

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, Plaintiff	No. 269 M.D. 2001
v.	
Reliance Insurance Company, Defendant	

ORDER

AND NOW, this _____ day of _____, 2007, upon consideration of the petition of Reliance Insurance Company (in Liquidation) and the Statutory Liquidator to enforce the Collateral Allocation Order of October 4, 2006, and the response thereto of the Trustee of the Trust for Certain Creditors of Consolidated Freightways Corporation and Certain Affiliates, said petition is hereby GRANTED as follows:

1. This Court finds that the Trustee has violated the Collateral Allocation Order dated October 4, 2006 and the Liquidation Order dated October 3, 2001.
2. This Court finds that the CF Collateral is in the possession and control of the Liquidator pursuant to 40 P.S. §221.23a and the Collateral Allocation Order.
3. The Trustee is ENJOINED from interfering with the Liquidator's administration of the CF Collateral in any way, except that the Trustee may apply to this Court for relief in a proper case.

BY THE COURT:

Hon. James Gardner Colins

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COMMONWEALTH COURT
OF PENNSYLVANIA

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

<p>M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, Plaintiff</p> <p style="text-align:center">v.</p> <p>Reliance Insurance Company, Defendant</p>	<p>No. 269 M.D. 2001</p>
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**PETITION TO ENFORCE THE COLLATERAL
ALLOCATION ORDER OF OCTOBER 4, 2006**

Reliance Insurance Company (In Liquidation) (“Reliance”) and its Statutory Liquidator, Acting Insurance Commissioner Randolph L. Rohrbaugh (the”Liquidator”), by and through the undersigned counsel, hereby petition the Court for the entry of an order enforcing this Court’s Collateral Allocation Order of October 4, 2006 (the “Collateral Allocation Order”), including a request for declaratory and injunctive relief. As set forth below, the Trustee of the Trust for Certain Creditors of Consolidated Freightways Corporation and Certain Affiliates (the “Trustee”) has interfered with the Collateral Allocation Order and prevented the Liquidator from complying with the Collateral Allocation Order. In support of this petition, the Liquidator makes the following averments:

1. On June 21, 2006, the Liquidator filed a Petition to Approve a Plan for Allocation of Policyholder Collateral in accordance with 40 P.S. §221.23a (the “Petition”). A copy of the Petition is attached hereto as Exhibit “A.”
2. The Trustee was an active participant in the formulation of the Plan for Allocation and in the preparation of the Petition. Upon the filing of the Petition by the Liquidator, the Trustee was provided a copy thereof as filed.

3. The Trustee wrote to the Commonwealth Court on September 28, 2006 to endorse the Petition and urge its approval by the Court. In his letter, the Trustee stated in part:

The Petition is the result of months of careful but amicable negotiation between the Reliance Liquidator, the National Conference of Insurance Guaranty Funds ("NCIGF"), and the CFC Trust. The goal of all parties involved was to implement Section 221.23a of the Pennsylvania Insurance Department Act and obtain the release of some of the more than \$100 million in CFC collateral currently being held by Reliance. Once implemented, the Plan of Allocation will reimburse state guaranty associations over \$30 million in paid but un-reimbursed CFC claims and provide an additional \$20 million to pay claims arising under CFC's policies with Reliance not covered by the state guaranty associations.

Exhibit "B."

4. This Court entered the Collateral Allocation Order on October 4, 2006. A copy of the Order is attached hereto as Exhibit "C."

5. The Collateral Allocation Order authorized the Liquidator to use \$30,254,461 of the Consolidated Freightways ("CF") Collateral to reimburse Guaranty Associations ("GAs") for deductible claims covered by the GAs; to use up to \$20 million of the CF Collateral to adjust and pay non-covered claims through a third-party administrator; and to use \$766,443 of the CF Collateral to pay Reliance retrospective premiums due from CF.

6. Pursuant to the Collateral Allocation Order, the Liquidator has paid the GAs over \$30 million with respect to deductible claims covered by the GAs and Reliance has been reimbursed for \$766,443 in retrospective premiums.

7. Pursuant to the Collateral Allocation Order, Reliance and the Trustee entered into a Master Claims Servicing Agreement with a third-party administrator (the "TPA") to handle the non-covered CF deductible claims. Reliance has transferred the

non-covered CF deductible claim files to the TPA, and has made an initial contract payment to the TPA of \$48,750.

8. On February 14, 2007, the Trustee filed an Adversary Complaint against Reliance in bankruptcy court to recoup all or part of the CF Collateral for its bankruptcy estate and, in effect, set aside everything to which it had agreed in this Court. The Adversary Complaint did not even mention the facts outlined above or acknowledge the existence of the Collateral Allocation Plan, the Collateral Allocation Order and the Master Claims Servicing Agreement. The Adversary Complaint was filed without advance notice to or discussion with Reliance. A copy of the Adversary Complaint is attached as Exhibit "D."

9. The Trustee asserts five claims in its Adversary Complaint that conflict with the Collateral Allocation Order:

Count I – for a declaration that (a) the CF Policies, (b) the interest earned on the drawn amount under the Bond, and (c) the cash collateral supporting the letter of credit ("LC") (the "Cash Deposit") are property of CF's bankruptcy estate pursuant to 11 U.S.C. §541 (but defining the Cash Deposit as the drawn amount of \$17.5 million under the LC, the undrawn amount of \$37.5 million, and the interest earned thereon);

Count III – for an order under 11 U.S.C. §105 enjoining Reliance from paying deductible claims under CF's policies and requiring such claims to be adjudicated and paid as general unsecured claims in the bankruptcy court;

Count IV – for turnover of the "Cash Deposit" pursuant to 11 U.S.C. § 542;

Count VI – for an order declaring payments from the Cash Deposit on claims under the CF policies to be violations of the automatic stay under 11 U.S.C. Section 362 and void ab initio; and

Count VII – for damages for failure to defend a claim under CF's policy of insurance.

(Collectively referenced as the "Complaint").

10. Each of the above claims seeks to void the Collateral Allocation Order and cause the Liquidator to breach his statutory obligations under 40 P.S. §221.23a to maintain and administer the CF Collateral for the purpose of adjusting and paying deductible claims.

11. Each of the above claims relates to policyholder collateral issued to Reliance, maintained and administered by the Liquidator in accordance with 40 P.S. §221.23a, and subject to the jurisdiction of this Court.

12. CF's actions are in clear and knowing violation of the Collateral Allocation Order. As outlined above, CF was an active participant in the formulation of the Plan for Allocation and drafting of the Petition. The Trustee, in fact, specifically requested the Court to sign the Collateral Allocation Order. After the Court had issued the Collateral Allocation Order, CF neither objected to nor sought relief from that Order.

13. The Order of this Court of October 3, 2001 placing Reliance in liquidation (the "Liquidation Order") requires that all claims against Reliance, including those alleged in the Trustee's Complaint, to be brought in this Court. The Trustee did not at any time seek relief from the Liquidation Order to assert such claims in the bankruptcy court. Liquidation Order at ¶19, attached hereto as Exhibit "E."

14. In addition to the foregoing, as this Court is well aware, the Liquidation Order enjoins the institution of any claims in law or equity against Reliance without the Liquidator's written consent. Exhibit "E," at ¶22. The Trustee did not seek and Reliance did not grant such consent.

15. Notice of the Liquidation Order and the stay of all actions against Reliance was provided to all policyholders, including CF. By filing the Adversary Complaint, the Trustee has knowingly violated the Liquidation Order.

16. The Liquidator believes the Trustee's adversary claims are meritless and is preparing a motion to dismiss the Trustee's Complaint on a number of grounds, including without limitation: (1) failure to state a claim upon which relief can be granted because the collateral securing CF's deductible obligations (a bond and a letter of credit) (the "CF Collateral"), the proceeds thereof, and any interest earned on such proceeds constitute policyholder collateral subject to the Liquidator's exclusive control under 40 P.S. §221.23a; (2) failure to state a good faith basis for setting aside the Collateral Allocation Order; (3) lack of federal jurisdiction under the McCarran-Ferguson Act¹; and (4) lack of federal jurisdiction under the Penn General case.² In the alternative, the Liquidator will ask the bankruptcy court to abstain based on the Burford and Colorado River cases³, full faith and credit and comity or to stay the bankruptcy matter.

17. Immediately upon filing the adversary complaint in the bankruptcy court, the Trustee sought and obtained an *ex parte* temporary restraining order against Reliance. A copy of the temporary restraining order dated February 14, 2007 (the

¹ 15 U.S.C. §§ 1011-1015. Section 1012(b) of the Act provides in part: "No Act of Congress shall be construed to invalidate, impair or supersede any law enacted by any State for the purpose of regulating the business of insurance ... unless such Act specifically relates to the business of insurance."

² Penn General Casualty Co. v. Pennsylvania Ex Rel. Schnader, 294 U.S. 189, 195 (1935) ("[T]o avoid unseemly and disastrous conflicts in the administration of our dual judicial system, and to protect the judicial processes of the court first assuming jurisdiction, the principle, applicable to both federal and state courts, is established that the court first assuming jurisdiction over the property may maintain and exercise that jurisdiction to the exclusion of the other.")

³ Burford v. Sun Oil Co., 319 U.S. 315, 327 (1943) (federal abstention is proper where case involved important issues of state regulation by a state administrative agency under a well-organized system of state regulation and review); Colorado River Water Conservation District v. United States, 424 U.S. 800, 822 (1976) (under certain circumstances, considerations of wise judicial administration warrant federal deference to state court procedures).

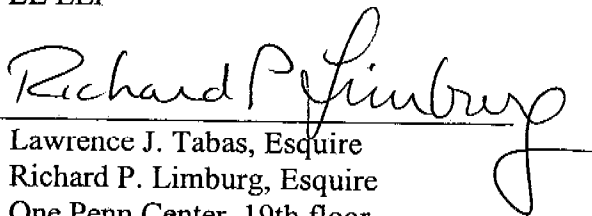
“TRO”) is attached hereto as Exhibit “F.” At Reliance’s request, the hearing on the TRO was postponed until April 25, 2007.

18. The TRO prohibits the Liquidator from paying any deductible claims and from drawing the CF Collateral, contrary to the terms of this Court’s Collateral Allocation Order.

19. As a result of the TRO, the Liquidator is prevented from on-going compliance with this Court’s Collateral Allocation Order. As a result of the TRO, adjustment and payment of non-covered claims has ceased.

WHEREFORE, Reliance and the Liquidator respectfully request that this Court enter an order finding that the Trustee has violated the Collateral Allocation Order and the Liquidation Order, finding that the Trustee has interfered with the Liquidator’s good faith compliance with the Collateral Allocation Order, finding that the CF Collateral is in the possession and control of the Liquidator pursuant to 40 P.S. §221.23a, and enjoining the Trustee not to interfere further with the Collateral Allocation Order and the execution thereof.

OBERMAYER REBMANN MAXWELL &
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By: 
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Dated: 4/10/07

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, Plaintiff v. Reliance Insurance Company, Defendant	No. 269 M.D. 2001
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**MEMORANDUM OF LAW IN SUPPORT OF
PETITION TO ENFORCE THE COLLATERAL
ALLOCATION ORDER OF OCTOBER 4, 2006**

It is well-established that the courts possess the inherent power to enforce their orders and decrees. Armstrong School District v. Armstrong Education Association, 595 A.2d 1139, 1143 (Pa. 1991); Korean American Association of Greater Philadelphia v. Chung, 871 A.2d 870, 874 (Commw. Ct. 2005).

Parties to an action may not knowingly violate an order of the court. In addition, non-parties may not knowingly aid and abet the violation of an order of the court by others, or violate such an order themselves if they are in the class of persons to whom the order applies. See Korean American, supra, 871 A.2d at 874.

“However intentioned, whether good or evil, a party is not authorized to ignore controlling court orders based upon its own view about the existence and effect of a change of circumstances.” Commonwealth v. Boczowski, 846 A.2d 75, 102 (Pa. 2004).

To the extent the Collateral Allocation Order constitutes a consent decree, it is a binding agreement and may only be modified by the parties. Lower Frederick Township v. Clemmer, 543 A.2d 502, 510 (Pa. 1988); Dravosburg Housing Association v. Dravosburg Borough, 454 A.2d 1158, 1162 (Commw. Ct. 1983). Though negotiated by

the parties, a consent decree is a judicial act and is enforceable by the court. Cecil Township v. Klements, 821 A.2d 670, 674-675 (Commw. Ct. 2003).

In this case, the Trustee of the Trust for Certain Creditors of Consolidated Freightways Corporation (“CF”) and Certain Affiliates participated in formulating the plan to allocate collateral provided to Reliance by CF (the “CF Collateral” and the “Collateral Allocation Plan”). The Trustee also participated in preparing the petition to approve the Collateral Allocation Plan. The Trustee then wrote to Court endorsing the Collateral Allocation Plan and urging the Court to approve it. The Court entered the Collateral Allocation Order on October 4, 2006.

The Liquidator has in good faith complied with the Collateral Allocation Order, inter alia, by paying the various guaranty associations (“GAs”) over \$30 million out of the CF Collateral for deductible WC claims covered by the GAs, engaging a third-party administrator (the “TPA”) to handle the non-covered AL and GL deductible claims, and transferring the AL and GL claims files to the TPA.

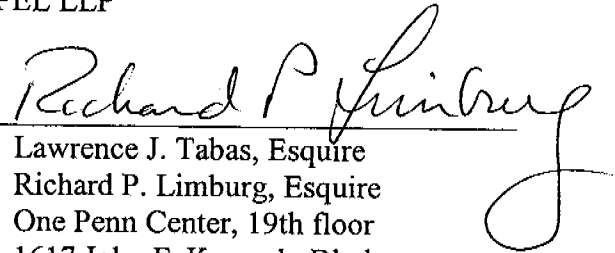
The Trustee has violated the Collateral Allocation Order by obtaining a TRO that prevents the Liquidator from using the CF Collateral to adjust and settle AL and GL claims under the CF Policies. Moreover, the Trustee has filed a complaint in bankruptcy court seeking possession and control of some or all of the CF Collateral which the Liquidator is administering pursuant to this Court’s Collateral Allocation Order.

The Trustee has also violated the ¶¶19 and 22 of the Liquidation Order by bringing a complaint against Reliance in bankruptcy court without the Liquidator’s consent and without leave of the Commonwealth Court.

In conclusion, this Court should find the Trustee in violation of the Collateral Allocation Order and the Liquidation Order, and should enjoin the Trustee from further violating such orders.

OBERMAYER REBMANN MAXWELL &
HIPPEL LLP

By:




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Attorneys for Reliance Insurance Company
(In Liquidation)

Dated: April 10, 2007

VERIFICATION

I, Ralph B. Gilmartin, Esquire, hereby state that I am Vice President and Associate General Counsel of Reliance Insurance Company (In Liquidation), that I am authorized to make this verification on behalf of Reliance Insurance Company (In Liquidation), and that the foregoing petition is true and correct to the best of my knowledge, information and belief. This verification is subject to the penalties of 18 Pa. C.S.A. sec. 4904 relating to unsworn falsification to authorities.



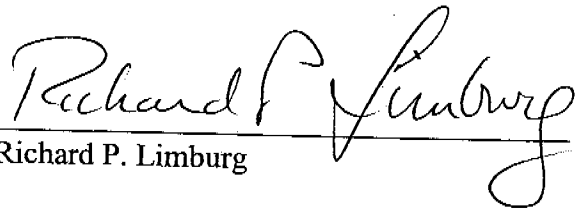
Ralph B. Gilmartin, Esquire

Dated: April 10, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Petition of Defendant Reliance Insurance Company (in Liquidation) to Enforce the Collateral Allocation Order of October 4, 2006 and supporting Memorandum of Law upon the following counsel by Federal Express on the date indicated below:

David L. Neale, Esquire
Levene, Neale, Bender, Rankin & Brill L.L.P.
10250 Constellation Boulevard, Suite 1700
Los Angeles, CA 90067


Richard P. Limburg

Dated: April 10, 2007