

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

OCT 17 2016

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RICK WARREN
COURT CLERK

STATE OF OKLAHOMA, ex rel.)
JOHN DOAK, Insurance Commissioner,)
)
Plaintiff,)
)
vs.)
)
PARK AVENUE PROPERTY AND)
CASUALTY INSURANCE COMPANY f/k/a)
PROVIDENCE PROPERTY AND CASUALTY)
INSURANCE COMPANY, a domestic)
insurance company,)
)
Defendant.)

Case No. CJ-2009-11178
The Honorable Roger H. Stuart

**RECEIVER'S SECOND REPORT ON CLAIMS EVALUATION AND
REQUEST FOR CONFIRMATION OF RECEIVER'S RECOMMENDATIONS**

The State of Oklahoma, ex rel., John Doak, Insurance Commissioner, as statutory receiver of and for Park Avenue Property and Casualty Insurance Company, in liquidation, ("Park Avenue") presents this Second Report on Claims Evaluation and Request for Confirmation of Receiver's Recommendations ("Second Report"), and shows the Court as follows:

SUMMARY

Based on the Receiver's prior recommendations, the Court, to date, has adjudicated 360 claims against the Park Avenue receivership estate, including claims in Classes 3 and 6.¹ In this Second Report, the Receiver submits for adjudication three

¹ Court review and approval of the Receiver's recommendations regarding Class 1 claims occurs on a regular, monthly, basis through a separate procedure and therefore Class 1 claims are not included in this total.

additional claims, including two orphan claims and one policyholder claim covered by the applicable state guaranty association.²

BACKGROUND

1. On November 18, 2009, this Court placed Park Avenue in liquidation through its Consent Order of Liquidation with a Finding Insolvency and Permanent Injunction (the “Liquidation Order”).

2. On October 14, 2010, the Court entered an Order by which it (a) approved the Receiver’s proposed Proof of Claim Form and accompanying instructions; and (b) established a deadline of February 15, 2011 for all claims to be filed.

3. On April 22, 2011, the Court entered its Order Approving Claims Evaluation Plan (“April 22, 2011 Order”). The April 22, 2011 Order, as modified through the Court’s subsequent February 24, 2012 Order, approved the following for the Receiver’s Claims Evaluation Plan:

<u>Activity</u>	<u>Date</u>
Receiver’s Report on Timely-Filed Claims	April 29, 2011
Receiver’s First Claims Evaluation and Request for Confirmation due (on claims due to be adjudicated);	April 15, 2012
Receiver’s Supplemental Claims Evaluations and Requests for Confirmation (on subsequently evaluated claims ready to [be] adjudicated)	October 15, 2012 and every six months thereafter

² Orphan claims are claims the state guaranty associations do not cover and therefore require the Receiver to provide administrative oversight. A policyholder claim is a claim for policy benefits for which the applicable state guaranty association provides coverage.

4. The Receiver took all reasonable efforts to determine the identity of all persons who may have claims against Park Avenue and to provide them with notice to allow them the opportunity to file a claim before the February 15, 2011 claims bar date.

5. On April 29, 2011, the Receiver filed the Receiver's Report on Timely Filed Claims. That report noted that the Receiver had (a) distributed in excess of 27,000 proofs of claim packets to potential claimants; (b) received 413 timely proofs of claims, seeking \$88,404,631.03; and (c) reported to the Court that 92 of those claims did not claim a specific sum of money. The Receiver's Report also reflected that notice of the proof of claim process and of the availability of proof of claim packets was published in *USA Today* on November 15, 2010 and in *The Oklahoman* on November 12, 13, and 14, 2010.

6. On April 13, 2012, the Receiver timely filed the Receiver's Report on Claims Evaluation and Request for Confirmation of Receiver's Recommendations ("Receiver's First Report and Recommendations"). The Receiver's First Report and Recommendations presented recommendations for the adjudication of 306 timely Class 3 claims, 49 timely Class 6 claims and five untimely claims.

7. On August 3, 2012, the Court accepted the Receiver's recommendations as to claims referenced in the Receiver's First Report and Recommendations and issued its Order adjudicating such claims.

8. Since that time, the Receiver has filed periodic reports advising the Court of the status of claims that remain for adjudication. In the most recent report, the Receiver advised the Court that there are 58 claims under review by the Receiver that fall into the following categories:

<u>Item No.</u>	<u>Type</u>	<u>Remaining</u>
1	State Guaranty Association Claims	40
2	Non-Covered Orphan or Orphan Related Claims	2
3	Professional Employer Organization Claims	12
4	General Creditor Claims	2
5	State or City Governmental Department Claims	1
6	Policyholder Claims	1
	<u>TOTAL</u>	58

9. The two orphan or orphan related claims referenced in Item No. 2 are now ready for adjudication. An "orphan" claim is a claim of the insured against a policy issued by the insolvent insurance company for which no state guaranty association has statutory responsibility. An "orphan-related claim" is a claim of a third-party provider for services provided to an orphan insured.

10. The single remaining policyholder claim referenced in Item no. 6 above is also ready for adjudication.

11. The Receiver recommends that one of the orphan claims be classified as a Class 3 claim for purposes of 36 O.S. 1927.1. Pursuant to 36 O.S. § 1927.1, Class 3 claims include:

All claims under policies including claims of the federal or any state or local, government for losses incurred ("loss claims") including third party claims, claims for unearned premiums, all claims of a guaranty association for payment of covered claims or covered obligations of the insurer and all claims of a guaranty association for reasonable expenses other than those included in Class 2. All claims under life and health insurance and annuity policies, whether for death proceeds, health benefits, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss,

indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to his employee shall be treated as a gratuity.

12. The Receiver recommends the remaining two claims be found untimely.

13. The Receiver has not completed marshaling all assets of Park Avenue.

14. This Report does not address the actual distribution of assets that may ultimately be made to creditors and beneficiaries of Park Avenue. Neither the Receiver's recommendation that a claim be allowed in a certain amount, nor the Court's Order allowing a claim, ensures that the claim will be paid in whole or in part. Payment of an allowed claim is contingent upon: (a) the assets available to the estate for payment of claims; (b) the class of the claim allowed; and (c) whether the assets of the estate are sufficient to pay in full all allowed claims and all classes of claims.

15. Imperial Casualty and Indemnity Company ("Imperial") is an insolvent insurer that is the subject of separate receivership proceedings in an action in the Oklahoma County District Court pending as Case No. CJ-2010-2340. Imperial was owned by the predecessor of Park Avenue and Imperial and Park Avenue provided workers compensation benefits through common transactions with insureds. On a number of occasions, claimants have submitted claims to the Imperial Receiver that should have been submitted to the Park Avenue Receiver. In each such instance, the Receiver has treated the claim as a claim against the Park Avenue receivership estate.

EXPLANATION OF RECEIVER'S RECOMMENDATION

16. Attached hereto as **Exhibit 1** is a report detailing the Receiver's recommendations as to the single, timely-filed orphan claim presented for adjudication. The Receiver has analyzed this claim reflected on **Exhibit 1** and recommends that it be classified as a Class 3 claim for purposes of 36 O.S. § 1927.1 and disallowed.

17. **Exhibit 1** provides further detail regarding the Receiver's recommendations for the timely-filed orphan claim. The first column provides the proof of claim number that the Receiver assigned to the claim. The "Amount Claimed" column reflects the amount that the claimant has sought through the claim. The "Amount Allowed" column sets forth the amount the Receiver recommends that the Court allow as to the claim. The "Timeliness" column indicates whether the claim was filed on or before the claims bar date of February 15, 2011, and constitutes the Receiver's recommendation concerning whether the claim should be treated as timely or untimely for purposes of 36 O.S. §§ 1927.1, 1930. Finally, the "Remark Code" column provides a code indicating the basis or bases for the Receiver's recommendation as to a particular claim. A definition for each of the codes used is set forth in the attached **Exhibit 3** and disallowed.

18. Attached hereto as **Exhibit 2** is a report reflecting Receiver's recommendation as to the remaining orphan claim and the single, policyholder claim covered by a state guaranty association. The Receiver recommends that each of these claims be found untimely.

19. The first column on **Exhibit 2** provides the proof of claim number that the Receiver assigned to the particular claim. The "Amount Claimed" column on **Exhibit 2**

reflects the amount that the claimant has sought through the particular claim. The "Amount Allowed" column sets forth the amount the Receiver recommends that the Court allow as to a particular claim. The "Timeliness" column indicates whether the claim was filed on or before the claims bar date of February 15, 2011, and constitutes the Receiver's recommendation concerning whether the claim should be treated as timely or untimely for purposes of 36 O.S. §§ 1927.1, 1930. The "Remark Code" column provides a code indicating the basis or bases for the Receiver's recommendation as to a particular claim. A definition for each of the codes used is set forth in the attached **Exhibit 3**.

20. For any of the untimely-filed claims for which the Court may determine an amount be allowed, the Receiver further recommends, pursuant to 36 O.S. § 1930, that such claims be determined to be ineligible to share in the distribution of the assets of the receivership estate until all timely allowed claims in Classes One through Nine have been first paid in full with interest.

21. The Proof of Claim form filed by each claimant contains the following language in bold type: **"If you have a change of address, you are required to inform the receiver of the new address in order to receive any payment that might be due."** To the extent any Notice of this proceeding is returned as undeliverable, the Receiver asks the Court to find that the due process rights of the claimant have not been impaired and to order that claimant's claim(s) be disallowed without further attempts to give actual notice.

22. Pursuant to 36 O.S. § 1918, the Receiver requests the Court to set a hearing on the claims and establish a date certain for filing an objection to the Receiver's

recommendation. Attached hereto as **Exhibit 4** is the Receiver's proposed form of notice of hearing to be provided to claimants made the subject of this Report.

23. The disallowance of any timely-filed proof of claim included in the Second Report does not alter the statutory obligation, if any, of the Oklahoma Property and Casualty Insurance Guaranty Association or other applicable state guaranty fund, to provide indemnity and defense of a covered claim as defined by the Oklahoma Property & Casualty Insurance Guaranty Association Act, 36 O.S. § 2004 (7), or other applicable state statute.

24. The Receiver's characterization of a claim or payment does not constitute an admission of liability by Park Avenue for purposes of any litigation.

WHEREFORE, the Receiver requests that this Court:

- a. order that the Receiver provide notice of opportunity to object and be heard to each of the claimants making a claim reflected on the attached Exhibits 1 and 2 to this Second Report and find that the proposed form of notice attached hereto as Exhibit 4 is proper in all respects;
- b. set a date for filing an objection to the recommendation of the Receiver;
- c. allow the Receiver to file a response to any objection filed with the Court;
- d. establish a date for hearing the Receiver's recommendation to the Court and any objections thereto;
- e. order that, in the absence of a timely-filed objection by a claimant, the Court may approve the recommendations of the Receiver and disallow the claim of that claimant without a hearing and without further notice;
- f. upon hearing any objections thereto, enter an order approving the Second Report, confirming the Receiver's recommendations; and disallow each of the claims described herein; and
- g. grant the Receiver such other and further relief as the Court deems appropriate.

Respectfully submitted,



John M. O'Connor, OBA No. 6741
William W. O'Connor, OBA No. 13200
Jon M. Payne, OBA No. 17910
NEWTON, O'CONNOR, TURNER & KETCHUM
15 West Sixth Street, Suite 2700
Tulsa, OK 74119
Phone: (918) 587-0101
Facsimile: (918) 587-0102
joconnor@newtonoconnor.com

-AND-

Barron B. Brown, OBA # 31346
Sara A. Worton, OBA # 21532
3613 NW 56th Street, Ste. 330
Oklahoma City, OK 73112
(405) 947-0022 – telephone
(405) 947-0046 – facsimile

**ATTORNEYS FOR PLAINTIFF, STATE OF
OKLAHOMA, ex rel., JOHN DOAK, Insurance
Commissioner for the State of Oklahoma, as
Receiver for Park Avenue Property and
Casualty Insurance Company f/k/a Providence
Property and Casualty Insurance Company, in
Liquidation**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served via United States mail, postage prepaid and properly addressed, on the 17th day of October, 2016 upon the following:

James Mills
Oklahoma Insurance Department
3625 NW 56th Street, Ste. 100
Oklahoma City, OK 73112

Mark Tharp
Tharp & Associates
300 West Osborn Road, Ste. 500
Phoenix, AZ 85013

Oklahoma Receivership Office, Inc.
Donna Wilson / Debra Crowe
3613 NW 56th, Suite 330
Oklahoma City, OK 73112

Park Avenue Insurance, LLC
c/o Charles Antonucci, Sr.
460 Park Avenue, 13th Floor
New York, NY 10022

Charles Antonucci, Sr.
c/o Charles A. Stillman
Stillman, Friedman & Shecktman, PC
425 Park Avenue
New York, NY 10022

Mark Steckbeck, Esquire
National Conference of Insurance Guaranty Funds
300 North Meridian Street
Suite 1020
Indianapolis, In 46204-1754

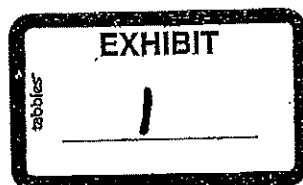


John M. O'Connor

**Proofs of Claims Subject to the Second Report
(Park Avenue Property and Casualty Insurance Company)**

Class 3 Claims

POC Number	Amount Claimed	Amount Allowed	Timeliness	Remark Code
PAPC-00185	\$ 70,393.44	\$ -	Timely	ES



**Proofs of Claims Subject to the Second Report
(Park Avenue Property and Casualty Insurance Company)**

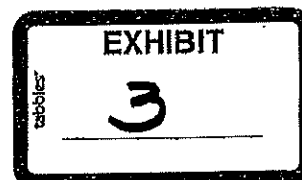
Untimely Filed Claims

POC Number	Amount Claimed	Amount Allowed	Timeliness	Remark Code
PAPC-00422	Undetermined	\$ -	Untimely	FL, DD
PAPC-00421	\$ 20,000.00	\$ -	Untimely	FL, DG



Remark Codes

Code	DEFINITION
AA	POC IS APPROVED AT POLICY ALLOWABLE BENEFIT
AD	APPROVED AS POC GUARANTY ASSOCIATION PAID LESS DEDUCTIBLE
AE	POC IS APPROVED AT EXCEPTION AMOUNT
AL	POC IS APPROVED AT AMOUNT SUPPORTED BY DOCUMENTATION PRESENTED
AP	POC IS APPROVED AT SUBMITTED AMOUNT
AR	APPROVED AS POC FOR RETROSPECTIVE POLICY
AS	APPROVED AS POC FOR W/C SECURITY DEPOSIT AND DEDUCTIBLES
AT	APPROVED AS POC SUBJECTIVE TIMELY FILED POC
AX	APPROVED AS POC GUARANTY ASSOCIATION PAID THRESHOLD EXCESS DUE
CA	CLAIM IS/HAS BEEN CONSIDERED ON ANOTHER POC FORM
CM	EXCEEDS MAXIMUM VISITS PER CALENDAR YEAR
CP	CLAIM WAS PARTIALLY PAID BY GUARANTY ASSOCIATION
CK	CLAIM RECOMMENDATION EXCLUDES INTEREST AND/OR PENALTIES
DD	DENIED AS POC DUPLICATE, WHOLLY OR PARTIALLY, OF ANOTHER POC ON FILE
DE	DENIED AS POC APPLIED TO ERISA DEDUCTIBLE
DG	DENIED AS POC/CLAIM IS GUARANTY ASSOCIATION OBLIGATION
DI	DENIED DUE TO NET WORTH DETERMINATION BY GA OR EXCLUSION FOR HIGH DEDUCTIBLE POLICIES; CLAIM REFERRED TO INSURED
DN	DENIED NOT ICIC OR PAPC OBLIGATION
DO	DENIED NO OBLIGATION DUE CLAIMANT
DP	DENIED AS POC CLAIMED AMOUNT WAS INCURRED/ASSESSED POST RECEIVERSHIP
DS	DENIED AS POC NO DOCUMENTS OR INSUFFICIENT DOCUMENTS RECEIVED
DU	DUPLICATE OF CHARGE(S) PREVIOUSLY CONSIDERED
DX	POC IS DENIED AS PART OF A SETTLEMENT
DZ	POC IS DENIED PREVIOUSLY PAID
EE	THIS CLAIM HAS BEEN ALLOWED ON THE PARTICIPANT'S PROOF OF CLAIM FORM
ES	THIS CLAIM HAS BEEN PAID AS PART OF A SETTLEMENT
FL	THIS CLAIM WAS NOT TIMELY FILED
FN	POC NOT COMPLETE
NC	NOT A COVERED BENEFIT
NP	DENIED NO UNEARNED PREMIUM DUE
PE	DATE OF SERVICE IS PRIOR TO THE EFFECTIVE DATE
PF	PAID OR CALCULATED PURSUANT TO FEE SCHEDULE OR COURT ORDER
PP	THIS CLAIM WAS PAID/DENIED (PARTIALLY OR FULLY) PRIOR TO RECEIVERSHIP
PR	THIS CLAIM HAS BEEN ALLOWED ON THE PROVIDER'S PROOF OF CLAIM FORM
PX	THIS CLAIM WAS DENIED DUE TO A PRE-EXISTING CONDITION
RI	REQUESTED INFORMATION NOT RECEIVED
SS	FULL TIME STUDENT STATUS WAS NEVER ESTABLISHED
TE	THIS CLAIM HAS BEEN ALLOWED ON THE TRUSTEE'S PROOF OF CLAIM FORM
TR	THIS CLAIM HAS BEEN ALLOWED ON THE TRUST'S PROOF OF CLAIM FORM
TX	DATE OF SERVICE IS AFTER THE TERMINATION DATE
UN	UNABLE TO IDENTIFY THE PATIENT AS A PARTICIPANT
WE	POC IS WITHDRAWN



IN THE DISTRICT COURT FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.)
JOHN DOAK, Insurance Commissioner,)
)
Plaintiff,)

vs.)

PARK AVENUE PROPERTY AND)
CASUALTY INSURANCE COMPANY f/k/a)
PROVIDENCE PROPERTY AND CASUALTY)
INSURANCE COMPANY, a domestic)
insurance company,)
)
Defendant.)

Case No. CJ-2009-11178
The Honorable Roger H. Stuart

**NOTICE OF OBJECTION DEADLINE AND HEARING ON THE
RECEIVER'S SECOND REPORT ON CLAIMS EVALUATION AND
REQUEST FOR CONFIRMATION OF RECEIVER'S RECOMMENDATIONS**

You are hereby notified that on _____ at _____ .m. a hearing will be held before the Honorable Roger H. Stuart, District Court Judge of Oklahoma County, Oklahoma, at which time the Receiver's Second Report on Claims Evaluation and Receiver's Request for Confirmation of Receiver's Recommendations ("the Receiver's Second Report") shall be heard. The hearing will be conducted at the Oklahoma County Courthouse, 321 Park Avenue, Room # 201, Oklahoma City, Oklahoma.

You are receiving this Notice because the Receiver has evaluated your claim and such claim is ready for adjudication. The Exhibit attached to this Notice sets forth the Receiver's recommendations to the Court in relation to your claim.¹ Your claim has been assigned the Proof of

¹The Receiver's recommendations to the Court regarding your claim and other claims set for hearing on the referenced hearing date are set forth in the Receiver's Second Report, which was filed in the above-entitled matter on October 17, 2016. A copy of the Receiver's Second Report is available on the website for the Oklahoma Receivership Office at www.okaro.org.



Claim number ("POC #") indicated on the attached Exhibit. The attached Exhibit also provides information specific to your claim including the amount of your claim, the Receiver's recommendation as to the amount of your claim to be allowed, if any, and the Receiver's recommendation regarding the classification of your claim, which classification reflects the nature of your claim and the priority the Receiver recommends be given to your claim under Oklahoma law, 36 O.S. § 1927.1.

IF YOU DO NOT WISH TO OBJECT TO THE RECEIVER'S RECOMMENDATIONS, YOU ARE NOT REQUIRED TO TAKE ANY ACTION AT THIS TIME. IF YOU WISH TO OBJECT TO THE RECEIVER'S RECOMMENDATIONS, YOU MUST FILE A PROPER, WRITTEN OBJECTION WITH THE COURT NO LATER THAN 5:00 P.M. To be a proper, written objection:

- (1) the objection must contain the case information located at the top of this Notice (State of Oklahoma, ex. rel. John Doak, Insurance Commissioner v. Park Avenue Property and Casualty Insurance Company f/k/a Providence Property and Casualty Insurance Company, Case No. CJ-2009-11178, Judge Roger H. Stuart);
- (2) the objection must be filed with the Clerk of the Oklahoma County District Court, 320 Robert S. Kerr Avenue, Oklahoma City, Oklahoma 73102, and a copy mailed to the Receiver's counsel at the address shown below;
- (3) the objection must be signed by the claimant or the claimant's representative;
- (4) the objection must be typewritten on a good grade of white paper size 8 ½ by 11 inches, give the name, current address and telephone number of the claimant making the objection, including the name and position of the person signing the objection, if the claimant is a business; and
- (5) the objection must state the exact grounds on which the objection is based and be accompanied by a concise brief that contains (a) a written statement of material facts as to which the objecting party contends no genuine issue exists verified by a person with knowledge of the facts; (b) references to supporting documentation submitted with the proof of claim; and (c) citation to applicable authority supporting the objection;
- (6) if you wish to present the Court with oral argument on your objection at the hearing, the objection must indicate your intention to appear at the hearing and make such oral argument. Failure to expressly state an intention to make oral

argument in your objection may be deemed by the Court to be a waiver of the right to oral argument.

Failure to file a timely and proper written objection as described above may result in your objection being denied. If the Court approves your claim in whole or in part, it does not mean that you will actually receive the allowed amount as ordered by the Court. The amount of payment on your claim, if any, is dependent upon the class or priority the Court assigns your claim based on Oklahoma law, and the assets in the estate available for payment. Certain legal matters still pending before the Court may prevent the payment of claims for some time. Any questions regarding this Notice, the Receiver's Second Report, the Receiver's Recommendations as to your claim or any of the other claims to be heard during the hearing on the date referenced above should be directed to the Assistant Receiver's Office. Contact information for the Assistant Receiver's Office is set forth below.

Assistant Receiver's Office

Mark D. Tharp, Assistant Receiver
300 West Osborn Road, Suite 500
Phoenix, AZ 85013
Phone: (602) 277-4807 or 1-800-388-2427
Fax: (602) 274-9849

Receiver's Counsel Address:

John M. O'Connor
William W. O'Connor
Jon M. Payne
Newton O'Connor Turner & Ketchum
15 West Sixth Street, Suite 2700
Tulsa, OK 74119
(918) 587-0101 (telephone)
(918) 587-0102 (facsimile).

Park Avenue Property and Casualty Company In Liquidation

EXHIBIT to NOTICE OF OBJECTION DEADLINE AND HEARING ON THE RECEIVER'S SECOND REPORT ON CLAIMS EVALUATION AND REQUEST FOR CONFIRMATION OF RECEIVER'S RECOMMENDATIONS

CLAIMANT:

ADDRESS:

PROOF OF CLAIM NUMBER:

RECOMMENDED PRIORITY CLASSIFICATION:

AMOUNT CLAIMED:

RECOMMENDED AMOUNT ALLOWED:

REMARK CODE(S):

In some instances, claimants have submitted claims to Imperial Casualty and Indemnity Company that should have been submitted to Park Avenue Property and Casualty Insurance Company. The Receiver has treated the claim as if filed in the proper estate.

If you have a change of address, you must inform the Assistant Receiver at the address below of your new address in order to receive any further correspondence regarding your Proof of Claim.

If the Receiver received your proof of claim after the bar date of February 15, 2011, the Receiver's Recommended Priority Classification above will be "Untimely" and the Receiver will further recommend that any amount the Court may allow to your claim be paid only after all other claimants with timely claims are paid in full with interest.

If you have any questions about your claim, the attached Notice of Hearing, or the objection process, please contact the Assistant Receiver's office at 1-800-388-2427.