

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff,

v.

RELIANCE INSURANCE COMPANY,

Defendant.

DOCKET NO. 269 MD 2001

ORDER

This matter having come before the Court on the Emergency Petition of M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, as Liquidator of Reliance Insurance Company, to Order Non-Payment of Bond and for Modification of the Order of Liquidation;

IT IS on this ____ day of October, 2001, hereby ORDERED that the Emergency Petition is GRANTED, and that the Liquidator is ORDERED to refrain from posting the appeal bond in the Wherehouse Entertainment Inc. action.

James Gardner Collins, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff,

v.

RELiance INSURANCE COMPANY,

Defendant.

DOCKET NO. 269 MD 2001

ORDER

This matter having come before the Court on the Emergency Petition of M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, as Liquidator of Reliance Insurance Company, to Order Non-Payment of Bond and for Modification of the Order of Liquidation;

IT IS on this ____ day of October, 2001, hereby ORDERED that the word "liquidation" shall be substituted for the term "rehabilitation" in the third sentence of Paragraph 23 of the Court's October 3, 2001 Order of Liquidation.

James Gardner Colins, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff,

v.

RELiance INSURANCE COMPANY,

Defendant.

DOCKET NO. 269 MD 2001

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OF PENNSYLVANIA

**EMERGENCY PETITION TO ORDER NON-PAYMENT OF BOND
AND FOR MODIFICATION OF THE ORDER OF LIQUIDATION**

Petitioner M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner"), as Liquidator of Reliance Insurance Company ("Liquidator"), respectfully requests based upon the declared insolvency of Reliance Insurance Company ("Reliance" or the "Company") and the October 3, 2001 Order of Liquidation, and the fact that the posting of an appeal bond in the amount of \$11.5 million (the "appeal bond") in the claims litigation matter David L. Peterson, et al. v. Wherehouse Entertainment Inc., et al., pending in the Superior Court of California, County of Santa Clara (the "Wherehouse action"), is not in the best interest of the estate of Reliance, nor in the best interests of Reliance policyholders, claimants, creditors and the general public, that this Court order the Liquidator to refrain from posting the appeal bond in the Wherehouse action.

In support of this Petition, the Liquidator avers the following:

NON-PAYMENT OF BOND

1. On September 28, 2001, the Commissioner, in her then-capacity as Rehabilitator of Reliance, filed an emergency petition seeking Court approval to sell or transfer \$11.5 million of United States Treasury securities purchased in contemplation of posting the appeal bond in the Wherehouse action. See Emergency Petition for Approval of Sale of Real Estate Assets and Securities (filed Sept. 28, 2001). Also on September 28, 2001, this Court entered an Order granting the Emergency Petition with regard to the appeal bond. See Order of the Court (filed Sept. 28, 2001).

2. On October 3, 2001, the Commissioner petitioned this Court for an Order of Liquidation of Reliance Insurance Company. On that same day, the Court entered an Order placing Reliance in liquidation under the provisions of the Insurance Department Act of 1921 (the "Act"). 40 P.S. §§ 221.1 et seq. In the Order of Liquidation, the Court appointed the Commissioner Liquidator of Reliance, vesting her "with all the powers, rights, and duties authorized under the Act and other applicable law." See Order of Liquidation (filed Oct. 3, 2001); 40 P.S. § 221.23 (9-10).

3. This Court declared Reliance "insolvent," as that term is defined in the Act. Id., ¶ 2; see 40 P.S. § 221.3. For an insurer such as Reliance, the Act defines "insolvency" as the inability to pay current obligations when they are due, or when admitted assets do not exceed the insurer's liabilities plus capital and surplus required by law. 40 P.S. § 221.3.

4. The Order of Liquidation "supercedes any order entered by this Court prior to 12:00 noon, October 3, 2001[.]" including this Court's Order of September 28, 2001, approving "the sale or transfer of the United States Treasury securities purchased in

contemplation of posting the . . . appeal bond [in the Wherehouse action] . . .” See Order of Liquidation (filed Oct. 3, 2001); see also Order of the Court (filed Sept. 28, 2001).

5. The Court’s Order of Liquidation declaring Reliance insolvent requires that further disbursements of Reliance funds proceed pursuant to the procedures set forth in the Insurance Department Act, including that all policyholders be treated similarly and receive no more than their pro rata share of distributable assets, at such time as a distribution is made by the Liquidator. See, e.g., 40 P.S. §§221.36, 221.44. Posting the appeal bond would distribute assets outside of, and contrary to the procedures required by statute.

6. Accordingly, the Liquidator respectfully requests that this Court order ordering the Liquidator to refrain from posting the appeal bond in the Wherehouse action.


7. To avoid any potential prejudice to the insured or the applicable guaranty association, the Liquidator requests that this Petition be considered on an emergency basis.

MODIFICATION OF THE ORDER OF LIQUIDATION

8. The Commissioner’s Petition for Liquidation on October 3, 2001, included an inadvertent reference to the Court’s supervisory authority over “rehabilitation” proceedings under the Act, rather than “liquidation” proceedings. Specifically, in the third sentence of Paragraph 23 of proposed Order of Liquidation, the word “liquidation” should have been substituted for the term “rehabilitation.” The Liquidator respectfully requests, in the interest of avoiding any confusion over the terms of the Order of Liquidation, that an Order be entered by the Court modifying Paragraph 23 of the October 3 Order of Liquidation to correct this inadvertent typographical error of counsel for the Commissioner.

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

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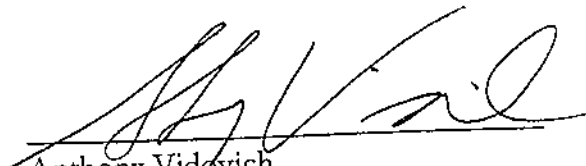
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Dated: October 5, 2001

CERTIFICATE OF SERVICE

I, Anthony Vidovich, hereby certify that this day a true and correct copy of the foregoing Emergency Petition was served on all persons listed on the attached Master Service List by facsimile and U.S. Mail, postage prepaid.

Dated: October 5, 2001


Anthony Vidovich

Master Service List

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v.

Reliance Insurance Company
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