

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

*In re:* LINCOLN GENERAL  
INSURANCE COMPANY (IN  
LIQUIDATION)

No. 1 LIN 2015

Re: *Liquidator's Application for Relief from Pa.R.A.P. 3781(b)(2)(i)*

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, upon consideration of the Liquidator's Application for Relief from Pa.R.A.P. 3781(b)(2)(i), it is hereby **ORDERED** that the Application is **GRANTED**. The Liquidator is relieved of the requirement of Pa.R.A.P. 3781(b)(2)(i) to include the allowed amount of the claim in all Notices of Determination for all claims by the United States in the estate of Lincoln General Insurance Company regarding customs surety bonds. The Liquidator thus need not include the allowed amount for any such claim in any such Notice of Determination.

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Renée Cohn Jubelirer, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

*In re:* LINCOLN GENERAL  
INSURANCE COMPANY (IN  
LIQUIDATION)

No. 1 LIN 2015

**LIQUIDATOR'S APPLICATION FOR RELIEF  
FROM REQUIREMENT OF PA.R.A.P. 3781(b)(2)(i)**

Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as the Statutory Liquidator of Lincoln General Insurance Company (In Liquidation) (“Lincoln”), seeks relief from the requirement of Pa.R.A.P. 3871(b)(2)(i) for her Notices of Determination evaluating claims by the United States regarding customs surety bonds. In support, she asserts:

1. This Court placed Lincoln into liquidation and appointed the Commissioner as its Liquidator (the “Liquidator”) by order dated November 5, 2015.

2. That order directed the Liquidator to take possession of Lincoln’s property, business, and affairs and liquidate it under Article V of the Insurance Department Act of 1921, 40 P.S. §§221.1 to 221.63 (“Act”).

3. To facilitate liquidations like Lincoln's, this Court has established rules for proceedings against insurers under the Act, found at Pennsylvania Rules of Appellate Procedure 3771 through 3784 ("Rules").

4. In compliance with the Liquidator Order, Act, and Rules, the Liquidator sent Proof of Claim forms and instructions to Lincoln estate claimants.<sup>1</sup>

5. Among the Lincoln estate's claimants is the Department of Homeland Security, U.S. Customs and Border Protection ("CBP"). Specifically, on June 30, 2016, the CBP filed a proof of claim under customs surety bonds issued by Lincoln purportedly totaling \$239,907,599.82 in value. These federal CBP claims are referenced here as the "US Bond Claims." In April 2019, the United States updated its submission to the Liquidator amending the purported valuation of the US Bond Claims as totaling \$151,599,055.57.

6. The validity, scope and total value of the US Bond Claims were in dispute prior to the liquidation of Lincoln and remain the subject of ongoing litigation proceedings before the United States Court of International Trade (the "CIT Proceedings").<sup>2</sup> The Liquidator has raised numerous material defenses to the

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<sup>1</sup> Those materials also are available on the Liquidator's public website for the Lincoln liquidation: <https://www.insurance.pa.gov/Regulations/LiquidationRehab/Pages/Lincoln-General.aspx>

<sup>2</sup> The CIT Proceedings include the following matters: *United States v. Lincoln General Ins. Co. (In Liquidation)*, Court Nos. 11-00296, 11-00352, 11-00367, 13-

US Bond Claims in the CIT Proceedings. The CIT Proceedings are currently stayed through April 1, 2022.

7. Consistent with long-standing Pennsylvania precedent and practice, the Liquidator maintains that the US Bond Claims must be assigned to class (c) (“Claims of the federal government [...]”) because, under Pennsylvania law, surety bond claims are not “claims under policies for losses” entitled to class (b) status under 40 P.S. §221.44 (and are historically and consistently treated as general creditor (or class (e)) claims). *See, e.g., Foster v. Mutual Fire, Marine and Inland Insurance Company*, 614 A.2d 1086 (Pa. 1992); *Grode v. Mutual Fire, Marine and Inland Insurance Company*, 572 A.2d 798 (Pa. Commw. 1990).

8. The United States has repeatedly acknowledged before different judges of the CIT that its US Bond Claims were entitled to class (c) status, and not class (b) status under 40 P.S. 221.44.<sup>3</sup>

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00083, 13-00085, 13-00086, 13-00087, 13-00088, 13-00089, 13-00090, 13-00091, and 13-00092.

<sup>3</sup> For example, on November 10, 2015, the U.S. filed a motion to stay the proceedings in nine of the CIT Proceedings. Even though the Liquidator advised that it preferred to proceed with the litigation, the U.S. contended that “proceeding with this litigation is likely to result in unnecessary expenditure of the Court’s, the Government’s, and the LGIC’s estate’s limited resources” and that it would like the matter stayed “at least until it is known whether any victory for the Government would likely be purely pyrrhic.” *See* Motion at 1 (CIT No. 13-84, etc.). The expressed reason for the Government’s pyrrhic victory concern was because its “current understanding is that the U.S. would not be at or near the top

9. Despite longstanding precedent and practice under Pennsylvania law, and despite having acknowledged its class (c) status in the CIT Proceedings, the United States has more recently advised the Liquidator that it believes the US Bond Claims actually belong in class (b).

10. As of June 30, 2021, the Liquidator has marshaled approximately \$46 million in assets. Approved class (b) claims total approximately \$26 million. As noted, the federal government has asserted that the US Bond Claims total over

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of the priority list of LGIC creditors.” *Id.* at 2. The CIT (Chief Judge Stanceu) granted the motion on February 18, 2016. On May 2, 2016, the U.S., in reliance on the Court’s stay order in the 2013 cases, moved for a stay in the sole 2014 case, Court No. 14-168. Specifically, the U.S. recited:

As a result of this liquidation action, the Court of International Trade has recently stayed other proceedings involving Lincoln General. *United States v. Lincoln Gen. Ins. Co.*, Nos. 13-00084 et al., 2016 WL 690525 (Ct. Int’l Trade Feb. 18, 2016). In those cases, the court recognized that judicial economy and efficiency favored a stay pending the receipt and evaluation of proofs of claims in the liquidation proceeding. *Id.* at \*2. The court noted that, in liquidations of insolvent insurers such as Lincoln General, Pennsylvania law prioritizes “administrative claims” and “claims under policies of insurance” ahead of Federal Government claims. *Id.* at \*1. Thus, until the proofs of claims are received and evaluated, it will not be known whether the Government may be able to recover its claim against Lincoln General.

Motion at 2. The Court (Judge (now Chief Judge) Barnett) issued a stay order in Court No. 14-168 two days later, on May 4, 2016. And in still other cases, the Government repeatedly acknowledged its class (c) status to other judges of the CIT. *See, e.g.*, Joint Status Reports in CIT Nos. 11-352 & 11-367 (Dec. 9, 2016) & 11-296 (Sep. 27, 2017).

\$150 million. The Liquidator continues to dispute the federal government's validity and valuation of the US Bond Claims. However, if the US Bond Claims are assigned to class (c), and the class (b) claimants receive 100% of their approved claims, then the need to continue the dispute with the federal government in the CIT Proceedings will be substantially diminished and possibly moot. Conversely, if the US Bond Claims are included within class (b) as the federal government now apparently contends, the CIT Proceedings will require continued litigation at significant cost to the estate, and if the claims are ultimately proven to be worth anything close to what the federal government asserts, all class (b) claimants would receive only a fractional share of their respective claim value, rather than 100% as the Liquidator presently projects.

11. To facilitate resolution of this threshold issue regarding priority class designation for the CBP's US Bond Claims, and to conserve the remaining assets of the estate for all claimants by not engaging in unnecessary litigation over valuation of the US Bond Claims, the Liquidator seeks to issue a "class only" Notice of Determination for the US Bond Claims, designating such claims as class (c). But she needs relief from a provision of Rule 3781 to do so—in particular, the requirement that each Notice of Determination must include "the allowed amount of the claim" under Rule 3871(b)(2)(i).

12. The relief requested by the Liquidator is supported by prior precedent. It mirrors an earlier request granted by Judge Leadbetter during the liquidation of Reliance Insurance Company. See Liquidator's Application for Relief from Pa.R.A.P. Nos. 3781 and 3784, Aug. 20, 2012, *In re: Reliance Insurance Company in Liquidation*, 1 REL 2001 (attached as Exhibit A); Order Granting Liquidator's Application Regarding Implementation of Pa.R.A.P. 3781(b)(1) and (b)(2)(i) and Pa.R.A.P. 3784(a), Oct. 3, 2012, *In re: Reliance Insurance Company in Liquidation*, 1 REL 2001 (attached as Exhibit B). No parties would be prejudiced by the requested relief.

13. For these reasons, the Statutory Liquidator asks the Court to relieve her of the requirement of Rule 3871(b)(2)(i) that each Notice of Determination include "the allowed amount of the claim" for the US Bond Claims.

WHEREFORE, the Liquidator requests that the Court grant this Application and issue an order in the attached form relieving the Liquidator of the requirement of Pa.R.A.P. 3781(b)(2)(i) to include the allowed amount of the claim in all Notices of Determination for all claims by the United States in the estate of Lincoln General Insurance Company regarding customs surety bonds.

Respectfully Submitted,

/s/ Karl S. Myers

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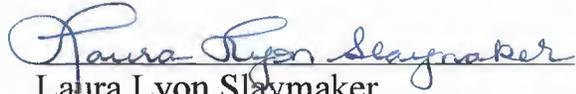
*Counsel for Jessica K. Altman, Insurance  
Commissioner of the Commonwealth of  
Pennsylvania, in her Official Capacity as Statutory  
Liquidator of Lincoln General Insurance Company  
(In Liquidation)*

Dated: October 7, 2021

**VERIFICATION**

I, Laura Lyon Slaymaker, am authorized by the Insurance Commissioner of the Commonwealth of Pennsylvania, under 40 P.S. §221.23, to act on her behalf in her capacity as the Liquidator of Lincoln General 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.

  
Laura Lyon Slaymaker  
Deputy Insurance Commissioner

Dated: October 7, 2021

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE:

Reliance Insurance Company  
in Liquidation

NO. 1 REL 2001

2012 AUG 20 A 11:48

RECEIVED AND FILED  
COMMONWEALTH COURT  
OF PA (PHILA)

APPLICATION FOR RELIEF FROM Pa. R.A.P. Nos. 3781 AND 3784

Applicant, Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania, in his official capacity as the Statutory Liquidator (“Liquidator”) of Reliance Insurance Company (“Reliance or Reliance Estate”), seeks relief from implementation of certain provisions of the new Pa. R.A.P. Nos. 3871 and 3874 because full and immediate implementation of those rules would not be feasible and would work an injustice as to the Estate and its claimants. In support of his Application, the Liquidator avers the following:

BACKGROUND

1. Plaintiff, Insurance Commissioner of the Commonwealth of Pennsylvania, was appointed Liquidator of Reliance pursuant to this Court’s Order dated October 3, 2001 (“Liquidation Order”).
2. The Liquidation Order directed the Liquidator to “immediately take possession of Reliance’s property, business and affairs. . . and to liquidate Reliance in accordance with Article V of the Insurance Department Act of 1921, as amended (40 P.S. §§211 et seq.) (the “Act”), and to take such action as the interest of the policyholders, creditors or the public may require.” See Liquidation Order, ¶3. The Liquidation Order also required the Liquidator to “give notice by first-class mail to all persons which or who may have claims against Reliance.” See Liquidation Order, ¶ 19. By the end of the first quarter of 2002, the Liquidator provided Proof of Claim

(“POC”) forms and instructions to policyholders and creditors of Reliance as identified by the books and records of Reliance. Additionally, since the first quarter of 2002, the POC forms and instructions have been available on the Reliance Documents website at [www.reliancedocuments.com](http://www.reliancedocuments.com). By the end of the claim filing period, December 31, 2003, Reliance had received 148,743 POCs.

3. This Court entered an Order in September of 2002 (“2002 Claims Order”) establishing a comprehensive claims procedure to implement the relevant provisions of the Act. Regarding the time frame for issuing Notices of Determination (“NODs”), paragraph 10(a) of the 2002 Claims Order required that:

Within one hundred eighty (180) days from when all necessary documentation has been received and when all claim requirements have been satisfied, the Liquidator shall provide a written notice of determination of the Proof of Claim (notice of determination) to the claimant and to claimant’s attorney, where applicable, by first class mail, at the address shown in the Proof of Claim or, if Reliance has been informed of a change of address, at such changed address.

Other paragraphs of the 2002 Claims Order required that status notices be sent to claimants within certain time frames advising them of the status of the evaluation of their claim.

4. Regarding reports to be submitted to this Court for approval of undisputed claims, paragraph 10(c) of the 2002 Claims Order provided that:

As soon as practicable, the Liquidator shall present to the Court a report of the claims determined by the Liquidator to which no objection was filed (“undisputed claims”). The report shall include: the name and address of each claimant, the particulars of the claim, and the amount of the claim determined by the Liquidator.

Other paragraphs of the 2002 Claims Order required that the claim number, the date the proof of claim was filed, and the claimed amount be included on certain claim reports submitted to this Court.

5. Status reports filed with this Court beginning on January 17, 2003; then on June

30, 2003; November 10, 2003; February 17, 2004; May 20, 2004; and August 20, 2004, detail the steps taken by the Liquidator to comply with the requirements of the 2002 Claims Order. In order to handle the volume of claims expected to be filed with the Estate, it was necessary to analyze the impact of the requirements and then develop information technology ("IT") and related systems for handling: work flows and related procedures, internal controls, imaging protocols, and document outputs to record, process, track, and assist in the evaluation of POCs; issue and track NODs from issuance through distributions; administer the objection process; bill reinsurers on qualifying claims; and provide a variety of reports, both internal and external, regarding all aspects of the claims process. Then those newly developed IT systems had to be integrated with the Reliance legacy systems for claims, reinsurance, reporting and accounting, in order to draw additional necessary information for processing and reporting. The analysis and development process involved over 50 key staff members over a period of almost 2 years. Creation and implementation of the new IT systems required the hiring of more than 50 IT staff (consultants and employees) to design, program, modify, and test the systems to meet the defined requirements. In excess of 60 additional claims personnel (both employees and consultants) were hired between the fall of 2002 and the end of 2003 in order to address the volume of claims within the required time frames, and even more claims staff would have been added if the Liquidator had been able to find qualified individuals available to fill the positions.

6. In the status report filed with this Court on June 30, 2003, it was reported that the design, development and implementation costs associated with providing the IT systems to comply with the 2002 Claims Order totaled \$2,714,000 through May 31, 2003. Incremental costs through the remainder of 2003 were projected to be at least \$6 million with an additional \$11 million to be incurred during 2004, depending on the number of POCs received by the December 31, 2003 claim filing deadline. These costs included not only IT systems

development costs, but the costs necessary to significantly increase consultants in the IT Department as well as to increase Claims Department staff by approximately 48%, along with the education and extensive training of new personnel (including some consultants) regarding Reliance history, policies, systems and procedures.

7. Over 70,000 POCs, or nearly half of the total POCs filed by the claim filing deadline of December 31, 2003, were received in the month of December which meant that all of those POCs had to be reviewed by June 30 of 2004 to determine whether all necessary documentation had been received and all claim requirements had been satisfied in order to issue NODs. Consequently, even with the considerable effort made by a significantly increased Reliance staff to comply with the time frames imposed by the 2002 Claims Order as detailed above, it was necessary to seek relief from this Court on June 28, 2004 to allow an additional 60 days for review of all the POCs filed shortly before the deadline. This Court granted the requested relief on June 29, 2004.

8. Certain aspects of the 2002 Claims Order were revised slightly in the Order issued by this Court on December 12, 2008 (“2008 Claims Order”). The 2008 Claims Order requires that “[w]ithin 180 days from receipt of information sufficient to adjudicate a POC, the Liquidator shall issue a written Notice of Determination (“NOD”).” This language regarding the time frame for issuing a NOD is not substantively different from the 2002 Claims Order requirement.

9. The 2008 Claims Order also requires that:

At least annually, the Liquidator shall prepare and submit to the Court a report of the Liquidator’s recommendations with respect to each NOD issued during the relevant period (“Claims Report”). The Claims Report shall include the following: Claimant’s name, address, priority class, allowed amount, and the particulars of the claim, including whether the NOD was issued without Objection or after the settlement of an Objection.

This language omitted certain information required by the 2002 Claims Order, such as the claim

number, the date the POC was filed, and the amount claimed (often not specified), none of which are particularly useful to the claimant, other interested parties, or this Court. The 2008 Claims Order added a requirement for indicating whether the NOD was issued with or without a subsequent objection.

10. Beginning in 2002, and adjusted periodically as required through June of 2012, all Reliance staffing levels, IT system design, workflows and related procedures, imaging protocols, reporting formats and internal controls have been based on the requirements of the 2002 Claims Order with the slight modifications required by the 2008 Claims Order. Through March 31, 2012, Reliance has received 160,277 POCs, 11,534 of which were received after the claim filing deadline of December 31, 2003. Based on the time frames for issuing NODs in the 2002 and 2008 Claim Orders, Reliance has issued 156,374 NODs through March 31, 2012, addressing more than 97% of all POCs filed.

11. While processing over 97% of the POCs in compliance with the 2002 and 2008 Claims Orders, the objection rate has consistently remained below 1% of all NODs issued. More than \$3.6 billion has been collected in reinsurance proceeds through March 31, 2012; more than \$2 billion has been advanced to guaranty associations (“GAs”) as early access, while \$1.5 billion of GA loss claims and \$138 million of GA administrative expense claims have been processed for approval; and \$306.6 million has been distributed to claimants on class (b) NODs approved by this Court. All of this was accomplished while consistently reducing staff from a high of 467 employees (excluding consultants) in 2001 to 131 employees as of March 31, 2012, a reduction of 72%. Total annual administrative expenses of the Liquidator (including salary and benefits, IT costs, professional services, legal and rent expenses, but excluding GA administrative expenses) have been reduced from \$142.6 million in 2002 to \$48 million in 2011, a reduction of 66%.

12. On June 8, 2012, this Court issued an Order regarding the Adoption of Pa. R.A.P. 3771-3784 Governing Insurance Rehabilitations and Liquidations and All Other Matters Under Article V of the Insurance Department Act of 1921 (“CC Rules”). The CC Rules became effective on July 30, 2012 unless this Court “determines that their application to a pending matter would not be feasible or would work an injustice.” There are three provisions of the CC Rules which would have a significant deleterious effect on the Reliance Estate and its claimants such that implementation of those rules, as written and when required, would not be feasible and would work an injustice, as well as extending the time frame for completion of the liquidation.

**RULE 3781(b)(1)**

13. Pa. R.A.P. No. 3781(b)(1) (“90-day Rule”) provides that

Unless otherwise ordered, the liquidator shall issue a written notice of determination within one hundred and eighty (180) days of the filing of the proof of claim, unless the liquidator seeks additional information on a claim pursuant to Section 538(b), 40 P.S. §221.38(b). If additional information is requested, the liquidator shall issue a notice of determination within ninety (90) days of the date on which the additional information is received.

The time requirement for issuing NODs as stated in the new 90-day Rule is significantly different than the requirement established in the 2002 and 2008 Claims Orders, both of which essentially allow 180 days from receipt of sufficient information. As explained below, this change would require significant and extensive modification of all Reliance IT systems, workflows and related procedures, imaging protocols, and internal controls to implement and comply with the new 90-day Rule, as well as engaging a significant number of consultants (along with procuring office space not currently available) to provide both immediate and continued compliance. Implementation of Pa. R.A.P. No. 3781(b)(1) would be quite costly to the Estate while providing virtually no benefit to the Reliance claimants.

14. The Reliance claim filing deadline was December 31, 2003, although new POCs

continue to be filed. After excluding the omnibus POCs filed by the GAs, pending POCs with objections, and all the POCs associated with a claim still being handled by GAs, approximately 2900 POCs remain open and under review by Reliance. Although Reliance has made contact with all of these claimants at various times in compliance with the 2002 and 2008 Claims Orders, Reliance does not yet have sufficient information to finally evaluate their POCs for a variety of reasons. All of those 2900 POCs would require immediate attention and review to determine whether NODs could be issued by October 29, 2012, whether there was contact with the claimant in the last 90 days or what additional information must be requested from the claimant, or what other steps must be taken to issue a NOD. All of the information gathered from the review would have to be organized in a format that could then be uploaded into Reliance IT systems. That type of review would not be feasible considering the number and type of remaining POCs, the time frame imposed, and the current staffing levels. In the meantime, IT systems, workflows and related procedures, internal controls and imaging protocols would need to be modified to first trigger requests for more information within the 90 day time frame and then to alert an evaluator to review any information received within a time frame that would allow either a NOD to be issued or an additional request for information within the next 90 days. It would be necessary to immediately increase staff, likely through the use of consultants, for the initial review of open POCs, the IT system revisions, and ongoing compliance so that all normal and necessary work could continue, such as the 11 reports which are now routinely filed with this Court every year which allow distributions to claimants and certain reimbursement payments to GAs. In addition to issuing NODs within the time frame required by the 2002 and 2008 Claims Orders, claims staff also review claims for other purposes, such as requests for release of collateral, commutation reviews, and reinsurance billings. All of those tasks would be adversely affected by implementation of the 90-day Rule. Further, the consultants added to implement the

changes would have to be provided with office space and computer setups, trained to work with the new IT systems, and educated regarding the policies issued by Reliance and the evaluation of claims under those policies, as well as the liquidation aspects of evaluating POCs.

15. Even if all of that is eventually accomplished, albeit with significant costs, there will be many instances where Reliance will still be unable to comply with the 90-day Rule. Many of the POCs remaining open involve the more complex claims with large exposures which typically require extensive review including analysis of large volumes of material and legal analysis, e.g., professional liability, medical malpractice, errors and omissions, legal malpractice, construction defect and mass tort (pollution and asbestos), as well as life-time worker compensation claims. Many involve policies written with multi-million dollar limits, with participation in multiple excess layers, and where multiple related wrongful acts may constitute one occurrence. As a consequence, one claim may involve numerous lawsuits in various jurisdictions, sometimes involving several class actions. When aggregate limits are involved, numerous unrelated underlying claims which could impact the aggregate may be handled under one POC. For example, there is one aggregate errors and omission claim by an insured which involves 700 individual claims. When multiple boxes of information are submitted for these types of claims, 90 days would not allow enough time to even review the volume of information received, much less consult outside experts, obtain a coverage opinion, or determine what other information might be necessary to properly evaluate the claim(s). Issuing NODs without sufficient time to adequately review and analyze the material submitted may result in incorrect priority classifications, incorrect allowed amounts, or incorrect liability decisions which could result in many more objections and associated unjustified costs for the claimants, the Reliance Estate and this Court. Additionally, an increase in the number of legal proceedings for disputed NODs would prolong the liquidation and the final distribution of assets to claimants.

16. It is important to note that Reliance has endeavored to negotiate NODs prior to issuing them, where possible, in order to minimize objections and the related costs for Reliance, the claimants and this Court. Because of the complexity of the underlying claims, multiple parties, and multiple jurisdictions, these negotiations (which are beneficial to both sides) may occur over many months, not in 90 days. Using the current negotiating process, Reliance has successfully resolved hundreds of millions of dollars in NOD allowed amounts with claimants. Also in a few instances, although a NOD could be issued on available information, claimants have actually requested that NODs not be issued. This is particularly true if a contingency in the future could substantially affect either the priority class or allowed amount of their claim. In that situation, neither the claimant nor the Liquidator wishes to incur the cost of an objection dispute unless absolutely necessary. Requiring NODs to be issued, prematurely, in those and other similar instances would also likely result in more objections which works an injustice on both the Estate and its claimants.

17. Currently, in order to comply with the 180 day time frame set forth in the 2002 and 2008 Claims Orders, Reliance claims staff routinely reviews claims for long tail business<sup>1</sup> once annually unless claim developments dictate an earlier review. All other claims are routinely reviewed twice a year unless claim developments dictate an earlier review. Over the course of the liquidation (almost 11 years) and in the course of issuing NODs for over 97% of the 160,277 POCs received, only 5 motions have been filed to compel issuance of a NOD. And in only 2 of those instances was a NOD issued within the next 6 months. In the other 3 instances, discussions between Reliance and the claimant clarified the reasons why the NOD had

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<sup>1</sup> Reliance wrote a variety of long tail lines of business, including: (1) workers compensation; (2) medical malpractice; (3) construction defect; (4) errors & omissions; (5) directors & officers liability; (6) environmental (asbestos and pollution); and (7) professional liability. For reasons unrelated to the Reliance receivership, but based rather on the nature of the insurance coverage written by Reliance and the claims under those policies, it will be several years before some of these long tail claims will be resolved so that they can proceed through the review and evaluation process.

not yet been issued. NODs in those cases were issued more than 3 years later when sufficient information was finally received to evaluate the POC in the normal course.

**RULE 3781(b)(2)(i)**

18. Pa. R.A.P. No. 3781(b)(2)(i) (“Amount Rule”) provides that “The notice of determination shall include: (i) the allowed amount of the claim;”. Through March 31, 2012, Reliance has issued 67,350 class-only NODs for priority classes below (b) which did not include any allowed amount. In each such NOD the following explanation was provided:

At this time it does not appear likely that there will be sufficient funds available to make payment to any class with priority below (b). Claims of priority below (b) will not be evaluated as to amount allowed unless and until it is determined that funds will be available. If funds become available for the priority level of your claim, you will be sent a Notice of Determination as to amount.

This practice has substantially conserved the assets of the Reliance Estate because resources were not expended to evaluate the amount of the claim since it is substantially certain that the Reliance Estate will never make a distribution on claims below class (b). This practice has also conserved the assets of the claimants because they do not have to expend resources to gather and submit documentation that could be both voluminous and not readily accessible, but lead to no recovery. In addition, neither the Reliance Estate nor the claimant incurs the cost to litigate a dispute as to an allowed amount unless and until it becomes apparent that assets will be available to make a distribution on the NOD. These “class only” NODs are typically issued regarding claims such as those for unearned premium, taxes or assessments, and assumed reinsurance. The resources necessary to evaluate POCs, issue NODs and address any objections would be significant, particularly for assumed reinsurance claims where Reliance has recorded over \$1.2 billion in potential liabilities. Attempts to obtain the information would be a futile expenditure of assets because the claimant has little or no motivation to provide documentation when there is little or no likelihood of any distribution.

19. Another example of the appropriate use of a class-only NOD is for POCs filed by claimants who have a claim against a special deposit retained by another state in which there is an ancillary liquidation proceeding. In its December 1, 2011, Order approving the Third Interim Distribution, this Court affirmed that claimants who have a claim against a special deposit not effectively returned to the Liquidator are ineligible for a distribution from Reliance “until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.” 40 P.S. §221.61(b). As to the Reliance Estate, that means that the worker compensation claimants in Arizona, Massachusetts, and Oregon, as well as all claimants in the Virgin Islands, cannot receive a distribution until at least class (e) claims are paid, which is highly unlikely to occur. If class-only NODs cannot be issued for those claimants, then the Reliance Estate would have to incur the expense of determining an allowed amount for claimants whose claim should be adjudicated and paid by an ancillary liquidator. Incurring such an unnecessary expense would work an injustice as to the Reliance claimants who are eligible to receive a distribution from the Reliance Estate.

**RULE 3784(a)**

20. Pa. R.A.P. No. 3784(a) (“Report Rule”) provides that:

At least annually, the liquidator shall file a report of the claims against the insurer’s estate that have been resolved, with his recommendations (“Claims Report”). The Claims Report shall include the following: each claimant’s name, address, priority class, allowed amount, and whether the claim determination was finalized because no objection was filed, no exceptions were taken to a referee’s recommended decision, a recommended decision was sustained by the court or the parties agreed to a settlement. The liquidator shall serve a copy of the Claims Report on those listed on the master service list in accordance with these rules. No claim shall be paid, in part or in whole, until the report is approved by the Court.

The Claims Reports filed by Reliance since November 12, 2003 have included the information

required by the 2002 Claims Order, as revised by the 2008 Claims Order. The new Report Rule requires data elements which were not included in either of the previous Claims Orders and which are not currently captured by Reliance in a manner that would allow the information to be included in Claims Reports.

21. Extracting and including information in the Claims Reports about a) whether exceptions were taken to a referee's recommended decision; b) whether a recommended decision was sustained by the Court; and c) whether the parties agreed to a settlement, would require modifications to the Reliance IT systems. If the information is required for Claims Reports prior to when those modifications can be completed, it would be necessary to manually review the individual claim files to extract that additional information which would substantially delay the filing of any Claims Reports.

22. The data in the Claims Reports regularly filed with this Court each November (for NODs issued through the previous June 30) and each May (for NODs issued through the previous December 31) is extracted by the IT systems several months before the filing date so that quality control reviews can be performed by IT, Claims and Legal staff to ensure that the information is accurate. This process is crucial because distribution payments are based on the information contained in the Claims Report once it is approved by this Court. Consequently, the information for the Claims Report to be filed this November is already under review. The information for the Claims Report to be filed in May 2013 would be extracted for review early in 2013.

23. Although it is possible, with some related costs, to include the additional data mandated by the Report Rule in future reports, the modifications to the IT systems cannot be completed in time to include the information in either the November 2012 Claims Report or the May 2013 Claims Report. Unless those Claims Reports can be filed utilizing the data elements

set forth in the 2008 Claims Order, those Claims Reports will have to be delayed until all necessary revisions are completed. That delay would work an injustice as to those Reliance claimants whose distributions will be delayed because their NODs were not submitted for approval by this Court in the normal course.

**TIME AND COST FOR IMPLEMENTATION OF  
RULES 3781(b)(1), 3781(b)(2)(i), and 3784(a)**

24. Implementation of the 90-day Rule would initially require an immediate review of open POCs to determine: a) whether NODs could be issued by October 29, 2012; b) whether and what additional information must be requested from the claimant; and/or c) what other steps are necessary to issue a NOD, such as coverage analysis or engagement of an expert. All of the information gathered from the review would have to be organized in a format that could then be uploaded into Reliance IT systems. Reliance would have to utilize consultants for this effort so that routine and necessary daily responsibilities would not be impacted. It is estimated that this initial and immediate review of approximately 2900 POCs would require approximately 9 full time and one part time consultants, working one month, by reviewing 75 open POCs per week. The associated cost would be approximately \$117,000 plus computer setups, training and testing at an additional cost of \$12,000. This assumes the consultants would be working from home as there is currently very limited space available in the Reliance offices.

25. More time and costs would be incurred in the implementation phase to perform the identified actions (e.g., requesting more information, obtaining coverage opinions, reviewing voluminous information, engaging experts) necessary to bring the 2900 POCs into compliance with Rule 3781(b)(1). Reliance estimates that approximately one-third of the 2900 POCs initially reviewed would likely require minimal additional work, however taking the actions necessary to bring the remaining approximately 2000 POCs into compliance would require

significant changes to processes and IT systems utilized by the Claims Department. Apart from separate IT responsibilities, it is estimated that this effort would require an additional 8 full time and one part time staff in the Claims Department for a 3 month period at a cost of approximately \$312,000. Fewer consultants could be used over a longer period of time, but the costs would be comparable. Training the consultants, providing computer setups and testing would require an additional \$16,000 in staff time.

26. Once all pending POCs have been addressed so that they are initially in compliance with the 90-day Rule, it is anticipated that additional claims consultants will be necessary thereafter to review some portion of the pending POCs every 90 days. Depending on the response to requests for additional information, immediate review of all documents submitted will be required to determine whether a NOD can be issued within 90 days or to identify and request additional information from the claimant or to take other actions, such as engagement of an expert or coverage analysis. It is estimated that the additional ongoing work in the Claims Department required by the increased frequency of file review and follow up actions, as well as the reduced time for issuing NODs once all requested information is received, would require at least 2 to 3 additional claim consultants per year for an approximate cost of \$312,000 to \$468,000 per year. Additionally planned reductions in Claims Department staff would be delayed, foregoing those expected savings.

27. Significant additional costs would also be necessary for the IT Department to extensively revise the automated systems by a) modifying the system codes for the notification generation and tracking functions utilized by the claim evaluators in the processing and imaging systems; b) eliminating old and adding new automated form letter templates in the processing system, adding a customizing feature for the new templates; c) modifying the imaging system mail process; d) modifying the integration between the processing and imaging systems to

handle the newly modified system code; e) modifying the claims operational processing system to enter, edit, update and store new data fields required for reporting purposes; f) exporting new data fields to reporting systems, analyzing over 275 existing reports to determine whether inclusion of data is necessary, and modifying reports where necessary; g) modifying current alerts and tasks that will have to be delayed during the review process; h) modifying the POC audit application to recognize new criteria necessary to audit and verify compliance; and i) deploying regression and certification testing of processing and imaging systems after modifications are in place. The majority of these efforts involve substantial and costly programming changes.

29. In order to accomplish the above IT tasks, the cost is estimated at \$93,500 for current IT staff/consultants and the estimated time frame to complete the modifications is 7 calendar months without impacting essential IT production support work during the period. The essential production work includes reporting functions for the 11 routine reports filed annually with this Court, processing GA claims information through the Reliance systems, issuing NODs and processing distributions, all of which impact reinsurance billing and commutations. Additionally, 7 IT projects already scheduled during this time frame would be put on hold. It would also be necessary to engage 2 IT business systems analysts, one full time and one part time, at an estimated cost of \$148,400 over 7 months. Planned reductions in IT consulting would be delayed foregoing expected savings of over \$260,000, and further hardware and software costs could be incurred for each IT and Claims consultant added under certain license agreements.

### **CONCLUSION**

30. As demonstrated above, implementation of Pa. R.A.P. Nos. 3781(b)(1), 3781(b)(2)(i), and 3784(a), as written and as of July 30, 2012, would not be feasible for the

Reliance Estate and would in many respects work an injustice as to both the Estate and its claimants by increasing costs for all parties with little or no apparent benefit for either the Estate or its claimants. The claim filing deadline for Reliance was December 31, 2003 which would put virtually all remaining POCs on the 90-day clock. But the types of POCs remaining in the Reliance Estate are not the kinds of claims that can be evaluated quickly or on a cursory basis so that a NOD can be issued within 90 days of when information is received from a claimant. If the Liquidator is required to issue NODs without a complete and thorough review of the claims, this may result in incorrect priority classifications, incorrect allowed amounts, or incorrect liability decisions, all of which could result in unnecessary objections being filed and resulting in additional expense for the Reliance Estate, the claimants, and this Court. Requiring the Liquidator to evaluate the allowed amounts for claims with a priority level below class (b), when it is highly unlikely that the Reliance Estate will have sufficient assets to make any distributions on claims below class (b) wastes both time and money, and affords no benefit to the claimants. Additionally, as set forth above, it will not be feasible for the Liquidator to comply with the required substantive changes to the Claims Reports in time to submit the Claims Reports in November, 2012, and May, 2013, which would accordingly delay by more than a year any distributions on the claims which could be approved in those Claims Reports.

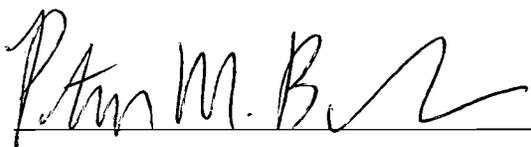
WHEREFORE, the Liquidator respectfully requests that this Court grant this Application and issue an Order as follows:

- a) Pa. R.A.P. No. 3781(b)(1) and (b)(2)(i) shall apply to the Reliance Estate except that:
  - i) The Liquidator shall issue a written notice of determination within one hundred and eighty (180) days from receipt of information sufficient to adjudicate a POC, and
  - ii) The notice of determination need not include an allowed amount for any

claims below class (b) priority unless and until it is determined that sufficient assets will be available for a distribution to any class below class (b).

b) Implementation of Pa. R.A.P. No. 3784(a) shall be delayed and will apply to the Reliance Estate effective July 30, 2013. Any Claims Reports filed prior to July 30, 2013 shall include the following: Claimant's name, address, priority class, allowed amount, and the particulars of the claim, including whether the NOD was issued without Objection or after the settlement of an Objection.

Respectfully submitted:

By: 

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Attorney for Michael F. Consedine,  
Insurance Commissioner of the  
Commonwealth of Pennsylvania, in his  
official capacity as Liquidator of  
Reliance Insurance Company

Dated: August 20, 2012

**B**

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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

*In Re: Liquidator's Application Regarding Implementation of Pa. R.A.P. 3781(b)(1) and (b)(2)(i) and Pa. R.A.P. 3784(a)*

**ORDER**

**AND NOW**, this 2nd day of October, 2012, upon consideration of the Liquidator's Application for Relief from the Implementation of Pa. R.A.P. 3781(b)(1), (b)(2)(i) and 3784(a), which is unopposed, the Application is hereby **GRANTED**.

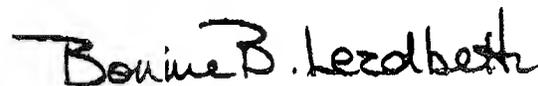
It is hereby **ORDERED** that the Liquidator shall issue a written Notice of Determination ("NOD") within one hundred and eighty (180) days from the receipt of information sufficient to adjudicate a Proof of Claim and the NOD need not include an allowed amount for any claims below class (b) priority unless and until it is determined that sufficient assets will be available for a distribution to a class below class (b).

Further, implementation of Pa. R.A.P. 3784(a) shall be delayed and will apply to Reliance Insurance Company in Liquidation effective July 30, 2013. Claims reports filed prior to July 30, 2013 shall include the following: Claimant's name, address, priority class, allowed amount, and the particulars of the claim, including whether the NOD was issued without objection or after the settlement of an objection.

**Certified from the Record**

**OCT 03 2012**

**And Order Exit**



**BONNIE BRIGANCE LEADBETTER,**  
Judge

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

*In re:* LINCOLN GENERAL  
INSURANCE COMPANY (IN  
LIQUIDATION)

No. 1 LIN 2015

**CERTIFICATE OF SERVICE**

I, Karl S. Myers, hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below:

By First Class US Mail & Email:

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/s/ Karl S. Myers  
\_\_\_\_\_  
Karl S. Myers