

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

v.

No. 269 M.D.2001

2007 MAY 18 A 10:18

Reliance Insurance Company,
Defendant

IN RE: ORDER APPROVING REFEREE CHAPAS' RECOMMENDATION
REGARDING SETTLEMENT OF NOBLE ENERGY, INC.'S PROOF OF CLAIM #
652477.

ORDER

AND NOW, to wit, this 18TH day of May, 2007, upon consideration of the Findings and Recommendation of Referee, William J. Chapas, Recommending Approval of Settlement in Connection with Insurance Policy Issued by Reliance Insurance Company to Nobel Energy, Inc. ("Referee's Findings and Recommendation"), and it appearing that the settlement of the disputed claim and that the settlement is in the best interests of the parties and in particular the estate of Reliance Insurance Company (In Liquidation), it is hereby ORDERED, ADJUDGED and DECREED that (1) the Referee's Findings and Recommendation is accepted as submitted, and (2) the Stipulation of Counsel in Support of Recommended Approval of Settlement, between counsel for the Statutory Liquidator for Reliance Insurance Company (In Liquidation) and counsel for Claimant Noble Energy, Inc., relating to Proof of Claim #652477, filed by Noble Affiliates, now known as Noble Energy, Inc., is approved.


JAMES GARDNER COLINS, President, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

v.

No. 269 M.D.2001

Reliance Insurance Company,
Defendant

In Re: Proof of Claim #652477
Claimant--Noble Energy, Inc.

FINDINGS AND RECOMMENDATION OF REFEREE WILLIAM J. CHAPAS
RECOMMENDING APPROVAL OF SETTLEMENT IN CONNECTION WITH
INSURANCE POLICY ISSUED BY RELIANCE INSURANCE COMPANY TO
NOBLE ENERGY, INC.

William J. Chapas (hereinafter "Referee"), having been appointed Referee for the within matter by order of the Honorable James Gardner Colins, President Judge of the Commonwealth Court of Pennsylvania, dated May 26, 2006, hereby makes the following Findings and Recommendation, recommending that an order be entered by the Commonwealth Court approving the Stipulation of Counsel in Support of Recommended Approval of Settlement (the "Settlement Agreement") and the actions taken and contemplated therein. In support thereof, the Referee sets forth the following:

FINDINGS

1. By Court Order dated May 26, 2006, the Referee was assigned to hear objections to notice of determination issued by the Statutory Liquidator (the "Liquidator") for Reliance Insurance Company (In Liquidation), to submit findings of

fact, where appropriate and necessary, and issue recommended decisions regarding said objections relating to Proof of Claim No. 652477, filed by Nobel Affiliates, Inc., now known as Noble Energy, Inc. (the "Claimant") on or about October 22, 2002 (the "POC").

2. Counsel representing the Claimant and Liquidator have advised the Referee that given the disputed coverage, liability and damages claims and issues, the costs of litigation for this disputed claim, and the risk to both sides of an adverse result, they have entered into the Settlement Agreement, which is subject to the recommendation of the Referee and approval of the Honorable James Gardner Colins, President Judge of the Commonwealth Court of Pennsylvania. The Settlement Agreement, which has been executed by the parties and the Referee, is attached as Exhibit A hereto and made a part hereof.

3. This matter arises out of a coverage dispute under a subscription Energy Package Policy ARS-2455, No. NOE0159142 (the "Policy") in the name of the Claimant under which Reliance Insurance Company ("Reliance") participated with a 7.5% share for the period October 1, 1999 to October 1, 2000. Under the Policy, Reliance provided coverage for Claimant's oil and gas operations. Claimant claims it is owed \$84, 201.64 as a result of a "blow out" at the "Cat Creek" well (the "Well") in Beckham County, Oklahoma, that took place on November 24, 2000, some four months after the Claimant had cancelled the Policy.

4. The Claimant claims that the blow out is covered by the Policy despite the cancellation of the Policy. Claimant asserts that the "spud" date for the Well was January 4, 2000 and that work continued on the Well from that date until the date of loss on

November 24, 2000. Coverage is claimed under the Special Extension of Coverage section of the Policy which according to Claimant provided for continued coverage until operations on the Well were complete, notwithstanding the cancellation of the Policy by Claimant. Specifically, Claimant relies on the following language contained in the Policy: "It is agreed that in the event of expiration of the term of this Policy or in the event of cancellation under the terms of Clause 8 (Cancellation//Termination) of the General Conditions of this Policy, any insured well which is in the course of being drilled, tested, deepened, reconditioned, repaired, or otherwise worked upon at the time of such termination or cancellation shall continue under full coverage afforded by this Policy until such operations are completed."

5. On the other hand, the Statutory Liquidator contends that no coverage is afforded to Claimant since Claimant terminated the Policy and received a refund of the unearned portion of the premium for the period from the termination date to the end of the Policy period. In support of its contention, the Statutory Liquidator asserts that if Claimant is correct in its interpretation of the Policy, Claimant could purchase a policy, pay the premium, start working on wells, cancel the policy after a brief period, receive a refund of the balance of the premium and still have coverage for the started wells until operations were completed in spite of the refund of premium and cancellation of the policy. This is contrary to the Statutory Liquidator's contention that to receive the agreed upon coverage, including any extended coverage, the insured must pay the full agreed upon premium. In support thereof, the Statutory Liquidator relies on Smith v. Smith, 181 A2d. 685 (Pa. Super. 1962); In Re Texas Association School Boards, Inc., 169 S.W. 3d

653 (Tex. 2005), rehearing denied (2005); BP America, Inc. v. State Auto Property & Cas. Ins. Co., 2005 WL 2277810 (Okla. 2005).

6. Liquidator, in response to the POC, issued its Amended Notice of Determination, dated November 11, 2005, wherein it advised Claimant that the loss was not covered by the Policy and assigned the claim a Priority Level (b) and a \$0.00 allowed amount. In effect, the Liquidator denied coverage under the Policy in question. The Claimant filed an Objection to the Amended Notice of Determination, which was received by the Liquidator on or about December 21, 2005, asserting coverage and seeking damages of \$84, 201.68, to which the Liquidator filed a response on or about January 23, 2006, and the matter is now before the Referee for consideration as ordered by the Court.

7. Conference calls were held on June 8 and June 19, 2006 and a discovery and briefing schedule was set by the Referee. At the request on both parties, several extensions were granted to allow the parties to attempt to settle their dispute, which culminated in the submission of the Settlement Agreement to the Referee for his approval and recommendation to the Court.

8. The Settlement Agreement, attached as Exhibit A hereto and made a part hereof, states, *inter alia*, that an Amended Notice of Determination will be issued assigning Claimant's claim a priority of class (b) and an allowed amount of \$20,000. The Settlement Agreement further provides, *inter alia*, that:

- a. Claimant will file a praecipe to withdraw its Objection;

b. Claimant will be eligible for pro rata distribution as other class (b) claimants;
and

c. All actions to be taken within time frames contained in the Settlement Agreement.

In the Settlement Agreement, Claimant has also acknowledged that it will likely receive less than the allowed \$20,000 since it will be eligible for distribution on the same pro rata basis as other class (b) claimants.

9. In making this Report, the Referee did not review and/or make a report or finding on matters in dispute.

10. Giving the coverage issues involved and as yet unresolved or disputed, the compromise settlement of assigning a \$20,000.00 allowed amount on Claimant's claim and the classification thereof to Priority Class (b) is reasonable given the "all or none" nature of the parties' claim and response thereto. Neither the parties nor the Referee can at this stage of the proceedings predict where the evidence would lead in the event of a hearing on the merits in this matter. It is apparent that neither party wishes to take this matter to its conclusion fearing an adverse result. It is further apparent that each party has given in to a significant degree in the proposed settlement.

11. Based upon the foregoing and the Settlement Agreement, I find that settlement of this disputed claim by the parties is in the best interests of the parties and in particular the estate of the Reliance Insurance Company (In Liquidation).

12. In making this Report and Recommendation, the Referee is limited to what was presented to him by the parties in the Settlement Agreement and to undisputed facts in the record.

RECOMMENDATION

WHEREFORE, based upon the foregoing and after review of the record and the proceedings before him, William J. Chapas, the Referee in the within matter, recommends that this Honorable Court approve the settlement as submitted and enter an order to that affect.

Respectfully submitted,



William J. Chapas, Referee

Dated: December 7, 2006

Copies by First Class Mail to the following on December 7, 2005:

Christopher P. Craven, Esquire
Wells & Cueller
440 Louisiana, Suite 718
Houston, TX 77002
Counsel for the Claimant

Gail M. Burgess
Vice President, Associate General Counsel
Reliance Insurance Company (In Liquidation)
Three Parkway, 5th Floor
Philadelphia, PA 19102
Counsel for Statutory Liquidator of Reliance Insurance Company

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 NOBLE AFFILIATES,
INC.

(Before Referee William J. Chapas, Esq.)

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

Claimant Noble Energy, Inc. and its related or affiliated entities ("Noble") 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.

EXHIBIT A

4. Noble filed a Proof of Claim (“POC”) Number 652477 seeking damages arising out of an explosion that occurred during the operation of its Cat Creek Well. (the “Noble Cat Creek POC”).

5. On November 11, 2005 Reliance issued its Amended Notice of Determination (NOD) assigning class (b) priority and an allowed amount of zero to the Noble Cat Creek POC because there was no coverage for this claim under the Reliance policy.

6. On or about December 21, 2005, Noble, through its undersigned counsel, filed an Objection to the Amended NOD (the “Noble Objection”), asserting that there was coverage for the Cat Creek claim and seeking damages of \$84,201.68.

7. The Liquidator filed her Response to the Noble Objection on or about January 23, 2006 asserting that there was no coverage for Noble’s claim under the Reliance policy because the policy was cancelled at Noble’s request prior to the loss, and the premium for the unearned portion of the policy was fully refunded.

8. Noble disputes this position, claiming that there is coverage for the claim under an endorsement to the policy which provides for continuing coverage after policy cancellation, if the loss arises out of a well which was placed into operation before the policy lapses. Reliance asserts that this provision does not apply where, as here, the policy is cancelled mid-term at the insured’s request and the unearned portion of the premium is fully refunded.

9. On May 22, 2006, the Court assigned the Noble Objection to Referee William J. Chapas, Esquire (“Referee Chapas”), 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 Objection to Notice of Determination by Noble Affiliates, Inc.* (the “Noble Action”).

10. Referee Chapas established a discovery and briefing schedule under which the parties were to conduct discovery, identify witnesses and brief the coverage issue. Prior to completion of discovery and briefing, with the approval of Referee Chapas, the parties agreed to extend the time within which the Liquidator had to identify her witnesses, to allow the parties to attempt to resolve the dispute, if possible.

11. On October 9, 2006, the parties reported to Referee Chapas 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 Noble Objection, the Noble Cat Creek POC, and the NOD issued as to it, as well as all matters pending before Referee Chapas relating to the Noble Action are resolved as follows:

- Within 10 days of the Court's approval of this Stipulated Settlement, Reliance will issue an Amended NOD assigning class (b) priority and an allowed amount of \$20,000 to the Noble Cat Creek POC.
- Within 10 days of the Court's Approval of this Stipulated Settlement, Noble, through its undersigned counsel, will file a praecipe to withdraw the Noble 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 Noble Cat Creek POC.
- Within 60 days of issuance of the Amended NOD, it will be eligible for inclusion on the next report of undisputed claims in accordance with paragraph 10 (c). Upon approval for distribution by the Court, the Cat Creek Amended NOD will be eligible for distribution on the same pro rata basis as other class (b) claimants. Noble

acknowledges that the amount it will actually receive as distribution(s) on the Amended Cat Creek NOD is uncertain and will likely be less than the \$20,000 allowed amount.

- Reliance agrees to pay the fees and costs of Referee Chapas with regard to the Cat Creek Well disputed claim, but otherwise both parties are to bear their own fees and costs.

13. The parties agree further that, other than the Noble Cat Creek POC, the only POCs filed, or which will be filed, by or on behalf of Noble Energy or any related entity, are:

(a) POC Numbers 1926983, 633038 and 1950136 all three of which are duplicates of the Noble Cat Creek POC and which, by agreement of the parties, are in inactive status and require no further action by the parties or the Court.

(b) POC # 1946246 which pertains to a different loss involving the Amistad Well. An Amended NOD issued on November 11, 2005 assigning class e priority and an allowed amount of zero. Because POC #1946246 arises under a reinsurance agreement, it is entitled to class (e) priority. The Amended NOD issued as to the Amistad Well POC #1946246 is currently pending Court approval, the time for Objection having passed. Noble asserts that it did not receive service of the Amistad Well NOD, a position with which Reliance disagrees. As part of this settlement agreement, Noble agrees not to assert, or to claim that it is entitled to assert, an Objection to the Amistad Well NOD

and will not dispute the class or amount assigned to the Amistad Well POC #1946246.

14. Noble covenants and agrees that there will be no additional POCs, claims, Objections, or proceedings filed by it, or on its behalf, with, or against, Reliance, the Statutory Liquidator, or the Reliance Estate. Noble further certifies that it has not received payment from any other source, including any state guaranty association, of the damages for which it has submitted the Noble Cat Creek POC.

15. 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.

16. 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.

17. 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.

18. 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

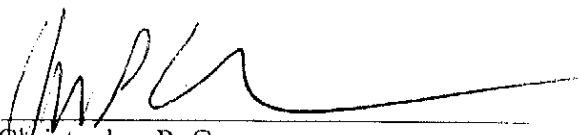
Liquidator, "to do such. . . acts as are necessary or expedient to collect, conserve or protect [the insolvent insurer's] assets or property, including the power to. . .compromise. . .any bad or doubtful debt.]" See 40 P.S. §221.23(6).

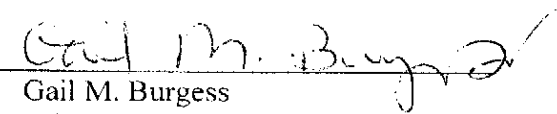
19. The Liquidator has determined that (1) this Stipulated Settlement is fair and reasonable and is in the best interest of the estate of Reliance, its policyholders and other creditors and (2) the terms of the Stipulated Settlement are consistent with the provisions of the Act and the Court's Orders. 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 Noble Action.

20. The Liquidator and Noble 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.

WELLS & CUELLAR

RELIANCE INSURANCE COMPANY
IN LIQUIDATION

BY: 
Christopher P. Craven
Counsel for, and on behalf of,
Noble Affiliates, Inc.

BY: 
Gail M. Burgess
Vice President, Associate General 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:


William J. Chapas, 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
NOBLE ENERGY, INC. REGARDING PROOF OF CLAIM NUMBER 652477**

TO THE PROTHONOTARY:

Christopher P. Craven, Esquire, of Wells & Cuellar, P.C., hereby files the following Praecipe to Mark Withdrawn the Objection of the claimant, Noble Energy, Inc. f/k/a Noble Affiliates, Inc., to the Notice of Determination issued by the Statutory Liquidator of Reliance Insurance Company (In Liquidation) on Proof of Claim Number 652477 pursuant to the Stipulation of Counsel in Support of Recommended approval of Settlement, as approved by the Court.

Dated: _____

Christopher P. Craven, Esquire
Wells & Cuellar, P.C.
440 Louisiana, Suite 718
Houston, TX 77002
Telephone: 713-222-1281
Facsimile: 713-237-0570

Exhibit A