

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

ORDER

AND NOW, this day of , 2001, it is hereby ORDERED that
Parthenia Ponder Vicks' Petition for Relief from Automatic Stay is GRANTED.

BY THE COURT:

By: _____ J.

RECEIVED AND FILED
FRANKLIN COUNTY
COMMONWEALTH COURT
OF PENNSYLVANIA
NOV 21 2 32 PM '01

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M. DIANE KOKEN	:	
Insurance Commissioner of the	:	
Commonwealth of Pennsylvania,	:	
	:	
Plaintiff,	:	
	:	
v.	:	DOCKET NO. 269 MD 2001
	:	
RELIANCE INSURANCE COMPANY, :	:	
	:	
Defendant	:	

**RESPONSE OF M. DIANE KOKEN TO PARTHENIA PONDER VICKS'
PETITION FOR RELIEF FROM AUTOMATIC STAY**

Plaintiff M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner"), as Liquidator of Reliance Insurance Company ("Liquidator"), by her undersigned counsel, responds to Parthenia Ponder Vicks' Petition for Relief from Automatic Stay of the action captioned Estate of Antwanette Ponder, et al. v. Crozer Chester Medical Center, et al., Court of Common Pleas of Delaware County, Pennsylvania at Docket No. 99-3220 ("Ponder case") as follows:

1. Reliance allegedly provided excess carrier insurance for three defendants in the Ponder case: Crozer Chester Medical Center, Crozer Keystone Health System and Health Access Network ("the three defendants"). See Vicks' Petition at ¶ 6. Reliance, however, is not a named party in the Ponder case.

2. As an excess insurance carrier, Reliance would ordinarily have an obligation to defend a claim where the liability exceeds coverage provided by the primary carriers and the Pennsylvania Medical Catastrophe Loss Fund (CAT Fund). Under Pennsylvania law, the order of payment of insurance proceeds is determined as follows: “the first \$200,000 of liability must be borne by the primary carriers, the CAT Fund is obligated to pay the next \$1 million and the excess carrier is responsible for the amount of the judgment that exceeds the underlying limits.” See Willet v. Pennsylvania Medical Catastrophe Loss Fund, et al., 549 Pa. 613, 621, 702 A.2d 850, 854 (1997) (citation omitted), rehearing denied, 1998 Pa. LEXIS 43 (Pa. Jan. 12, 1998). See also PA. STAT. 1301.705(a).

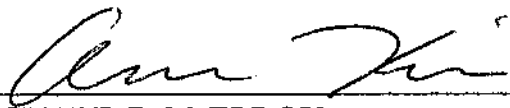
3. On September 28, 2001, the parties in the Ponder case entered into an agreement where the “plaintiffs agree not to execute on the personal assets of said [three] defendants and not to execute on any excess coverage the [three] defendants may have.” See Vicks’ Petition, Exhibit A.. Accordingly, plaintiffs have “waived any further excess claims against Crozer Chester Medical Center, Crozer Keystone Health System and Health Access Network and Reliance Insurance Company. By the Release aforementioned entered into by [the plaintiffs] with these Defendants, the [plaintiffs] waived any future claims against Crozer Chester Medical Center, Crozer Keystone Health System and Health Access Network and its excess insurance carrier [Reliance].” See Vicks’ Petition at ¶¶ 5, 7.

4. Pursuant to this Court's October 3, 2001 Order placing Reliance in liquidation ("Liquidation Order"), all proceedings in which Reliance is obligated to provide a defense are stayed for ninety (90) days. See Order at ¶ 23.

5. Because the plaintiffs in the Ponder case have waived any future claims against Reliance, as the excess insurance carrier and the three defendants that Reliance may have been obligated to defend, Reliance has no interest at stake or any potential obligation to defend with respect to the Ponder case.

WHEREFORE, the Liquidator does not oppose Parthenia Ponder Vicks' Petition for Relief from Automatic Stay.

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Dated: November 27, 2001

CERTIFICATE OF SERVICE

I, Alphonso B. David, hereby certify that this day a true and correct copy of the foregoing Response of M. Diane Koken to Petition for Relief from Automatic Stay of Parthenia Ponder Vicks was served on all persons listed on the attached Master Service List by facsimile and U.S. Mail, postage prepaid.



ALPHONSO DAVID

Dated: November 27, 2001

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Reliance Insurance Company

No. 269 M.D. 2001 (Commonwealth Court of Pennsylvania)

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