

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania,
Plaintiff

v.

Reliance Insurance Company,
Defendant

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: No. 269 M.D. 2001

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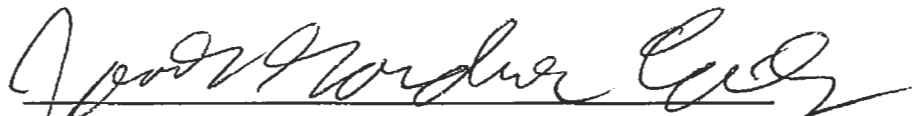
RECEIVED AND FILED
COMMONWEALTH COURT
OF PENNSYLVANIA

IN RE: Order Approving Referee Nigro's Recommendation to Accept Settlement of POC No. 1917160 claim of Angela and Dominique Bosdorf

ORDER

AND NOW, this 19th day of May 2006, the Court has given consideration to and does agree with Referee Russell M. Nigro's Recommendation that this Court approve the Stipulation of Counsel in Support of Recommended Approval of Settlement, which was reached after discussions with the parties and after consideration of the parties' written submissions; ACCORDINGLY, it is ORDERED that the Stipulation of Counsel in Support of Recommended Approval of Settlement, attached hereto and marked as Exhibit A, is APPROVED and ACCEPTED by the Court.

By the Court:



JAMES GARDNER COLINS, President 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

OBJECTION OF ANGELA AND
DOMINIQUE BOSDORF AND THE
ESTATE OF FRANK BOSDORF
(Before Justice Russell M. Nigro, Referee)

**STIPULATION OF COUNSEL IN SUPPORT OF
RECOMMENDED APPROVAL OF SETTLEMENT**

Claimants, Angela and Dominique Bosdorf, and the Estate of Frank Bosdorf ("the Bosdorfs"), and the Honorable M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Statutory Liquidator ("the Liquidator") of Reliance Insurance Company in Liquidation ("Reliance"), through their respective attorneys, hereby stipulate and agree as follows:

1. Reliance was placed into Rehabilitation by Order of the Commonwealth Court of Pennsylvania dated May 29, 2001.

2. By Order of October 3, 2001, the Commonwealth Court terminated the Rehabilitation and Reliance was placed into Liquidation.

3. By Order of September 9, 2002, the Commonwealth Court established claims filing procedures and directed that Referees be appointed by the Court to hear claim disputes and outstanding Objections to Notices of Determination issued by the Liquidator and to make recommendations to the Commonwealth Court regarding such claims and Objections.

4. The Bosdorfs filed a Proof of Claim seeking damages arising out of the death of their husband and father Frank Bosdorf who was killed in a diving accident when he was struck

" EXHIBIT A "

by a vessel owned by Reliance's insured J&L Enterprises and being piloted by Captain Harry Sinnamon ("the Bosdorf POC")

5. On August 9, 2005, Reliance issued its Notice of Determination assigning class (b) priority and an allowed amount of zero to the Bosdorf POC because there was no coverage for their claim under the Reliance policy.

6. On or about October 7, 2005, the Bosdorfs, through their undersigned counsel, filed an Objection to the Notice of Determination (the "Bosdorf Objection"), asserting that there was coverage for their claims and that they are entitled to damages of \$825,000 based on a stipulated judgment entered by them against Captain Sinnamon in a Florida state court action they filed against him alleging that he negligently operated the vessel and caused Mr. Bosdorf's death. As part of that stipulated settlement, the Bosdorfs received an assignment of any and all rights Captain Sinnamon had to the proceeds of the policy issued by Reliance to the vessel's owner J&L Enterprises and Lamar Beach, its President.

7. The Liquidator filed her Response to the Bosdorf Objection on or about November 9, 2005 asserting that: (a) there was no coverage for Captain Sinnamon under the Reliance policy because he was a "paid captain" and was therefore not an insured under the Policy which states that it does not apply to paid captains; (b) the stipulated judgment, which was entered after Reliance was ordered into liquidation, was not binding on the Liquidator; and (c)

there was and is no basis for a finding of liability or damages against Captain Sinnamon, in any event, because the accident was not his fault but was due to the negligence of the diving company which conducted the dive in a heavily trafficked area and failed to provide adequate markers.

8. The Bosdorfs dispute each of these positions, claiming that: (a) there is coverage for Captain Sinnamon because the term paid captain is ambiguous and should be construed against Reliance; (b) Reliance was bound by the stipulated judgment; and (c) even if Reliance

were not bound, there was and is evidence of liability and damages sufficient to justify an award against Captain Sinnamon in the amount claimed.

9. On January 3, 2006, the Court assigned the Bosdorf Objection to Justice Russell M. Nigro ("Justice Nigro"), as Referee for hearing and recommendation. This dispute is styled *Koken v. Reliance Insurance Company, Docket No. 269 M.D. 2001, In the Matter of Objections to Notices of Determination by Angela and Dominique Bosdorf and the Estate of Frank Bosdorf* (the "Bosdorf Action").

10. A briefing schedule was established pursuant to which the parties were to brief the coverage issue. Prior to completion of the briefing, with the approval of Justice Nigro, the parties agreed that the Liquidator could have an extension of time until April 7, 2006 to file her Brief, to allow the parties to attempt to resolve the dispute, if possible.

11. On April 6, 2006, the parties reported to Justice Nigro that, subject to his approval and recommendation and the Court's approval, they had settled all disputes between them.

12. Specifically, the parties have agreed that, subject to the Court's approval, all disputes between them regarding the Bosdorf Objection, the Bosdorf POC, and the NOD issued as to it, as well as all matters pending before Justice Nigro relating to the Bosdorf Action are resolved as follows:

- Within 10 days of the Court's approval of this Stipulated Settlement, Reliance will issue an Amended Notice of Determination assigning class (b) priority and an allowed amount of \$300,000 to the Bosdorf POC.
- The parties agree that the Bosdorf POC is the only Proof of Claim filed by or on behalf of the Bosdorfs or any other party relating to Mr. Bosdorf's accident and the Bosdorfs' claims arising out of it and currently pending with the Liquidator. The Bosdorfs, including all members of the Bosdorf family, covenant and agree not to file

any additional Proofs of Claim and further certify that they have not received payment from any other source, including the insured or any state guaranty association, for the damages for which they have submitted the Bosdorf POC.

- Within 10 days of the Court's Approval of this Stipulated Settlement, the Bosdorfs, through their undersigned counsel, will file a praecipe to withdraw the Bosdorf Objection, in the form attached hereto as Exhibit "A", and will file no further objections with regard to the Amended NOD issued or to be issued on the Bosdorf POC.

13. This settlement is a compromise of disputed coverage, liability and damages claims and issues, and is not an admission by either party as to the existence of coverage, liability, or damages. Given the numerous issues involved and which are as yet unresolved or disputed; the costs of litigating them; and the risks to both sides of an adverse result, the parties have agreed to resolve their differences by entering into this compromise settlement which will fully and finally resolve all disputes, issues and claims between the Bosdorfs, the Liquidator and the Reliance Estate.

14. The Pennsylvania Insurance Department Act of 1921 ("the Act") confers broad powers on the Liquidator to administer the affairs of an insolvent insurer's estate and to achieve the purposes of liquidation under the Act. See 40 P.S. §§221.1, 221.23.

15. Sections 221.23, 221.43, 221.44 and 221.45 of the Act confer upon the Liquidator the express authority to settle claims against the insolvent insurer's estate.

16. The Pennsylvania Supreme Court has recognized that the General Assembly conferred broad discretion upon the Insurance Commissioner, in her capacity as a statutory receiver, to achieve the public policy and legislative goals of the Act. See Foster v. Mutual Fire Marine and Inland Ins. Co., 614 A.2d 1086 (Pa. 1992). The Act specifically authorizes the

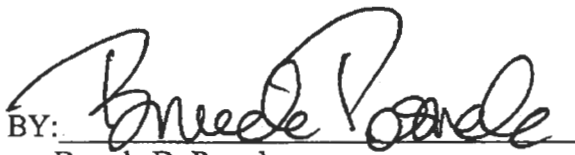
Liquidator, "to do such. . . acts as are necessary or expedient to collect, conserve or protect [the insolvent insurer's] assets or property, including the power to. . .compromise. . .any bad or doubtful debt.]" See 40 P.S. §221.23(6).

17. The Liquidator has determined that (1) this Stipulated Settlement is fair and reasonable and is in the best interest of the estate of Reliance, its policyholders and other creditors and (2) the terms of the Stipulated Settlement are consistent with the provisions of the Act and the Court's Orders. The Liquidator further believes that the Stipulated Settlement will assist her in achieving the objectives of liquidation under the Act, in that it will assist the Liquidator in conserving the assets of the estate, one of the primary objectives of liquidation, by eliminating the costs and expenses that would be incurred in litigating the Bosdorf Action.

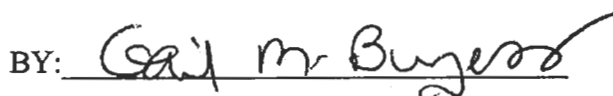
18. The Liquidator and the Bosdorfs respectfully request that the Referee favorably recommend to the Commonwealth Court that it (1) approve the terms of the Stipulated Settlement as set forth herein; and (2) authorize the Parties to perform the Stipulated Settlement.

STERNS & WALKER

RELIANCE INSURANCE COMPANY
IN LIQUIDATION

BY: 

Brenda D. Posada
On Behalf of Angela and Dominique Bosdorf
and the Estate of Frank Bosdorf

BY: 

Gail M. Burgess
Vice President, Associate General
On Behalf of Counsel
On Behalf of M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania, in
her official capacity as the Statutory
Liquidator of Reliance Insurance
Company

APPROVED:



Justice Russell M. Nigro, Referee

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN
Insurance Commissioner of the
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Plaintiff,

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RELIANCE INSURANCE COMPANY,

Defendant.

DOCKET NO. 269 MD 2001

**PRAECIPE TO MARK WITHDRAWN THE OBJECTION OF
ANGELA AND DOMINIQUE BOSDORF
REGARDING PROOF OF CLAIM NUMBER 1917160**

TO THE PROTHONOTARY:

Brenda D. Posada, Esquire, of Law Offices of Sterns & Walker, hereby files the following Praecipe to Mark Withdrawn the Objection of the claimants, Angela and Dominique Bosdorf and the Estate of Frank Bosdorf, to the Notice of Determination issued by the Statutory Liquidator of Reliance Insurance Company (In Liquidation) on Proof of Claim Number 1917160.

Dated:

April 7, 2006



Brenda D. Posada, Esquire
Law Offices of Sterns & Walker
Clocktower Building, Old Oakland
901 Clay Street
Oakland, CA 94607
Telephone: 510-267-0500
Facsimile: 510-267-0506

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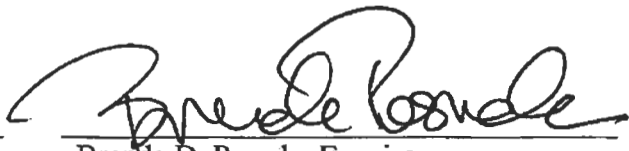
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CERTIFICATE OF SERVICE

I, Brenda D. Posada, Esquire, do hereby certify that this day a true and correct copy of the Praecipe to Mark Withdrawn the Objection of the claimants, Angela and Dominique Bosdorf and the Estate of Frank Bosdorf, to the Notice of Determination issued by the Statutory Liquidator of Reliance Insurance Company (In Liquidation) on Proof of Claim Number 1917160 was served on Reliance Insurance Company (In Liquidation) by regular U.S. mail, postage prepaid.

Dated:

April 7, 2006



Brenda D. Posada, Esquire
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