

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

**IN RE:** :  
: **No. 1 REL 2001**  
**Reliance Insurance Company** :  
**In Liquidation** :

*In Re: Liquidator's Application for Approval of Fourth Interim Distribution Percentage and Continuation of Safety Factor Percentage*

**MEMORANDUM and ORDER**

Presently before the Court is the Liquidator's Application for Approval of Fourth Interim Distribution Percentage and Continuation of Safety Factor Percentage (SFP) and the limited objection of JDN Realty Corporation regarding further continuation of the SFP. In her Application, the Liquidator seeks Court approval to increase the current cumulative interim distribution percentage of 40% of Notice of Determination (NOD) allowed amounts (the Third Interim Distribution Percentage) to 65% of NOD allowed amounts (the proposed Fourth Interim Distribution Percentage). The Liquidator has set forth her reasoning and analysis in making this request and asserts that it fulfills her duty to "pay distributions 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 as required by 40 P.S. § 221.6." Application at 9 (internal citation omitted).

In connection with her request to increase the cumulative interim distribution percentage, the Liquidator recommends continuing the current SFP of 30%. Despite that a recent independent actuarial review indicated to the Liquidator a reduction in the overall expected ultimate losses as well as no new areas of significant concern, that an updated analysis indicated some increase in available coverage within the Aggregate Limits, and that, the number of open claims being handled by the various guaranty associations has decreased as has the number of unresolved Proof of Claims, the Liquidator believes that:

[T]here is still a risk that unanticipated development on Aggregate Policies will occur, *particularly absent a claims bar date* cutting off all future claims. New Aggregate POCs will continue to be received and new information will continue to be received on pending Aggregate POCs. In addition, the [Guaranty Associations] will continue to handle certain claims under Aggregate Policies and subsequent adverse development is possible for those claims. Even with the 30% [SFP] in effect, there remains a risk that overpayment could occur on Aggregate NODs which the Liquidator would not be able to recover ("Excess Distributions"). . . . That risk becomes significantly greater when the cumulative distribution percentage is increased by more than 50%, as the Liquidator is recommending. A 65% cumulative distribution percentage presents a heightened risk that there will be Excess Distributions, even with the [SFP] continuing at the current 30%, because a significantly lower amount of additional reported losses can result in Excess Distributions.

Application at 13 (emphasis added).

JDN Realty Corporation has filed a response objecting to continuation of the SFP, essentially arguing that averments set forth in the Liquidator's various filings, including those in support of the entry of a claims bar date, support the conclusion that imposition of a SFP is no longer necessary to protect future unliquidated or undetermined claims. After consideration of the papers filed in this matter, this Court enters the following Order.

**AND NOW**, this 13th day of January, 2016, the Liquidator's Application for Approval of Fourth Interim Distribution Percentage and Continuation of Safety Factor Percentage is **GRANTED IN PART** as follows:

1. The cumulative Fourth Interim Distribution Percentage of 65% of NOD allowed amounts is approved for all class (b) Eligible Claimants as defined in the Application;
2. Ineligible Claimants, as defined in the Application, must look to the Guaranty Association in their state or the special deposits held in their state for any payment of their claims;
3. The Liquidator shall issue checks based on the cumulative Fourth Interim Distribution Percentage to class (b) Eligible Claimants; those Eligible Claimants who have already received a 40% cumulative distribution will receive an additional distribution based on the increase in the cumulative distribution percentage to 65%.

4. While the Court shall not disturb the current SFP of 30%, the Liquidator's request to continue the current SFP is held in abeyance and the Liquidator is directed to file another response in light of the recent establishment of a claims bar date of March 31, 2016. In her response, the Liquidator is directed to address whether the March 31, 2016, claims bar date changes the Liquidator's recommendation regarding the SFP, whether the SFP can be discontinued as of the claims bar date of March 31, 2016, and if not, the reasons supporting that position. The Liquidator shall file her response on or before February 3, 2016. Any reply to the Liquidator's response, shall be filed by February 12, 2016.

  

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BONNIE BRIGANCE LEADBETTER,  
Judge