

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania
Plaintiff

v.

Reliance Insurance Company,
Defendant

No. 269 M.D. 2001

IN RE: *The Fuji Bank Limited*

ORDER

AND NOW, on this ____ day of _____, 2002, upon
consideration of Fuji Bank Limited's Petition to Intervene and Emergency Petition to
Compel the Liquidator to Determine Fuji's Proof of Claim, IT IS HEREBY ORDERED
that the Petition is DENIED.

JAMES GARDNER COLLINS, Judge

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M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania
Plaintiff

v.

Reliance Insurance Company,
Defendant

No. 269 M.D. 2001

IN RE: *The Fuji Bank Limited*

**RESPONSE IN OPPOSITION TO THE FUJI BANK LIMITED'S PETITION
TO INTERVENE AND EMERGENCY PETITION TO COMPEL THE
LIQUIDATOR TO DETERMINE FUJI'S PROOF OF CLAIM**

M. Diane Koken, the Insurance Commissioner of the Commonwealth of Pennsylvania, as Liquidator for Reliance Insurance Company ("Liquidator"), through her undersigned counsel, opposes the Petition to Intervene and Emergency Petition of The Fuji Bank Limited ("Fuji") to Compel the Liquidator to Determine Fuji's Proof of Claim.

General Response In Opposition To Fuji's Petition

Fuji's present Petition should be denied for three reasons: (1) Fuji's renewed attempt to intervene in this matter and to achieve expedited, preferential treatment of its Proof of Claim is nothing more than a motion for reconsideration of its previously denied petition to intervene and for other relief; (2) there are presently approximately 1.4 million proofs of claim pending in the Reliance Liquidation, of which Fuji's is only one; and (3) the Liquidator's valuable and limited resources should not be wasted by Fuji's proposed

splintered, protracted proceedings, whereby the amount of Fuji's Proof of Claim would be determined by April 20, 2002, but all other issues, including priority classification of Fuji's claim and the competing claims to certain securities proceeds, would be determined later.

Dissatisfied with the Court's Order of February 27, 2002, denying Fuji's petition to intervene and for other relief, Fuji seeks once again to intervene. Fuji's current attempt has the same underlying goal as its former one: To enable Fuji to argue that it is entitled to approximately \$2,000,000 in securities proceeds, which is the subject of a dispute among the parties to a September 28, 1998 Securities Proceeds Agreement ("SP Agreement") among Fuji as Lender, Woodbaby, Inc. as Borrower, Film Kids, Inc., Reliance Insurance Company of Illinois ("Reliance"), Woodbridge Films, Inc. ("Woodbridge"), and The Fuji Bank and Trust Company ("Fuji Trust").

To assert entitlement to the securities proceeds, the SP Agreement requires Fuji to obtain an arbitration award before May 15, 2002, pursuant to a March 17, 1998 Motion Picture Advertising Efficacy Insurance Policy (the "Woodbridge Agreement") between Reliance as "Insurer," and Woodbridge as "Insured." Fuji, as the lone "Loss Payee" under the Woodbridge Agreement, is entitled exclusively to any payments due thereunder.

Fuji's prior petition unsuccessfully requested this Court to command Reliance to enter into a stipulated arbitration award under the Woodbridge Agreement against Reliance and in favor of Fuji before May 15, 2002, so that Fuji could then assert its alleged priority rights to the securities proceeds under the SP Agreement. Now Fuji seeks to achieve the same result, *albeit* by a different method: This time Fuji requests an order compelling the

Liquidator to determine Fuji's Proof of Claim on or before April 20, 2002. Presumably, Fuji's intention is to leverage any Proof of Claim determination as the equivalent of an arbitration award before the May 15, 2002 deadline.

The bottom line remains that several parties to the Securities Proceeds Agreement, including Fuji, Reliance, and Woodbridge, have asserted rights to the securities proceeds. These conflicting rights need to be determined fully and fairly in the ordinary course of Fuji's Proof of Claim proceeding. They should not be determined, as Fuji desires, after Fuji has had an expedited opportunity to secure a determination it will then claim gives it a priority and exclusive right to the disputed funds. Certainly Fuji preserves the right to argue that its inability to secure an arbitration award by May 15, 2002 because of the stays entered by the Court in the Rehabilitation and Liquidation proceedings should not preclude its claimed entitlement to the securities proceeds.

While Fuji's second attempt to secure some kind of arbitral determination before May 15, 2002 may have merit in its mere cleverness, it should be denied for some of the same reasons as its former one:

1. The October 3, 2001 Liquidation Order specifically provides that "[u]nless the Liquidator consents thereto in writing, no action at law or equity, or arbitration or mediation, shall be brought against Reliance or the Liquidator, whether in this Commonwealth or elsewhere, nor shall any such existing action be maintained or further prosecuted after the date of this Order." Liquidation Order at ¶ 22. The relief Fuji seeks violates the stay

provision by allowing Fuji to secure the equivalent of an arbitration award without the Liquidator's consent.

2. The Liquidation Order also expressly prohibits any person from "obtaining of preferences, judgments, attachments, garnishments or liens against Reliance's assets, property and policyholders." Liquidation Order at ¶ 21(g). Fuji's Petition requests the Liquidator to violate this Paragraph of the Order by effectively asking that Fuji's desired arbitration claim under the Woodbridge Agreement be approved now so that it can claim an alleged priority interest in the securities proceeds under the SP Agreement, and thus recover a preference payment contrary to the Statute and the Liquidation Order. However, approximately 1.4 million Reliance creditors have filed proofs of claim in this Liquidation. Fuji's recently filed Proof of Claim is but one of this mass of claims. Fuji is no more entitled to preferential, special "emergency" determination of its claim than any other creditor, many of whom have already sought and been denied expedited or emergency relief.

Fuji's current Petition is yet another attempt by a Reliance creditor to circumvent the stay of actions and arbitrations against Reliance in order to get a preferential determination potentially affecting the distribution of assets that belong to the Reliance Estate. Moreover, Fuji's Petition - which seeks a determination now of the amount of its Proof of Claim and a determination later of: (1) entitlement to the SP Agreement's securities proceeds; and (2) the priority classification of the Woodbridge Agreement - unnecessarily requests a protracted and splintered proceeding which ill-serves the limited judicial, administrative, and economic resources available to the Liquidator.

Pursuant to the Court's February 8, 2002 Order, Fuji's Proof of Claim should be determined in an orderly and efficient fashion along with the many other proofs of claim filed by the 1.4 million Reliance creditors. Fuji's Petition should be denied.

Specific Response In Opposition To Numbered Paragraphs In Fuji's Petition

1. Admitted in part and denied in part. It is admitted that Fuji filed a Petition as described on January 15, 2002. It is denied that the amount of Fuji's Flanders Claim under the Woodbridge Agreement is undisputed.

2. Admitted.

3. Admitted.

4. Denied. Fuji merely has a right to claim the securities proceeds held under the SP Agreement if Fuji obtains an arbitral award for an amount due it under the Woodbridge Agreement on or before May 15, 2002. The SP Agreement also gives Reliance a right to claim the securities proceeds if, as will be the case, Reliance is not paid certain premiums due and owing under the Woodbridge Agreement by May 15, 2002. Woodbridge also has asserted a claim to the securities proceeds.

5. Admitted that Fuji filed an arbitration claim dated April 25, 2001. Denied that Reliance refused to pay the March 2001 Flanders Claim. Fuji sent a letter dated March 5, 2001 to Reliance whereby Fuji simply notified Reliance of its claim as Loss Payee to the proceeds of the Woodbridge Agreement.

6. Denied. Reliance has never acknowledged that Fuji has a valid claim under the Woodbridge Agreement worth no less than \$16,989,629. Reliance's counsel wrote a letter dated August 20, 2001 to Fuji's counsel pointing out that Reliance was in Rehabilitation and specifically advising Fuji that Reliance reserved its rights regarding Fuji's claim under the Woodbridge Agreement as to the following issues: (1) the characterization of the Woodbridge Agreement under Rehabilitation rules as a contract for suretyship as opposed to a policy of casualty insurance; (2) any reduction in the Claim payment amount mandated by Rehabilitation itself or the terms of any Rehabilitation Plan or Order applicable thereto; and (3) the timing of any payment(s) ultimately made on the Claim in Rehabilitation. By this reservation of rights, Fuji was expressly on notice that its claim was now governed by the Rehabilitation proceedings.

7. Denied for the reasons set forth in Paragraph 6, above, and in Paragraph 10 of Liquidator's response to Fuji's original petition, as attached at Exhibit E to Fuji's present Petition.

8. Denied for the reasons set forth above in Paragraph 7.

9. Denied for the reasons set forth above in Paragraphs 6-8.

10. Denied. The Liquidator's response in opposition to Fuji's original petition speaks for itself and is misstated by Fuji. The Liquidator expressly stated that in Paragraph 18 of its response to Fuji's original petition that "Section 5(a) of the SP Agreement gives Fuji a *potential* entitlement to the securities proceeds *if certain conditions are met*."

11. Denied. Notwithstanding the Rehabilitation and Liquidation proceedings, Fuji may still not have secured an arbitration award under the Woodbridge Agreement before the May 15, 2002 deadline.

12. Denied.

13. Denied.

14. Denied.

15. Denied. Moreover, it would be a tremendous waste of the Liquidator's limited and valuable resources to determine Fuji's Proof of Claim in the piecemeal, splintered fashion advocated by Fuji.

16. Denied.

17. Denied.

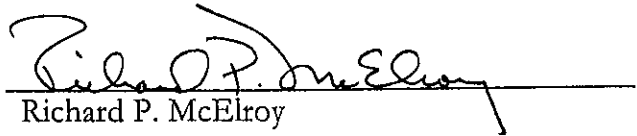
18. Denied as stated. The Court's February 27, 2002 Order gave Fuji, like every other Reliance creditor, the right to file a proof of claim, which Fuji did. The Order contains no provisions for the preferential, expedited treatment sought by Fuji.

WHEREFORE, the Liquidator moves for the entry of an Order in the form attached denying Fuji's Petition to Intervene and Emergency Petition to Compel the Liquidator to Determine Fuji's Proof of Claim.

Respectfully submitted,

BLANK ROME COMISKY & McCAULEY LLP

By:



Richard P. McElroy
J.B. Dilsheimer
One Logan Square
Philadelphia, PA 19103-6998

Counsel for M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania, as
Liquidator for Reliance Insurance Company

OF COUNSEL:

David F. Simon, Esquire
Chief Counsel, The Pennsylvania Insurance Department
Office of Chief Counsel
1341 Strawberry Square
Harrisburg, PA 17104

April 4, 2002

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania
Plaintiff

v.

Reliance Insurance Company,
Defendant

No. 269 M.D. 2001

IN RE: *The Fuji Bank Limited*

**MEMORANDUM OF LAW IN SUPPORT OF LIQUIDATOR'S RESPONSE IN
OPPOSITION TO THE FUJI BANK LIMITED'S PETITION TO INTERVENE
AND EMERGENCY PETITION TO COMPEL THE LIQUIDATOR TO
DETERMINE FUJI'S PROOF OF CLAIM**

M. Diane Koken, the Insurance Commissioner of the Commonwealth of Pennsylvania, as Liquidator for Reliance Insurance Company ("Liquidator"), through her undersigned counsel, relies on and incorporates by reference as if set forth fully herein, the Response in Opposition to the Petition to Intervene and Emergency Petition of The Fuji Bank Limited ("Fuji") to Compel the Liquidator to Determine Fuji's Proof of Claim for her Memorandum of Law.

To reiterate the main points of the Liquidator's opposition to Fuji's Petition, the Petition should be denied for three reasons:

1. Fuji's renewed attempt to intervene in this matter and to achieve expedited, preferential treatment of its Proof of Claim is nothing more than a motion for reconsideration of its previously denied petition to intervene and for other relief

2. Fuji's Proof of Claim, which is one of 1.4 million in these Liquidation proceedings, should not be afforded preferential, expedited, "emergency" treatment.

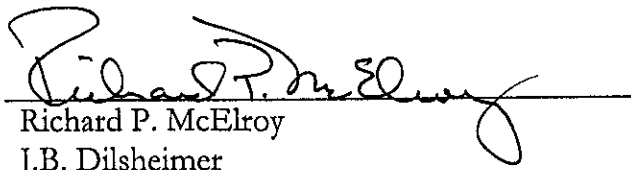
3. The Liquidator's valuable and limited resources should not be wasted by Fuji's proposed splintered, protracted Proof of Claim proceedings, whereby the amount of Fuji's claim would be determined by April 20, 2002, but all other issues, including priority classification of Fuji's claim and the competing claims to certain securities proceeds, would be determined later.

For these reasons, as well as those set forth in the Liquidator's Response in Opposition to Fuji's Petition, the Liquidator requests that the Court enter an Order denying Fuji's Petition to Intervene and Emergency Petition to Compel the Liquidator to Determine Fuji's Proof of Claim.

Respectfully submitted,

BLANK ROME COMISKY & McCAULEY LLP

By:



Richard P. McElroy
J.B. Dilsheimer
One Logan Square
Philadelphia, PA 19103-6998

Counsel for M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania, as
Liquidator for Reliance Insurance Company

OF COUNSEL:

David F. Simon, Esquire
Chief Counsel, The Pennsylvania Insurance Department
Office of Chief Counsel
1341 Strawberry Square
Harrisburg, PA 17104

April 4, 2002

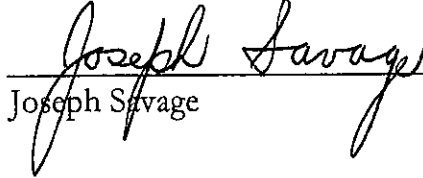
VERIFICATION

I, Joseph Savage, am a Senior Vice President of Reliance Insurance Company (in Liquidation). I hereby verify that the statements made in the foregoing Response in Opposition to The Fuji Bank Limited's Petition to Intervene and Emergency Petition to Compel the Liquidator to Determine Fuji's Proof of Claim are true and correct to the best of my knowledge, information, and belief.

I understand that the statements in the foregoing Response in Opposition are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated:

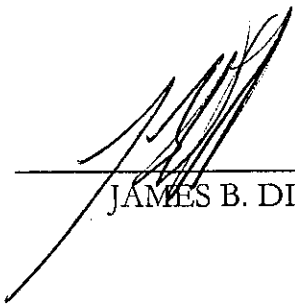
4/2/02



Joseph Savage

CERTIFICATE OF SERVICE

I, James B. Dilsheimer, hereby certify that on April 4, 2002, a true and correct copy of the foregoing Response in Opposition to the Fuji Bank Limited's Petition to Intervene and Emergency Petition to Compel the Liquidator to Determine Fuji's Proof of Claim was served on all persons listed on the attached Master Service List by U.S. Mail, postage prepaid.



JAMES B. DILSHEIMER

Master Service List

M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania

v.

Reliance Insurance Company

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

Jerome R. Richter
Ann B. Laupheimer
Blank Rome Comisky & McCauley LLP
One Logan Square
Philadelphia, PA 19103
(215) 569-5500
(Attorneys for M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania)

David F. Simon, Esquire
Chief Counsel
Pennsylvania Insurance Department
1341 Strawberry Square
Harrisburg, PA 17120
(717) 787-6009
(Attorney for M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania)

Marilyn K. Kincaid, Esquire
Reliance Insurance Company
(in Liquidation)
Three Parkway
Philadelphia, PA 19102
(215) 864-4205
(Attorney for Reliance Insurance
Company (in Liquidation))

Hillary C. Steinberg
James Michael Matour
Hangley Aronchick Segal & Pudlin, P.C.
One Logan Square
Philadelphia, PA 19103
(215) 568-6200
(Attorneys for Reliance Group
Holdings, Inc.)

Jeffrey B. Rotwitt
Obermayer Rebmann Maxwell & Hippel
1 Penn Center, 19th Floor
Philadelphia, PA 19103-1895
(215) 665-3000
(Attorneys for M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania)

Edward A. Perell
Debevoise & Plimpton
919 Third Avenue
New York, NY 10022
(212) 909-6000
(Attorneys for Reliance Group
Holdings, Inc.)

William Charles Bensley
George Whittaker Howard
Edward M. Nass
Howard Brenner & Nass, P.C.
1608 Walnut Street, Suite 1700
Philadelphia, PA 19103
(215) 546-8200
(Attorneys for Francine and Ted Forman)

Brad S. Karp
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000
(Attorneys for Reliance Group
Holdings, Inc.)

Robert H. Levin
Adelman Lavine Gold & Levin, P. C.
1900 Two Penn Center Plaza
Philadelphia, PA 19102
(215) 568-7515
(Attorneys for Committee of Policyholders)

Richard E. Poole
Potter Anderson & Corroon LLP
1313 North Market Street
P.O. Box 951
Wilmington, DE 19899-0951
(302) 984-6006
(Attorneys for Jason Pauley)

Richard P. Coe
Weir & Partners, LLP
1339 Chestnut Street, Suite 500
Philadelphia, PA 19107
(215) 665-8181
(Attorneys for Forestal Village Community
Services Association, Inc. and Sutton
Woods Condominium Assoc., Inc.)

Theodore E. Huenke
Huenke & Rodriguez
One Huntington Quadrangle, Suite 2S02
Melville, NY 11747
(631) 756-2024
(Attorneys for Hanover Ins. Co.)

Andrew K. Stutzman
David Carl Franceski
Stradley, Ronon, Stevens & Young, LLP
2600 One Commerce Square
Philadelphia, PA 19103-7098
(215) 564-8008
(Attorneys for Citicorp North America, Inc.)

Roy S. Cohen
Nicole L. Herman
Cohen, Segalis, Pallas & Greenhall, P.C.
1515 Market Street, 11th Floor
Philadelphia, PA 19102
(215) 564-1700
-and-
Richard D. Batchelder, Jr.
Ropes & Gray
One International Place
Boston, MA 02110-2624
(617) 951-7000
(Attorneys for Miami Cruiseline
Holdings LLC)

Frank F. McGinn
Bartlett Hackett Feinberg, P.C.
Suite 920
10 High Street
Boston, MA 02110
(617) 422-0200
(Attorneys for Flatley Company)

James W. Creenan
Francis X. McTiernan
Wayman, Irvin & McAuley
1624 Frick Building
Pittsburgh, PA 15219
(412) 566-2970
(Attorneys for Consolidated Freightways)

Janet S. Baer
Kirkland & Ellis
200 East Randolph Drive, Suite 6500
Chicago, IL 60601
(312) 861-2200
(Attorneys for AmeriServe Food
Distribution, Inc.)

Robert D. Rhoad
Dechert Price & Rhoads
Princeton Pike Corporate Center
P.O. Box 5218
Princeton, NJ 08543
(609) 620-3200
(Attorneys for Acumen Re Management
Corporation)

Robert A. Kaufman
Michael L. Browne
Reed Smith Shaw & McClay LLP
2500 One Liberty Place
Philadelphia, PA 19103
(215) 851-8262
(Attorneys for Vitas Healthcare Corp.)

Thomas J. Madigan
Christopher A. Coppula
Cohen & Grigsby, P.C.
11 Stanwix Street, 15th Floor
Pittsburgh, PA 15222
(412) 297-4900
(Attorneys for O'Brien-Kreitzberg
& Associates, Inc.)

Stephen C. Becker
Becker Law Office
P.O. Box 192991
San Francisco, CA 94119-2991
(415) 434-8000
(Attorneys for Great Western Collection
Bureau)

Terence R. Savage
Employment Development Department
State of California
800 Capitol Mall, Legal Office
Sacramento, CA 95814
(916) 654-8410
(Attorneys for Employment Development
Department, State of California)

Peter J. Boyer
McCarter & English, LLP
One Commerce Square
2005 Market Street, Suite 3600
Philadelphia, PA 19103
(215) 557-7700
(Attorneys for Brand Scaffold Services, Inc.
and Magellan Ins. Co. Ltd.)

Philip A. Ignelzi
Michael A. Murphy
Ogg, Cordes, Murphy & Ignelzi, LLP
Riverview Place
245 Fort Pitt Boulevard
Pittsburgh, PA 15222
(412) 471-8500
(Attorneys for the Estate of Richard
McClintock)

John Norig Ellison
Timothy Patrick Law
Anderson, Kill & Olick P.C.
1600 Market Street, 32nd Floor
Philadelphia, PA 19103
(215) 568-4202
-and-
Marvin L. Wilenzik
Elliott Reihner Siedzikowski & Egan, P.C.
925 Harvest Drive
P.O. Box 3010
Blue Bell, PA 19422
(215) 977-1050
(Attorneys for Synagro Technologies, Inc.)

Jeremy J.O. Harwood, Esquire
Healy & Baillie, LLP
29 Broadway
New York, NY 10006-3293
(212) 943-3980
(Attorneys for Steamship Mutual
Underwriting Association (Bermuda) Ltd.)

Daniel J. DiGiacomo, Esquire
Law Offices of DiGiacomo & Baffa
1601 Market Street, 16th Floor
Philadelphia, PA 19103
(215) 568-3700
(Attorneys for Aleksander Blonarowycz and
Parthenia Ponder Vicks, Administratrix of
the Estate of Antwanette Ponder and Murray
Garson)

Thomas V. White, Esquire
Joseph P. Rusnak, Esquire
Tune, Entekin & White, P.C.
AmSouth Center, 21st Floor
315 Deaderick Street
Nashville, TN 37238
(615) 244-2770
(Attorneys for Home Builders Association
of Tennessee Self-Insured Trust)

Robert D. Brown
Donato Minx & Brown
Suite 2310, 3200 Southwest Freeway
Houston, TX 77027-7525
(713) 877-1112
(Attorneys for Andy's Marine, Inc.)

Mike Crane, Esquire
Law Office of McManus & Crane, LLP
209 West Juan Linn
P.O. Box 2206
Victoria, TX 77902-2206
(361) 575-6764
(Attorneys for Iris Kramer, Individually and
as Guardian of the Person and Estate of
Nicky Lee Kramer, an Incapacitated Person,
and as Next Friend of Joshua Kramer, Minor
Child of Nicky Lee Kramer, Jason Kramer
and Jason Tarver)

Michele Ann Smolin, Esquire
McDonald, Hopkins, Burke & Haber
600 Superior Avenue E
Cleveland, OH 44114-2653
(216) 348-5400
(Attorneys for United Church of Christ
Insurance Board)

Dolores Mary Troiani, Esquire
Bebe H. Kivitz, Esquire
Troiani/Kivitz, L.L.P.
38 North Waterloo Road
Devon, PA 19333
(610) 688-8400
(Attorneys for Dawn Popoca)

John Michael Sheridan
Sheridan, Bracken & White
P.O. Box 1940
101 West Baltimore Avenue
Media, PA 19063
(610) 565-7770
(Attorneys for Harry Moser)

Philip J. Goodman
Chadbourn & Parke LLP
120 New Hampshire Avenue, NW
Washington, DC 20036
(202) 974-5600
(Attorneys for 1741 Ivar LLC)

Lise Luborsky, Esquire
Britt, Hankins, Schaible & Moughan
Two Penn Center Plaza, Suite 515
1500 John F. Kennedy Blvd.
Philadelphia, PA 19102-1888
(215) 569-6918
(Attorneys for the Pennsylvania Property
and Casualty Insurance Guaranty
Association)

Frederick P. Santarelli, Esquire
Elliott Reihner Siedzikowski & Egan, P.C.
925 Harvest Drive
P.O. Box 3010
Blue Bell, PA 19422
(215) 977-1050
(Attorneys for Estate of Leo Frances
Tenczynski)

Janice Marie Savinis, Esquire
Goldberg, Persky, Jennings & White, P.C.
1030 Fifth Avenue
Pittsburgh, PA 15219
(412) 471-3980
(Attorneys for Harold W. Thomas)

Steve Gitman, Esquire
One Penn Center, Suite 1025
Philadelphia, PA 19103
(215) 569-4611
(Attorneys for Beth & Damon Gonzaga)

Francine L. Semaya, Esquire
Cozen O'Connor
45 Broadway, 16th Floor
New York, NY 10006
(212-908-1270)
(Attorneys for Allied Holdings and Client
Assurance Pool)

Kathleen S. McGrath, Esquire
Marshall, Dennehey, Warner,
Coleman & Goggin
One Montgomery Plaza, Suite 1002
Norristown, PA 19401
(610-292-4440)
(Attorneys for Pottstown Memorial Medical
Center)

Richard F. McMenamin, Esquire
David L. Harbaugh, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
(215-963-5596)
(Attorneys for Fuji Bank Limited)

Allan H. Gordon, Esquire
Kolsby, Gordon, Robin & Shore
1650 Market Street, 22nd Floor
Philadelphia, PA 19103
(215-851-9700)
(Attorneys for Estate of Angela Auch)

Michael E. McGilvery, Esquire
Young & McGilvery, P.C.
1400 Union Meeting Road
P.O. Box 3006
Blue Bell, PA 19422-3006
(215-654-7525)
(Attorneys for Wilhelm Gerhard)

Michael J. Kowalski, Esquire
Hourigan, Kluger & Quinn, P.C.
700 Mellon Bank Center
Wilkes Barre, PA 18701
(570-825-9401)
(Attorneys for Estate of Elizabeth A. Slucki)

Eric P. Wilenzik, Esquire
Elliott Reihner Siedzikowski & Egan, P.C.
925 Harvest Drive
Blue Bell, PA 19422
(215-977-1000)
(Attorneys for Brandywine Realty Trust)

R. Nicholas Gimbel, Esquire

McCarter & English
Mellon Bank Center, Suite 700
1735 Market Street
Philadelphia, PA 19103
(215-979-3800)
(Attorneys for Carolyn Corporation)

Edward F. Mannino, Esquire
Akin, Gump, Strauss, Hauer & Feld, LLP
One Commerce Square, Suite 200
2005 Market Street
Philadelphia, PA 19103
(Attorneys for Deloitte & Touche)

Charles T. Locke, Esquire
Locke & Herbert
900 Third Avenue
New York, NY 10022
(212-355-7493)
(Attorneys for Citicorp USA Inc.)

Charles S. Greene, III, Esquire
Hogan & Hartson, LLP
555 13th Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5797
(Attorneys for National Structured
Settlements Trade Association, General
Electric Capital Assurance Co., First Colony
Life Ins. Co., Federal Home Life Ins. Co.,
and GE Life and Annuity Assurance Co.)

David W. Cranshaw, Esquire
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, GA 30326
(404-233-7000)
(Attorneys for ChoicePoint and its division
ChoicePoint Commercial Specialist)