

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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
DEAN GOSHERT AND STEPHANIE GOSHERT'S MOTION
FOR EMERGENCY RELIEF FROM THE 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 the Motion of Dean Goshert and Stephanie Goshert for Emergency Relief from Automatic Stay of the action captioned Dean and Stephanie Goshert, h/w v. Township of Spring, Pennsylvania Department of Transportation, PP&L, Inc., PP&L Resources, Inc. and Asplundh Tree Expert Company, Court of Common Pleas of Berks County, Pennsylvania at Docket No. 99-1247 ("Goshert case") as follows:

1. On February 11, 2000, Dean and Stephanie Goshert ("the Gosherts") filed a civil action against Asplundh Tree Expert Company ("Asplundh"), as well as other parties,

for an incident that allegedly occurred on April 15, 1998 in Chapel Hill Road, Township of Spring, Pennsylvania. See Gosherts' Motion, Ex. B. The claim was subsequently consolidated with another claim filed by the Gosherts involving the same incident. See Gosherts' Motion, Ex. C. Reliance Insurance Company ("Reliance") allegedly provided excess carrier insurance for Asplundh. See Gosherts' Motion at ¶ 3. Reliance, however, is not a named party in the Goshert case. See Gosherts' Motion, Ex. C.

2. On November 1, 2001, the Gosherts signed a release of liability against Asplundh and Reliance, entitled Joint Tortfeasor Release ("Release"). The Release states that:

for and in consideration of the payment to us in the sum of Seven thousand five hundred (\$7,500.00), and other good and valuable consideration, we realizing that there is doubt and uncertainty as to the nature and extent of our injuries, losses, and damages and as to the liability of Asplundh Tree Expert Company and Reliance Insurance Company . . . have released and discharged, and by these presents, do for Ourselves, our heirs, executors, administrators and assigns, release, acquit and forever discharge Defendants Asplundh Tree Expert Company and Reliance Insurance Company, and/or their masters, servants, agents and officers (any and all of whom are herein referred to as Payer), their heirs, representatives, successors, and assigns from any and all actions, causes of action, claims, demands, damages, costs, loss of services, expenses, compensation, and all consequential damage and also to the extent of their liability for contribution to other jointfeasors arising out of or in any way growing out of any and all known and unknown personal injuries and death or property damage arising out of an accident which occurred on April 15, 1998, at Chapel Hill Road and Wheatfield Road in the Township of Spring, [Pennsylvania].

See Gosherts' Motion at Ex. H. Thus, by entering in the aforementioned Release, the Gosherts have waived any further excess claims against Reliance.

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. Because Dean and Stephanie Goshert, the plaintiffs in the Goshert case, have waived any future claims against Reliance, as the excess insurance carrier of Asplundh, which Reliance may have been obligated to defend, Reliance has no interest at stake or any potential obligation to defend with respect to the Goshert case.

WHEREFORE, the Liquidator does not oppose the Motion of Dean Goshert and Stephanie Goshert for Emergency Relief from Automatic Stay.

Respectfully submitted,

BLANK ROMÉ COMISKY & MCCAULEY LLP

By:


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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 Motion of Dean Goshert and Stephanie Goshert for Emergency 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