

Agreement). Steamship Mutual Underwriting Association (Bermuda), Ltd. (Steamship), has filed objections to the amended petition.

ALMA and its more than 50 members filed claims against the Reliance Estate as direct insureds. The claims total more than \$30 million. The agreements purport to resolve disputes over coverage and competing rights and responsibilities of various insurers, reinsurers, and retrocessionnaires. Steamship Mutual Underwriting Association (Bermuda) Ltd. (Steamship) challenges the agreement which has been presented to the Court by the Liquidator through the filing of an amended petition. On its face, Steamship challenges the fiscal soundness of the Liquidator's decision. However, at its core, the objection expresses concern over whether approval of the plan will expose Steamship to liability.

Common to this action is the liability of maritime employers to pay benefits and compensation under the United States Longshore and Harbor Workers' Compensation Act (USL&H).² The USL&H provides uniformity of benefits and remedies available to longshoremen & harbor workers, *i.e.*, non-seamen personnel serving at shipyards, docks and harbors in connection with vessel loading and repairs. In addition to liability pursuant to USL&H, maritime employers are also liable to pay benefits under state worker compensation laws, and other statutes. Due to the unavailability of coverage and skyrocketing costs of coverage, large employers self-insured, and purchased excess insurance thereby insuring their risk.

² 33 U.S.C. §901-905, adopted March 4, 1927, c. 509, §1, 44 Stat. 1424; September 28, 1984; Pub.L. 98-426, §27(d)(1), 98 Stat., 1654. USL&H exposure includes payment of indemnity for lost time claims, medical attention, traditional allocated expenses, and an obligation to pay 8(f) assessments, *i.e.*, Second Injury Fund assessments which, assessments are imposed by the United States Department of Labor.

American Equity Underwriters (AEU), in conjunction with Reliance, issued a number of excess USL&H policies. In 1994, Reliance became the insurer for an incidental USL&H program and a first dollar USL&H program for clients of AEU. In their brief to the Court, ALMA explains that it was formed in Bermuda in order to implement a first dollar USL&H insurance program. The United States Department of Labor³ approved ALMA's petition to issue Member Coverage Agreements issued to ALMA members. Employers who had exposure under USL&H became a member of ALMA. In turn, ALMA obtained insurance for its members' obligations under the USL&H from Reliance, and in some instances also provided its members with insurance covering state workers' compensation benefits.

In order to implement this arrangement of insuring the USL&H exposure and providing state workers compensation benefits coverage, AEU and Reliance entered into a Program Manager's Agreement (PMA), in which Reliance authorized AEU to issue state workers' compensation benefits policies through Reliance admitted companies. Thereafter, AEU and Reliance further extended into the maritime arena, by extending coverage to include vessel owners' and operators' liability exposures to their crews arising under the Jones Act⁴ and Death on the High Seas Act⁵ ("Maritime Employers Liability Exposure"). Under this program, AEU was authorized by Reliance, as set forth in the PMA, to issue insurance policies for a Reliance company with a limit of \$1,000,000 per

³ The United States Department of Labor supervises USL&H insurance coverage.

⁴ 41 Stat. 1007, as amended, 46 U.S.C. App. 688, created a wrongful death action in favor of the personal representative of a seaman killed in the course of employment. *Miles v. Apex Marine Corp., et al.*, 498 U.S. 19, 23-24 (1990).

⁵ 41 Stat. 537, 46 U.S.C. §761, 762, created a similar action for the personal representative of anyone killed on the high seas. *Miles*, 498 U.S. at 24.

occurrence. All of the insurance in this program was protected by one reinsurance program. There is no dispute that the specific reinsurers and levels of reinsurance responsibility varied over time; however, it remains uncontested that there was a single reinsurance program that protected Reliance's obligations arising under all the various lines of coverage. The reinsurance policy provided that reinsurance proceeds protected Reliance for each risk from the first dollar of loss up to \$500,000 with limited aggregate exposure, followed by excess specific reinsurance for Reliance's obligations from \$500,000 to \$5,000,000. MEL exposure was limited to \$1,000,000. However, since the USL&H and state workers compensation benefits exposure was statutory; any claim under either the USL&H program or the state workers' compensation program that exceeded \$5,000,000 reverted to Reliance for payment.

For the period October 1, 1997 through August 1, 2002, multiple certificates of insurance were delivered to ALMA each stating that:

IN CONSIDERATION OF THE PAYMENT OF
THE REINSURANCE PREMIUM AND SUBJECT TO
THE TERMS AND CONDITIONS CONTAINED
HEREIN, WHICH ARE MADE A PART OF THIS
CERTIFICATE, RELIANCE NATIONAL
INDEMNITY COMPANY ... DOES HEREBY
REINSURE:

* * *

Item I. COMPANY: AMERICAN LONGSHORE
MUTUAL ASSOCIATION LIMITED and individual
members as listed on endorsement #1.

(See Exhibit F attached to the Amended Petition for Approval of Commutation and Novation Agreement filed December 8, 2003.) Company is defined as each member of ALMA. The membership endorsement listed each member of ALMA.

ALMA and its membership have filed claims against the Reliance Estate totaling in excess of \$30 million. In an effort to resolve the underlying claims, ALMA and Reliance worked to settle the looming litigation. The Court applauds them for doing so. The language of the documentation submitted to the Court, details that ALMA and its members are direct insureds. On April 26, 2002 this Court entered guidelines regarding the direct payment of reinsurance proceeds pursuant to 40 P.S. §221.34 (hereinafter Guidelines) and set forth therein that

a reinsurer of Reliance Insurance Company ("Reliance") will not be relieved of its obligation to pay all reinsurance proceeds, without diminution, to the Liquidator unless (1) the relevant reinsurance contract contains a direct payment provision in compliance with the requirements of 40 P.S. § 221.34, as set forth in the Guidelines; (2) the reinsurer or insured seeks in writing and obtains the written approval of the Court and the Liquidator before the reinsurer makes a direct payment to the insured; and (3) in considering any written request to pay reinsurance directly to an insured, the Liquidator shall apply the requirements of 40 P.S. § 221.34, as reflected in the Guidelines.

IT IS further **ORDERED** that, as a necessary condition precedent to any direct payment by a reinsurer to any Reliance insured, the reinsurer shall provide to the Liquidator a signed document evidencing (1) that the reinsurer has unequivocally undertaken a direct coverage obligation to the insured; and (2) the insured's informed consent to the reinsurer's direct coverage of the insured.

The Court has the authority to issue such guidelines. Further, the Court directed that pursuant to 40 P.S. §§ 221.4 and 221.5, this Court shall retain sole and exclusive jurisdiction over, inter alia, the assets of the Reliance estate, including matters related to the direct payment of reinsurance to Reliance insureds

by Reliance's reinsurers given that said payments reduce the assets of Reliance available for distribution to all policyholders.

In applying the Guidelines, the Liquidator has the sole discretion to resolve disputes, and upon doing so, will seek the Court's review of the decision. In reviewing the settlement agreements to which the Liquidator is a party, this Court does not require that the Liquidator issue a "reasoned decision" as such is understood in the context of the Workers Compensation Law.⁶ Rather, the Court looks to see whether the Liquidator has abused her discretion in entering into the agreement. Having studied the varying paper books filed with the Court and having reviewed the supporting documentation, the Court concludes that the Liquidator has not abused her discretion in putting forth a settlement agreement that will resolve \$30 million in potential claims, and infuse the Reliance Estate with a reinsurance contribution of nearly \$33.5 million.

⁶ Section 422(a) of the Pennsylvania Workers' Compensation Act (Act), Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §834. Section 422(a) of the Act, 77 P.S. §834, provides in relevant part:

All parties to an adjudicatory proceeding are entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached. The workers' compensation judge shall specify the evidence upon which the workers' compensation judge relies and state the reasons for accepting it in conformity with this section. When faced with conflicting evidence, the workers' compensation judge must adequately explain the reasons for rejecting or discrediting competent evidence. Uncontroverted evidence may not be rejected for no reason or for an irrational reason; the workers' compensation judge must identify that evidence and explain adequately the reasons for its rejection. The adjudication shall provide the basis for meaningful appellate review.

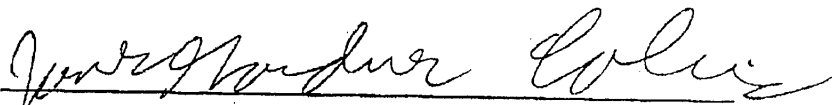
Steamship objects to the settlement on the grounds that the Liquidator has not complied with the guidelines. Steamship has taken issue with varying aspects of the agreement and apparently would have crafted a settlement different from that, which has been proposed. Nevertheless, Steamship has offered nothing to the Court that suggests the Liquidator abused her discretion in forging this agreement. Steamship has not sought a declaration of its cut-through rights. The only challenge is the rights of others and the soundness of the plan advanced by the Liquidator. The Court finds no merit to Steamship's objection to the petition for approval on the grounds that it is contrary to statutory authority and enters the following

ORDER

AND NOW, this 17th day of August, 2004, the Court having reviewed the Amended Petition of M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania as Liquidator of Reliance Insurance Company (Reliance) for Approval of (1) the Commutation Agreement among Reliance, Sun Life Assurance Company of Canada ("Sun Life"), Phoenix Life Insurance Company ("Phoenix"), and Blunt PA Consortium, LPSO Registered Consortium 9027 (Blunt); (2) the Novation Agreement among Reliance, American Longshore Mutual Association, Ltd., (ALMA), Sun Life, Phoenix and Blunt (the Primary Novation Agreement); and (3) the Novation Agreement among Reliance, Lloyds Consortium 9036/9037, CSC Assurance Ltd. and ALMA (the Excess Novation Agreement); and finding no merit to the objections filed thereto on behalf of Steamship Mutual Underwriting Association (Bermuda) Ltd., the Amended

Petition is GRANTED, and the Commutation Agreement, the Primary Novation Agreement, and the Excess Novation Agreement are hereby APPROVED.

FURTHER, the Liquidator, through her counsel, is hereby directed to serve a copy of this order, forthwith, upon all parties listed on the master service list via U.S. mail and, where designated, fax and/or e-mail. The Liquidator, through her counsel, is directed to file with the court in the Office of the Prothonotary, 9th Floor the Widener Building, 1339 Chestnut Street, Philadelphia, PA 19107, by 3:00 p.m. August 20, 2004 an affidavit, that service, as outlined above, has been effectuated.



JAMES GARDNER COLINS, President Judge