoll
One South Market Square
213 Market Street, 3rd Floor
Harrisburg, PA 17101
Phone: (717) 237-4852
Fax: (717) 233-0852
E-mail: jayson.wolfgang@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
swhitmer@lockelord.com
jyoung@lockelord.com
(Attorneys for Illinois Insurance Guaranty Fund)

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

Timothy P. Law, (215) 851-8100
Matthew D. Rosso
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
mrosso@reedsmith.com
(Counsel for Unisys Corporation and Tribune
Company, Lincoln National Corporation, Warrantech
et. al)

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
bgillespie@psmn.com
(Counsel for Washington Mutual Bank ("WAMU"),
as successor to Hawthorne Financial Corp. and
Hawthorne Saving, F.S.B.)

Craig Tractenberg, (212) 940-3722
NIXON PEABODY LLP
Two Penn Center
1500 JFK Blvd
Suite 200
Philadelphia, PA 19102
Phone: (212) 940-3722
Fax: (866) 852-3722
E-Mail: ctractenberg@nixonpeabody.com
(Counsel for Massachusetts Insurers Insolvency
Fund)

Nicholas E. Chimicles, Esquire, (610) 642-8500
Anthony A. Geyelin, Esquire
Chimicles & Tikellis LLP
361 W. Lancaster Avenue
Haverford, PA 19041
Phone: (610) 642-8500
Fax: (610) 649-3633
Email: Nick@Chimicles.com
TonyGeyelin@Chimicles.com
(Counsel for Petitioner, the Certified Class in the In
re Phoenix Leasing Limited Partnership Litigation)

Jayne A. Risk, (215)656-3328
DLA Piper (US) LLP
One Liberty Place
1650 Market Street
Philadelphia PA 19103
Phone: (215)656-3328
fax: (215)606-3328
Email: jayne.risk@dlapiper.com

Stephen A. Loney, Jr., (267) 675-4600
Hogan & Hartson LLP
1835 Market Street
29th Floor
Philadelphia, PA 19103
Phone: (267) 675-4600
Fax: 267-675-4601
e-mail: 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)

Annuity Issuers

Pacific Life Insurance Company
Attention: John E. Carlson
Law Department
700 Newport Center Drive
Newport Beach, CA 92660-6367

General Electric Capital Life Assurance Company of
New York
Attention: Andrew McLean, Esquire
P.O. Box 6158
Lynchburg, VA 24505

General Electric Capital Life Assurance Company of
New York
c/o Craig H. Ulman, Esquire
Charles S. Greene III, Esquire
Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, D.C. 20004

Federal Home Life Insurance Company
Attention: Andrew McLean, Esquire
P.O. Box 6158
Lynchburg, VA 24505

Federal Home Life Insurance Company
c/o Craig H. Ulman, Esquire
Charles S. Greene III, Esquire
Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, D.C. 20004

First Colony Life Insurance Company
Attention: Andrew McLean, Esquire
P.O. Box 6158
Lynchburg, VA 24505

First Colony Life Insurance Company
c/o Craig H. Ulman, Esquire
Charles S. Greene III, Esquire
Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, D.C. 20004

Monarch Life Insurance Company
Attention: Michael Miller, Esq
Lori Israeli, Esq
Drinker Biddle & Reath LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

Aviva Life Insurance Company
Attention: Carl H. Wilson, Esquire
Law Department
3 Pine Hill Drive
Quincy, MA 02169-7472

American General Life Insurance Company
Attention: Stephen C Baker, Esquire
John B Dempsey, Esquire
Drinker Biddle & Reath, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

AIG Life Insurance Company
Attention: Stephen C Baker, Esquire
John B Dempsey, Esquire
Drinker Biddle & Reath, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

Safeco Life Insurance Company
Attention: Jeffrey A Laurance, Esquire
Life Legal Department
1191 2nd Avenue, Ste 200
Seattle WA 98101-2997

Annuity Issuers

Variable Annuity Life Insurance Company
Attention: Stephen C Baker, Esquire
John B Dempsey, Esquire
Drinker Biddle & Reath, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

American Mayflower Life Insurance Company
Attention: Andrew McLean, Esquire
P.O. Box 6158
Lynchburg, VA 24505

American International Life Assurance Company of NY
Attention: Stephen C. Baker, Esquire
John B. Dempsey, Esquire
Drinker Biddle & Reath, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

Swiss Re Life and Health America Inc.
Attention: Stephen C. Baker, Esquire
John B. Dempsey, Esquire
Drinker Biddle & Reath, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

Transamerica Occidental Life Insurance Company
Attention: Richard M. Rubenstein, Esquire
Law Department
400 West Market Street
Aegon Center 8th Floor
Louisville, KY 40202

Peoples Benefit Life Insurance Company
Attention: Richard M. Rubenstein, Esquire
Law Department
400 West Market Street
Aegon Center 8th Floor
Louisville, KY 40202

Allstate Life Insurance Company
Attention: Ann M. Walton, Esquire
3100 Sanders Road J5B
Northbrook, IL 60062

American Mayflower Life Insurance Company
c/o Craig H. Ulman, Esquire
Charles S. Greene III, Esquire
Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, D.C. 20004

National Indemnity Company
Attention: Brennan S. Neville, Esquire
Legal Council
3024 Harney Street
Omaha, NE 68131

AIG Annuity Insurance Company
Attention: Stephen C. Baker, Esquire
John B. Dempsey, Esquire
Drinker Biddle & Reath, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

Monumental Life Insurance Company
Attention: Richard M. Rubenstein, Esquire
Law Department
400 West Market Street
Aegon Center 8th Floor
Louisville, KY 40202

The Prudential Insurance Company of America
Attention: Richard Torres, Esquire
VP and Corp Counsel
Prudential Retirement Law Department
200 Wood Avenue S, MS 225
Iselin, NJ 08830

Annuity Issuers

Delaware American Life Insurance Company
Attention: Stephen C. Baker, Esquire
John B. Dempsey, Esquire
Drinker Biddle & Reath, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

Reassure American Life Insurance Company
Attention: Stephen C. Baker, Esquire
John B. Dempsey, Esquire
Drinker Biddle & Reath, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

The Equitable Life Assurance Society of the United States
Attention: Margaretta J. Bowen, Esquire
Legal Department, 12th Floor
1290 Avenue of the Americas
New York, New York, 10104

Aurora National Life Assurance Company
Attention: Stephen C. Baker, Esquire
John B. Dempsey, Esquire
Drinker Biddle & Reath, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

General Electric Capital Assurance Company
Attention: Andrew McLean, Esquire
P.O. Box 6158
Lynchburg, VA 24505

General Electric Capital Assurance Company
c/o Craig H. Ulman, Esquire
Charles S. Greene III, Esquire
Hogan Lovells US LLP
555 Thirteenth Street, NW,
Washington, D.C. 20004

Jefferson Pilot Financial Insurance Company
100 North Greene Street
Greensboro, NC 27401

Gregg Hansen, Vice President
Jefferson Pilot Financial Insurance Company
100 North Green Street
Greensboro, NC 27401

Security Benefit Life Insurance Company
Attention: Natalie Hagg, Esquire
Law Department
One Security Benefit Place
Topeka, KS 66636-0001

Liberty Life Assurance Company of Boston
Attention: Patricia Fairhurst
Structured Settlement Administration
100 Liberty Way
Dover, NH 03820