

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
the Petition of Murray Garson and Kristin Garson for Relief from Automatic Stay is
DENIED.

BY THE COURT:

By: _____ J.

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OF PENNSYLVANIA

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**RESPONSE OF M. DIANE KOKEN IN OPPOSITION
TO MURRAY GARSON AND KRISTIN GARSON'S
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 Murray Garson and Kristin Garson's Petition for Relief from Automatic Stay of the action captioned Murray Garson and Kristin Garson v. Pottstown Memorial Hospital, et al., Court of Common Pleas of Philadelphia County, Pennsylvania at Docket No. 01-1180 ("Garson case") as follows:

1. On February 11, 2000, Murray Garson and Kristin Garson ("the Garsons") filed a civil action against Crozer Chester Medical Center, Pottstown Memorial Medical Center ("Pottstown") and several other parties for alleged medical malpractice. See Garsons' Petition at ¶ 2. Reliance Insurance Company ("Reliance") allegedly provided excess carrier

insurance for Pottstown. See Garsons' Petition at ¶ 5. Reliance, however, is not a named party in the Garson 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 40 PA. STAT. 1301.705(a) (stating that "[n]o insurer providing excess professional liability insurance to any health care provider eligible for coverage under the fund shall be liable for payment of any claim against a health care provider for any loss or damages except those in excess of the fund coverage limits.").

3. 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.

4. The Garsons allege that they "are making their claim against the primary insurance policy only, and have agreed to waive any and all claims to the excess policy held by Pottstown Memorial Medical Center with Reliance Insurance Company; as such, there is

no reason why the Garson matter should not proceed as scheduled.” See Garsons’ Petition at 6 (“Garson waiver”).

5. Despite the aforementioned representation, the Liquidator opposes the Garsons’ Petition on grounds that the said waiver is neither effective or binding on Reliance’s obligation to defend claims in the Garson case. As an excess insurer, Reliance may be obligated to defend a claim where the liability exceeds coverage provided by the primary carriers and the CAT Fund. The Garson waiver does not terminate that obligation. Rather, Reliance remains subject to defend potential claims raised by or against Pottstown. An effective waiver terminating Reliance’s obligation to defend in the Garson case would acquit and discharge Pottstown and Reliance from any and all actions, claims, demands, damages, costs, loss of services, expenses and compensation related to the Garson medical malpractice case. In the absence of such a release, Reliance, as the excess insurer, may be obligated to defend claims in the Garson case. Moreover, assuming *arguendo* that the Garsons waiver terminated Reliance’s obligation to defend, which it does not, such waiver would be unenforceable as a binding agreement. The Garson waiver is not a signed release but, rather, a representation made by counsel for the Garsons. As such, the waiver is not a binding promise enforceable against the Garsons. For the foregoing reasons, the Liquidator opposes the Garsons’ Petition.

WHEREFORE, the Liquidator request that this Court deny the Petition of Murray Garson and Kristin Garson for Relief from Automatic Stay.

Respectfully submitted,

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Attorneys for Plaintiff

M. Diane Koken, Insurance Commissioner
of the Commonwealth of Pennsylvania, as
Rehabilitator for Reliance Insurance Company

Dated: December 7, 2001

CERTIFICATE OF SERVICE

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



ALPHONSO DAVID

Dated: December 7, 2001