

James Gardner Collins
JAMES GARDNER COLINS, Judge

Commutation Agreement

(hereinafter referred to as the "Agreement")

Among

Reliance Insurance Company (In Liquidation)

and

Member Companies of the
Workers' Compensation Reinsurance Bureau
for all participation periods covering accident dates
from January 1, 1954 through December 31, 1992
(hereinafter referred to individually as "Member(s)"
and collectively as "WCRB" or "Member Companies")

WHEREAS, the Member Companies and Board of Governors of the WCRB and Reliance Insurance Company (In Liquidation) and all of its parent, subsidiary, and/or affiliated companies ("Reliance") desire to commute all of Reliance's recoverables and liabilities for losses and other obligations, known and unknown on a full, final and complete basis for all participation periods covering accident dates January 1, 1954 through December 31, 1992 (hereinafter referred to as the "Participation Periods"), as itemized on Schedule A hereto; and

WHEREAS, calculations of the amount of such recoverables and liabilities for the Participation Periods have been made, and Reliance's share thereof determined;

NOW, THEREFORE, the WCRB, for and on behalf of itself and its Member Companies, and Reliance, by executing this Agreement, hereby agree as follows:

1. Reliance agrees to pay to the WCRB the sum of \$5,458,366.00.
2. This Agreement shall become effective only when all of the following have occurred:
 - a. Reliance has executed this Agreement by and through its duly authorized representative(s) and has provided the WCRB with an executed original of this Agreement.
 - b. The WCRB has executed this Agreement by and through its duly authorized representative(s).
 - c. Reliance has provided the WCRB with a certified copy of an order entered by the Pennsylvania Commonwealth Court, or other court of appropriate jurisdiction, in M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania v.

Reliance Insurance Company, Docket No. 269 MD 2001, Commonwealth Court of Pennsylvania (the "Liquidation Proceeding"), which such order has become final and non-appealable, authorizing Reliance to enter into and execute this Agreement and approving the terms of this Agreement.

- d. Reliance has remitted the amount specified in Section 1 hereof to the WCRB via wire transfer from Reliance's account, or by payment from the Reliance Collateral Trust Account.
 - e. The WCRB has confirmation of collected credit on the amount payable by Reliance to the WCRB as required by Section 1 hereof.
3. As soon as practicable after the execution of this Agreement, Reliance, at its sole expense, shall apply to the Pennsylvania Commonwealth Court, or other court of appropriate jurisdiction, in the Liquidation Proceeding for the approvals specified in Section 2(c) hereof and shall take any and all necessary or appropriate action in connection therewith, including, but not limited to, satisfying and/or complying with any notice or other requirements in connection with such application.
4. Upon the payment by Reliance to the WCRB of the amount specified in Section 1 hereof, and the release of the Collateral Trust Account assets to Reliance as specified in Section 13 hereof, Reliance's membership in the WCRB shall terminate, and the WCRB, its Members, and Reliance, as well as their respective predecessors, successors, assignees, and their respective past, present and future officers, directors, shareholders, employees, agents, receivers, trustees, attorneys and legal representatives, unconditionally and completely release and forever discharge each other and one another, as well as their respective predecessors, successors, assigns, and their respective past, present and future officers, directors, shareholders, employees, agents, receivers, trustees, attorneys and legal representatives from any and all past, present and future rights, liabilities and obligations, including, but not limited to, payments, claims, debts, demands, causes of action, costs, disbursements, fees, attorneys' fees, expenses, damages, injuries and/or losses of every kind, whether known or unknown, reported or unreported, fixed or contingent, relating to or arising out of Reliance's membership in the WCRB for the Participation Periods; the WCRB Constitution and By Laws, the WCRB First Amended Security Agreement, the Amended Collateral Trust Agreement, the WCRB Custody Agreement, and any and all other agreements, contracts, and/or instruments relating to the WCRB, including, but not limited to, any common law or statutory claims for fraud and misrepresentation or under the Racketeering Influenced Corrupt Organization Act ("RICO").
5. Notwithstanding Section 4 hereof, Reliance shall be entitled to receive the net proceeds of excess reinsurance layer recoverables relating to the five reinsurance claims set forth on Schedule B hereto ("Reinsurance Claims"). "Excess reinsurance layer recoverables" represent amounts collected from the WCRB's excess reinsurers on the Reinsurance Claims. The following terms and conditions apply:

a. Reliance acknowledges and accepts that the recoverability of the Reinsurance Claims is contingent in nature as to both amount and timing of ultimate recoverables and that there may be no recovery whatsoever.

b. Reliance agrees to accept any and all amounts collected or recovered by the WCRB in connection with the Reinsurance Claims as Reliance's full and complete payment for any recovery to which it may be entitled in connection with the Reinsurance Claims. The amount of such collection shall be either:

(i) The net proceeds actually received by the WCRB as commutation settlement amounts for the Reinsurance Claims which, at the sole discretion of the WCRB Board of Governors, are deemed acceptable to it; or

(ii) The actual amounts recovered by the WCRB from its reinsurers for billed loss on the Reinsurance Claims.

Reliance hereby authorizes the WCRB to bill its reinsurers for collection of the commutation settlement amounts or billed loss to WCRB reinsurers on the Reinsurance Claims. Reliance agrees to accept the net proceeds from any commutation or loss recovery in connection with the Reinsurance Claims. "Net proceeds" is defined as the WCRB recoverable for the Reinsurance Claims attributable to the collection or commutation of placed reinsurance from solvent WCRB reinsurers less any pro rata apportionment of expenses associated with arbitration or other necessary recovery costs to secure actual collection of reinsurance proceeds. Collections from solvent WCRB reinsurers shall include amounts actually received by the WCRB from or on account of insolvent or impaired WCRB reinsurers under Schemes of Arrangement or liquidators of WCRB reinsurers.

6. Reliance agrees to provide the WCRB with continuing access to its records in a manner consistent with Reliance's pre-commutation Member obligations as long as reasonably requested by the WCRB.

7. Reliance acknowledges that it may hereafter discover facts, circumstances or legal decisions different from or in addition to those now known or believed to be true regarding the subject matter of this Agreement. It is understood that this Agreement shall remain in full force and effect, notwithstanding the existence of any such different or additional facts. In this connection, Reliance specifically waives the provisions of any civil code which provides in substance or effect as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

8. Reliance represents that each representative executing this Agreement on behalf of Reliance has the power and authority to execute and deliver this Agreement on behalf of Reliance.

9. The WCRB represents that each representative executing this Agreement on behalf of the WCRB has the power and authority to execute and deliver this agreement on behalf of the WCRB.

10. The rights, duties and obligations of this Agreement shall be binding upon and inure to the benefit of the WCRB and each Member, as well as their respective heirs, executors, administrators, successors and assigns.

11. Reliance is entering into this Agreement freely, without duress, in good faith, at arms' length and in the regular course of business and believes that it is a good, valid and enforceable agreement. Reliance is not relying upon the other Members, nor any person, third party or anything other than its own independent knowledge and judgment and the advice of its own counsel and other representatives in entering into this Agreement. No representations, warranties or promises of any kind have been made directly or indirectly to induce Reliance to execute this Agreement other than those which are expressly set forth herein. Reliance is not aware of any third party who might assert some interest in any claims intended to be released hereunder.

12. This written Agreement constitutes the entire agreement between Reliance and the WCRB and its Members concerning the commutation of Reliance's share of recoverables and liabilities for the Participation Periods, and supersedes all prior agreements concerning commutation of the Participation Periods, whether written or oral, among said Members. No supplement, amendment, modification, waiver or termination of this Agreement shall be effective unless in writing and signed by the WCRB and Reliance.

13. The WCRB agrees to release in full its security interest in the Collateral Trust Account upon the occurrence of any of the events specified in Section 2 hereof.

14. The WCRB and Reliance agree to take any and all action and to execute any and all documents that may be reasonably necessary or appropriate to effectuate this Agreement.

In Witness Whereof, Reliance Insurance Company (In Liquidation) by its duly authorized representative has executed this Agreement as of the date stated below:

This _____ day of December, 2001.

William S. Taylor, Authorized Signatory for and on
Behalf of M. Diane Koken, Insurance Commissioner of
The Commonwealth of Pennsylvania, in her capacity as
Liquidator of Reliance Insurance Company (In
Liquidation).

In Witness Whereof, the Workers' Compensation Reinsurance Bureau by its duly authorized representatives has executed this Agreement as of the date stated below:

This _____ day of December, 2001.

George Busche, WCRB Trustee

This _____ day of December, 2001.

James Kleinberg, WCRB Trustee

This _____ day of December, 2001.

Nancy Mueller, WCRB Trustee