

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

v.

Reliance Insurance Company,  
Defendant.

269  
No. 296 M.D. 2001

In Re: Petition to Approve Plan for  
Allocation of Policyholder Collateral for  
Consolidated Freightways Corporation

2006 OCT -4 A 9 47

RECEIVED AND FILED  
COMMONWEALTH COURT  
OF PENNSYLVANIA

ORDER

AND NOW, this 4<sup>th</sup> day of October, 2006, upon consideration of the Petition of M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in her capacity as Liquidator of Reliance Insurance Company ("the Liquidator") for Approval of Plan for Allocation of Policyholder Collateral of Consolidated Freightways Corporation (Plan), and the absence of any objection thereto, the Court finds that the Plan complies with Section 523.1 of Article V of the Act of May 17, 1921, P.L. 789, *as amended*, added by the Act of June 28, 2004, P.L. 443; 40 P.S. §221.23a (known as the Insurance Company Law of 1981 (Act)), and equitably allocates the collateral of Policyholder Consolidated Freightways Corporation (the "Collateral") currently in the possession of Reliance Insurance Company ("Reliance").

The Court finds as follows:

- A. Reliance currently holds the Collateral, which consists of \$100 million.
- B. The Collateral was posted by CF with Reliance to secure its deductible reimbursement obligations under policies of insurance issued by Reliance to Consolidated Freightways Corporation ("CF") for workers compensation

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coverage and automobile/general liability (“AL/GL”) coverage and also to secure its obligations for retrospective premium adjustments (the “CF Policies”).

C. The CF Policies consist of the following:

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

- D. The Collateral is in the form of a \$55 million letter of credit and a \$45 million surety bond issued by CNA.
- E. After Reliance was placed in liquidation in October 2001, claims which had arisen under the CF Polices were sent to the guaranty associations (“GAs”). Subject to applicable statutory limitations, certain GAs assumed the obligation to pay CF workers compensation claims. These are referred to as the “Affected GAs”. The Affected GAs which paid and are paying CF workers compensation claims and the amounts they had paid through December 31, 2005 are as follows and the payments made total \$30,052,708.97:

<u>Guaranty Association</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

- F. Three Affected GAs – California, Pennsylvania and Texas - initially funded some AL claims within the CF deductible in the amount of \$201,753.00.
- G. In addition to claims under the workers compensation and AL/GL deductible policies, some of the CF 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.
- H. CF also has an as yet undetermined amount of claims that are not covered by GAs.

**Accordingly, it is hereby ORDERED and DECREED as follows:**

1. The Liquidator will retain a third party administrator (“TPA”) to adjust and settle known, but unresolved, non-covered AL/GL claims.
2. From the Collateral, the Liquidator will make available an initial sum of \$20 million to settle the non-covered AL/GL claims within the deductible (“the Settlement Fund”). No settlement will be eligible for payment unless it releases the Liquidator and the Reliance Estate. To the extent claimants, GAs or CF have submitted POCs for any claim which is settled according to this process, the Liquidator shall be entitled to issue a NOD with an amount of \$0 at the appropriate statutory priority. The reasonable administrative expenses of CF and the costs of the TPA may be paid from the Settlement Fund.
3. The Liquidator shall pay to the Affected GAs from the Collateral the amounts set forth above at paragraph E.
4. The Liquidator shall pay to the California, Pennsylvania and Texas GAs \$201,753.00 that they paid in AL/GL claims.
5. The Liquidator shall reimburse Reliance from the Collateral for the amount of \$766,443.12 that was due and owing in retrospective premium through December 31, 2005.
6. **Ongoing Collateral Review**
  - a. No later than October 31, 2007, the Liquidator shall complete a review and evaluation of the Collateral and claims under CF Policies in order to determine whether there is sufficient collateral, including any Collateral

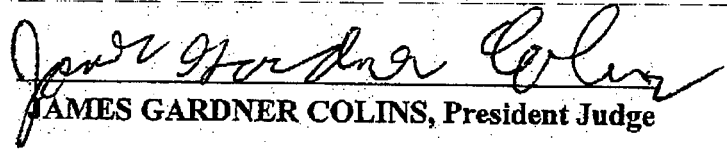
remaining in the Settlement Fund, to fund all remaining known, outstanding and anticipated claims, retrospective premium and administrative expenses.

- b. If by October 31, 2007, the Liquidator determines that there is sufficient collateral, she shall promptly file with the Court a Petition to Finally Allocate Collateral, setting forth the terms upon which she proposes to allocate and pay the Collateral. Upon approval by the Court, the Liquidator shall be entitled to proceed to allocate and pay the Collateral asset forth as directed by the Court.
  - c. If by October 31, 2007, the Liquidator determines that actuarial projections remain too imprecise to finally allocate and pay the Collateral, but that a further partial allocation and payment is appropriate, the Liquidator will promptly file with the Court a Petition to Partially Allocate Collateral, setting forth the terms upon which she proposes to allocate and pay part of the Collateral. Upon approval by the Court, the Liquidator shall be entitled to proceed to allocate and pay the Collateral as directed by the Court.
  - d. At each year anniversary of October 31, 2007, as updated and more accurate information is obtained, the Liquidator will complete a collateral review and determine whether to proceed under paragraph (b) above if the collateral is determined to be sufficient, or paragraph (c) above if the collateral review remains inconclusive.
  - e. No payments shall be made from the Collateral without approval of the Court.
7. **Insufficient Collateral.** If the Liquidator determines at any time 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 the Court and seek the Court's approval of an amended plan establishing an equitable *pro rata* allocation formula against the Collateral controlling all future distributions. If the Collateral is exhausted without the full payment of all non-covered AL/GL claims and reimbursement of all claims paid by the Affected GAs in full, the remaining claims or partial 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, and any amendments or supplements thereto.
8. **Liquidator Expenses.** The Liquidator may withdraw up to 3% of the Collateral for reasonable actual expenses incurred in the administration of Section 221.23a of the Act. After each annual plan review, the Liquidator shall include in the Petition a statement of and request for approval of reimbursement of the Liquidator's administrative expenses. The Liquidator shall file the Petition with the Court, along with any response received.

9. **FURTHER**, within three months of the date of this Order and every four month period thereafter, the Liquidator shall file a report detailing the complete status of the Plan.

**AND FURTHER**, it is **ORDERED** that the Liquidator shall serve a copy of this Order upon all listed on the Master Service List, and also, shall file with this Court no later than October 13, 2006, an affidavit that service has been effectuated.

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**JAMES GARDNER COLINS, President Judge**