

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN, Insurance	:	
Commissioner of the Commonwealth of	:	
Pennsylvania,	:	
In her official capacity as Liquidator of	:	
RELIANCE INSURANCE COMPANY	:	No. 296 M.D. 2001
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
RELIANCE INSURANCE COMPANY,	:	
	:	
Defendant.	:	

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 COMMONWEALTH COURT
 OF PA (PHILA)
 2006 JUN 21 PM 3:02

**PETITION TO APPROVE A PLAN
 FOR ALLOCATION OF POLICYHOLDER COLLATERAL OF
CONSOLIDATED FREIGHTWAYS CORPORATION**

Petitioner, M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Statutory Liquidator (“Liquidator”) of Reliance Insurance Company (“Reliance”), petitions the Court for approval of a plan of allocation of policyholder collateral (the “Plan”) originally posted by former Reliance policyholder Consolidated Freightways Corporation (“CF”), now bankrupt, for deductible obligations and retrospective premium obligations under Section 523.1 of the Pennsylvania Insurance Department Act, 40 P.S. § 221.23a.

In formulating the Plan, the Liquidator has actively conferred with the Trustee for the CF Liquidating Trust (the “Trustee”), successor to CF and the National Conference of Insurance Guaranty Funds (the “NCIGF”), as representative of various state guaranty associations which have claims under CF policies (the “Affected GAs”). Both the Trustee and the NCIGF have reviewed the Plan and concurred. The Liquidator

believes the Plan is in the best interests of the estate of Reliance, the Affected GAs, certain claimants of CF without guaranty association coverage and the Trustee.

LIQUIDATION BACKGROUND

1. On May 29, 2001, this Court entered an Order of Rehabilitation with respect to Reliance pursuant to the Pennsylvania Insurance Department Act of 1921, 40 P.S. §§ 221.1 – 221.63 (the “Act”).

2. On October 3, 2001, this Court entered an Order of Liquidation with respect to Reliance, which included a finding that Reliance was insolvent. See Liquidation Order, ¶2.

3. In June 2004, the Pennsylvania Legislature adopted an amendment to the Act to add a provision entitled “Policyholder Collateral, Deductible Reimbursements and other Policyholder Obligations” (“Section 523.1”). Section 523.1 provides a framework for the administration by a liquidator of all collateral held to secure policyholder deductibles and other obligations under policies issued by an insurer subsequently placed in liquidation. 40 P.S. § 221.23a.

Section 523.1 specifically provides that this collateral is not an asset of the liquidation estate and, with respect to this collateral, supercedes any other provision of law or contract. 40 P.S. §221.23a(a). Consequently, claims against the collateral are to be administered pursuant to Section 523.1 rather than through the proof of claim process established by the Act and the September 9, 2002 Order of this Court.

4. In particular, Section 523.1 mandates that a liquidator use the collateral to pay or reimburse claims within the deductible amounts under a deductible policy or

agreement.¹ 40 P.S. § 221.23a(b). Where a claim within a deductible amount is covered by a guaranty association, the collateral will be used to reimburse the guaranty association for claims paid within the deductible amount. 40 P.S. § 221.23a(f)(1). If, however, a claim within a deductible amount is not covered by any guaranty association and the insured is unwilling or unable to handle and pay the non-covered claim,² the liquidator is charged with adjusting and paying claims within the deductible amount, utilizing the collateral. 40 P.S. §221.23a(c). If the collateral also secures other obligations of the insured to pay amounts to the insolvent insurer directly, such as premium due under a retrospectively rated insurance policy,³ the collateral shall also be utilized to pay such obligations to the insolvent insurer's estate. 40 P.S. § 221.23a(d).

5. The obligations imposed upon a liquidator by Section 523.1 are relatively straightforward in situations where the available collateral is sufficient to pay all outstanding and anticipated claims against the collateral, including reimbursement claims by guaranty associations, non-covered claims, and claims for sums owed to the

¹ A deductible policy or agreement as defined by Section 523.1 includes “. . .any combination of one or more policies, endorsements, contracts or security agreements which provide for the policyholder to bear the risk of loss within a specified amount per each claim or occurrence covered under a policy of insurance. . . .” 40 P.S. § 221.23a(n)

² Non-covered claim generally means a claim that is subject to a deductible agreement, may be secured by collateral and is not covered by a guaranty association. 40 P.S. §221.23a (n).

³ Generally, a retrospectively rated insurance policy provides that the premium obligation of the insured is adjusted after the expiration of the policy period based upon the insureds actual loss experience. See 40 P.S. § 221.23a(d).

insolvent insurer's estate.⁴ Where, however, the liquidator determines that the collateral is insufficient to pay all outstanding and anticipated claims, Section 523.1(c) permits the liquidator to develop and file with the Court a plan for equitable distribution of the collateral. Specifically, Section 523.1 declares: "When the liquidator determines the collateral provided by the insured is insufficient to pay all additional and anticipated claims against the insured, the liquidator may file a plan for equitably allocating the collateral among claimants of the insured which provided the collateral, subject to court approval."

THE CF POLICIES, COLLATERAL AND CLAIMS

6. Reliance issued policies of insurance to CF for workers compensation coverage and automobile/general liability ("AL/GL") coverage. Most of the CF policies were issued with deductible provisions. Other CF policies provided for retrospective premium adjustments payable to Reliance. The specific policy periods, deductible amounts and lines of business are shown in Exhibit A.

7. To secure its deductible reimbursement obligations under the deductible policies and its obligations for retrospective premium adjustments, CF posted collateral with Reliance in the total amount of \$100 million in the form of a \$55 million letter of credit and a \$45 million surety bond issued by CNA. That collateral remains available to fund the Plan.

⁴ If the collateral is exhausted and the insured is not able to pay the remaining claims within the deductible, the liquidator's obligation to pay such claims from the collateral terminates, and the remaining claims are claims against the insolvent insurer's estate and subject to compliance with the proof of claim process established by the Act and the September 9, 2002 Order of this Court. 40 P.S. §221.23a(c).

8. After Reliance was placed in liquidation in October 2001, claims which had arisen under the CF policies were sent to the guaranty associations. Subject to applicable statutory limitations, the Affected GAs assumed the obligation to pay CF workers compensation claims. The Affected GAs which paid and are paying workers compensation claims are listed in Exhibit B. Through December 31, 2005, the Affected GAs had paid CF workers compensation claims in the amount of \$30,052,708.97.

9. With respect to the AL/GL claims, however, most guaranty associations interpreted the AL/GL policies as not requiring the guaranty associations to pay losses within CF's deductible.⁵ The rejected AL/GL claim files were returned to CF for handling within the deductible limits.

10. On September 3, 2002, CF filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. On or about the time of filing for bankruptcy, CF essentially ceased handling claims and the Liquidator ultimately took possession of the claim files from CF's third party administrator to avoid destruction of the files.

11. Effective December 13, 2004, following confirmation of CF's liquidating plan of reorganization, all responsibilities with respect to the administration, liquidation and disposition of all rights, claims and assets of CF were transferred to a liquidating trust.

⁵ Three Affected GAs – California, Pennsylvania and Texas - did initially fund some AL/GL claims within the CF deductible in the amount of \$201,753.00. While these Affected GAs will be reimbursed appropriate amounts if the CF Plan is approved by this Court, for purposes of clarity in describing the Plan, AL/GL claims will be treated as non-covered claims.

12. At the time of the CF bankruptcy there were approximately 181 known AL/GL claims outstanding under its Reliance policies. Since September 2002, these claims have, with rare exception, remained unadjusted and their current value is uncertain. In 2005, the Liquidator engaged a claims consultant to estimate the value of the AL/GL claims based *solely* on the outdated information contained in the claim files. Using the estimates provided by the consultant, the Liquidator concluded that a reserve of \$23 million would be reasonable – albeit imprecise and undoubtedly subject to future adjustment -- for these unadjusted claims.

13. In addition to claims under the workers compensation and AL/GL deductible policies, some of CF's Reliance policies provided for retrospective premium adjustments. From the date of liquidation through December 21, 2005, CF owed Reliance \$766,443.12 for retrospective premium adjustments.⁶

14. Section 523.1 requires the Liquidator to administer the collateral so as to satisfy all three types of CF obligations: claims covered and paid by guaranty associations, non-covered claims, and premium obligations owed by CF to the insurer.

THE PROPOSED CF PLAN

15. The CF scenario presents the perfect opportunity to utilize the flexibility of Section 523.1 to bring about the equitable result contemplated by the Section. In this case, the Affected GAs have paid out millions to satisfy CF claims and many non-covered claimants remain wholly uncompensated, notwithstanding the existence of \$100 million of CF collateral that might be used to reimburse the Affected GAs and pay the

⁶ This retrospective premium adjustment amount has been drawn from collateral and is being held by Reliance for allocation under the Plan, if approved by this Court.

uncovered claims. While the Liquidator does not yet possess a projection of the total value of CF claims that would permit a determination that the collateral will necessarily be adequate to satisfy fully all non-covered claimants, to reimburse the GAs for all paid and future claims and to satisfy CF's obligations to the estate, the Liquidator, after consultation with the NCIGF and the Trustee, believes that the Plan set forth in this petition satisfies Section 523.1 by protecting the interests of all affected parties and permitting prompt distribution of a reasonable portion of the collateral. The Plan, in its entirety, is set forth as follows.

16. **Settlement Fund.** Because CF is unable to pay the non-covered claims, the Liquidator will retain a third party administrator ("TPA") to adjust and settle known, but unresolved, non-covered AL/GL claims. The affected parties have all agreed that (1) CF, Reliance and the TPA will work together to adjust the non-covered AL/GL claims; and (2) from the CF \$100 million collateral, the Liquidator will make available an initial sum of up to \$20 million in collateral to settle the non-covered AL/GL claims within the deductible (the "Settlement Fund"). No settlement will be approved, however, unless it releases the Liquidator and the Reliance estate and, to the extent claimants, GAs or CF have submitted POCs for settled claims, the Liquidator shall be entitled to issue a NOD with an allowed amount of \$0 at the appropriate statutory priority. The reasonable administrative expenses of CF and the cost of the TPA will also be paid from the Settlement Fund.

17. **Reimbursement to Affected GAs.** The Affected GAs will be reimbursed from the collateral for CF claims they have paid through December 31, 2005 in the total amount of \$30,254,461.97.⁷

18. **Retrospective Premium.** Reliance will be reimbursed from the collateral for retrospective premium due through December 31, 2005 in the amount of \$766,443.12.

19. The Liquidator has determined that under these circumstances, and considering the available data upon which to base a reserve estimate, the proposed release of up to \$51,020,905.09 of the \$100 million in CF collateral is a reasonable component of a “plan of equitable allocation” of CF collateral, as contemplated by Section 523.1. This initial release leaves approximately \$49 million for unadjusted claims, adverse development and retrospective premium owed to Reliance and the Liquidator believes that this plan comports with the spirit, intent and language of Section 523.1.

20. **Initial Collateral Review.** Approximately one year from the effective date of this Plan, the Liquidator will review and evaluate:

(a) the amounts paid to date and future estimated reserves necessary to resolve any outstanding non-covered AL/GL claims;

⁷ This total includes the distributions to the Affected GAs set forth in Exhibit B as well as the limited AL/GL payments set forth in footnote 5. The actual amount reimbursed to the Affected GAs will be reduced by claim payments previously reimbursed to the Affected GAs from the collateral pursuant to the “Interim Agreement” approved by this Court in connection with the Large Deductible dispute between the GAs and Reliance on April 26, 2002, which pre-dates Section 523.1.

(b) the additional amounts paid by the Affected GAs after December 31, 2005 and future estimated reserves on claims covered by the Affected GAs; and

(c) the additional retrospective premium owed to Reliance after December 31, 2005 and estimated future retrospective premium amounts.

At the collateral review the Liquidator will determine whether sufficient, accurate data exists to ascertain the sufficiency of the remaining CF collateral.

21. Annual Plan Review.

(a) If at the next collateral review and as determined by the Liquidator, there is sufficient collateral, including any collateral remaining in the Settlement Fund, to fund all remaining known, outstanding and anticipated claims, retrospective premium and administrative expenses, the Liquidator shall continue under Section 523.1 to adjust and pay non-covered AL/GL claims, reimburse claims paid by Affected GAs, and pay any retrospective premium owed to the Reliance estate. The collateral will continue to be reviewed and adjusted annually, and excess collateral, if any, released to the Trustee as appropriate, until the collateral is exhausted and all claims, retrospective premium and administrative expenses have been settled and paid or reimbursed.

(b) If, however, at the one year anniversary of the Plan, the collateral review results in a determination by the Liquidator that actuarial projections remain too imprecise to establish reserves accurately, the Liquidator will confer with the NCIGF and the Trustee and will calculate a further partial draw against the collateral to reimburse GA paid claims, to replenish the Settlement Fund, and to pay retrospective premiums incurred, as necessary. Reimbursement of incurred amounts may be in whole or in part, depending upon the reserve calculations.

(c) At each year anniversary, as updated and more accurate information is obtained, the Liquidator will complete a collateral review and determine whether to proceed under paragraph (a) above if the collateral is determined to be sufficient, or paragraph (b) above if the collateral review remains inconclusive. Within one to three years, the Liquidator predicts that all non-covered AL/GL claims should be settled or fully evaluated and reserved, the Affected GA reserves should be further refined and all anticipated claims should be identified.

22. **Insufficient Collateral.** The foregoing notwithstanding, if, at any time during the administration of this Plan, the Liquidator determines that the collateral is insufficient to reimburse all claims paid by the Affected GAs, pay all non-covered AL/GL claims, pay all retrospective premiums due and owing, as well as administrative expenses, the Liquidator shall file with this Court an amended plan establishing an equitable *pro rata* allocation formula against the collateral controlling all future distributions. If the collateral is subsequently exhausted without the payment of all non-covered AL/GL claims and reimbursement of all claims paid by the Affected GAs, the remaining claims shall be claims against the Reliance estate and subject to compliance with the proof of claim process established by the Act and the September 9, 2002 Order of this Court.

23. **Liquidator Expenses.** The Liquidator is entitled under Section 523.1(i)(1) to deduct from reimbursements or collateral returned to CF up to 3% of the collateral for the Liquidator's reasonable actual expenses incurred in the administration of Section 523.1. The Liquidator shall during the annual plan review provide to the

Affected GAs and the Trustee a statement of the Liquidator's administrative expenses to facilitate reimbursement under this section.

CONCLUSION

24. Section 523.1 establishes a complex scheme for the administration by the Liquidator of collateral posted in connection with policyholder obligations under deductible policies. In situations such as CF, where the amount of collateral is significant and various constituencies share an interest in the collateral, the Liquidator must balance the rights of the Affected GAs for amounts they have paid and will continue to pay on CF's behalf, with protecting the interests of non-covered claimants to the collateral whose claims are outstanding, as well as the interests of the Reliance Estate in receiving retrospective premium owed and reimbursement for administrative expenses, and the residual interest of the CF Trustee in excess collateral. The Liquidator believes that the Plan, as formulated, fulfills her duty under Section 523.1 to equitably allocate the collateral. In addition, the Plan comports with the Liquidator's general duty under the Section 501(c)(iv) of the Act to apportion equitably unavoidable loss,⁸ if any materializes, while protecting, as best as possible, the interests of all parties.

WHEREFORE, the Liquidator respectfully requests that this Court grant the Petition, approve the Plan and order such other relief as this Court deems necessary and appropriate.

⁸ 40 P.S. § 221.1(c)(iv).

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By: 

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official capacity as Liquidator of
Reliance Insurance Company


Dated: June 21, 2005

VERIFICATION

I, David S. Brietling, am authorized by M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, pursuant to 40 P.S. § 221.23, to act on her behalf in her capacity as the Liquidator of Reliance Insurance Company. I hereby verify that the facts set forth in the foregoing Petition to Approve a Plan for Allocation of Policyholder Collateral Under Section 221.23a of the Pennsylvania Insurance Department Act are true and correct to the best of my knowledge, information and belief.

I understand that this Verification is made subject to the penalties of 18 P.S. § 4904 relating to unsworn falsification to authorities.

Date: June __, 2006



David S. Brietling

EXHIBIT A

Policy Number	Effective Date	Expiration Date	Line of Business	Policy Type
NKC0131913	10/1/1996	10/1/1997	AL	\$3,000,000 Deductible
NKC0131913	10/1/1997	10/1/1998	AL	\$3,000,000 Deductible
NKC0131913	10/1/1998	10/1/1999	AL	\$3,000,000 Deductible
NKC0131913	10/1/1999	10/1/2000	AL	\$3,000,000 Deductible
NKC0131914	10/1/1996	10/1/1997	AL	\$3,000,000 Deductible
NKC0131914	10/1/1997	10/1/1998	AL	\$3,000,000 Deductible
NKC0131914	10/1/1998	10/1/1999	AL	\$3,000,000 Deductible
NKC0131914	10/1/1999	10/1/2000	AL	\$3,000,000 Deductible
NKC0131915	10/1/1996	10/1/1997	AL	\$3,000,000 Deductible
NKC0131915	10/1/1997	10/1/1998	AL	\$3,000,000 Deductible
NKC0131915	10/1/1998	10/1/1999	AL	\$3,000,000 Deductible
NKC0131915	10/1/1999	10/1/2000	AL	\$3,000,000 Deductible
NGB0131922	10/1/1996	10/1/1997	GL	\$500,000 Deductible
NGB0131922	10/1/1997	10/1/1998	GL	\$500,000 Deductible
NGB0131922	10/1/1998	10/1/1999	GL	\$500,000 Deductible
NGB0131922	10/1/1999	10/1/2000	GL	\$500,000 Deductible
NWA0131923	10/1/1996	10/1/1997	WC	\$2,000,000 Deductible
NWA0131923	10/1/1997	10/1/1998	WC	\$2,000,000 Deductible
NWA0131923	10/1/1998	10/1/1999	WC	\$2,000,000 Deductible
NWA0131923	10/1/1999	10/1/2000	WC	\$2,000,000 Deductible
NWA0131924	10/1/1996	10/1/1997	WC	Retro
NWA0131924	10/1/1997	10/1/1998	WC	Retro
NWA0131924	10/1/1998	10/1/1999	WC	Retro
NWA0131924	10/1/1999	10/1/2000	WC	Retro
NWA0158556	10/1/1999	10/1/2000	WC	\$2,000,000 Deductible

EXHIBIT B

Workers Compensation

<u>State</u>	<u>Total Paid</u>
Alaska	691.00
Alabama	206,006.00
Arkansas	45,407.00
Arizona	85,461.00
California	10,994,010.44
Colorado	151,953.00
Connecticut	242,424.00
Florida	2,040,453.00
Georgia	587,810.00
Hawaii	176.00
Iowa	533,854.00
Illinois	2,287,987.00
Indiana	52,814.00
Kansas	250,135.00
Kentucky	22,277.00
Louisiana	76,627.00
Massachusetts	767,217.00
Maryland	275,271.00
Maine	128,617.00
Michigan	325,728.00
Minnesota	409,698.00
Missouri	395,709.00
Mississippi	128,169.00
Montana	51,976.00
North Carolina	756,715.97
Nebraska	110,792.00
New Jersey	681,887.00
New York	2,489,331.00
Oklahoma	150,058.00
Oregon	134,036.00
Pennsylvania	1,855,509.00
Rhode Island	57,653.00
South Carolina	845,504.56
Tennessee	1,318,042.00
Texas	804,927.00
Utah	323,585.00
Virginia	460,400.00
Vermont	4.00
Wisconsin	3,794.00
 Grand Total All States	 30,052,708.97

CERTIFICATE OF SERVICE

I, Sheila E. Branyan, hereby certify that on or about this day, pursuant to the Court's Order of April 1, 2004, service of the foregoing Petition of the Liquidator to Approve a Plan for Allocation of Policyholder Collateral of Consolidated Freightways Corporation was made on the attached Master Service List through the transmission of a Notice of Filing and through posting of a true and correct copy in PDF file format on the Reliance Documents website (www.reliancedocuments.com).

Dated: June 21, 2006


SHEILA E. BRANYAN

Master Service List

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v.

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