

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

RECEIVED  
PHILADELPHIA COUNTY  
COMMERCIAL COURT  
OF PENNSYLVANIA  
OCT 2 2 07 PM '01

**RESPONSE IN OPPOSITION TO SUTTON WOODS  
CONDOMINIUM ASSOCIATION INC.'S PETITION FOR  
INTERVENTION AND PETITION FOR RELIEF FROM STAY**

M. Diane Koken, the Insurance Commissioner of the Commonwealth of Pennsylvania, as Liquidator for Reliance Insurance Co. ("Liquidator") opposes Sutton Woods Condominium Association Inc.'s ("Sutton Woods") petition for intervention and petition for relief from stay as follows:

**BACKGROUND**

**A. Liquidation Order and its Stay Provisions**

1. On October 3, 2001, the Commonwealth Court of Pennsylvania entered its order ("Liquidation Order") placing Reliance Insurance Company ("Reliance") in liquidation pursuant to Penn. Stat. Ann. tit. 40, §§ 221.1 et seq. ("Pennsylvania Insurance Act"). The Liquidation Order declared Reliance insolvent. Order at ¶3.

2. Pursuant to the Pennsylvania Property and Casualty Insurance Guaranty Association Act, 40 P.S. §§991.1801 et seq. (the "Act"), upon entry of an order declaring an

insurer insolvent, the guaranty association assumes an insolvent insurer's claim obligations for any "covered claim." The Act provides that actions in which the insolvent insurer is obligated to defend a party in the Commonwealth of Pennsylvania are stayed for ninety (90) days "to permit proper defense by the [guaranty] association of all pending causes of action." 40 P.S. §991.1803. Consistent with the Act, paragraph 23 of the Liquidation Order expressly provides for a 90-day stay with respect to "all proceedings in which Reliance is obligated to defend a party in any court of this Commonwealth."

3. For suits in which Reliance is obligated to defend a party pending outside of Pennsylvania and in federal courts, the Liquidation Order requests comity in the imposition of a stay by such courts. Order at ¶ 23.

**B. Sutton Woods' Petition for Relief from Stay**

4. On October 22, 2001, Sutton Woods filed a petition with this Court to intervene in this action for the purpose of seeking a relief from the 90-day stay.

5. In its petition, Sutton Woods alleges that it is a plaintiff in an action captioned Sutton Woods Condominium Association, Inc. v. Baker Firestone et al., Docket No. MRS-L-20 52-95 that is pending in the Superior Court of New Jersey, Law Division, Morris County ("New Jersey Action") in which one of the defendants, Coffey Brothers, Inc., is insured by Reliance.

6. Prior to this Court's entry of the Liquidation Order, Reliance provided defense in the New Jersey Action.

## ARGUMENT

### **Sutton Woods' Petition for Relief for Stay should be Denied because a Stay is Authorized by the Liquidation Order and Applicable Law and is Necessary**

7. The Liquidation Order clearly authorizes a stay of the New Jersey Action. For cases pending outside of Pennsylvania, such as the New Jersey Action, the Liquidation Order requests comity in the imposition of a stay permitted under the laws of the applicable jurisdiction.

8. New Jersey's Property-Liability Insurance Guaranty Association Act requires a stay of 120 days to permit proper defense of the case by the New Jersey guaranty association. N.J.S.A. 17:30A-18 (in all actions which an insolvent insurer is obligated to defend a party in any court in New Jersey "shall be stayed for 120 days and such additional time thereafter as may be determined by the court to permit proper defense by the association of all pending claims.").


9. Therefore, both the Liquidation Order and New Jersey law recognize the propriety and necessity of a stay of the New Jersey Action.

10. The New Jersey guaranty association is authorized by applicable law and may elect to seek a 120-day stay of the New Jersey Action.

WHEREFORE, the Liquidator requests that this Court enter an order denying  
Sutton Woods' petitions.

Respectfully submitted,

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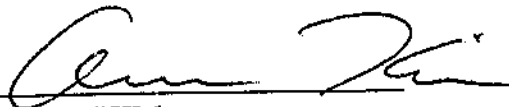
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November 2, 2001

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the preceding Response in Opposition to Sutton Woods Condominium Association, Inc.'s Petition for Intervention and Petition for Relief from Stay was served this 2nd day of November 2001, by first class mail, postage prepaid, upon the individuals listed in the attached Master Service List and by hand delivery upon:

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