

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOEL S. ARIO,
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff,

v.

RELIANCE INSURANCE COMPANY,

Defendant.

No. 269 M.D. 2001

In Re: Petition for Approval of Direct Payment of Reinsurance by International Industrial Indemnity Company formerly known as TRN Insurance Company to Trinity Industries, Inc.

ORDER

AND NOW, this ___ day of _____, 2008, the Court upon consideration of the Petition filed by Joel S. Ario, Insurance Commissioner of the Commonwealth of Pennsylvania in his official capacity as Statutory Liquidator of Reliance Insurance Company ("Liquidator"), the Court accepts the Liquidator's representations that International Industrial Indemnity Company formerly known as TRN Insurance Company ("IIC") and Trinity Industries, Inc. ("Trinity") are in compliance with 40 P.S. § 221.34, the "Guidelines For Enforcement of 40 P.S. § 221.34" and the Order of this Court dated April 26, 2002. Further, the Court accepts the representations of the Liquidator and Trinity that no person or firm will earn any contingent fee or extra remuneration of any type as a result of this transaction.

Therefore, in accordance with the Liquidator's recommendation, the Court hereby confirms the approval by the Liquidator and further approves IIC's assumption of a direct coverage obligation to Trinity upon the terms set forth in IIC's request and supporting

documentation and approves the direct payment to Trinity by IIC in accordance with its direct payment obligations resulting from the assumption.

Further, the Court directs the Liquidator to serve a copy of this Order upon all listed on the Master Service List, and to file with the Court an affidavit that service as directed by the Court has been effectuated.

Bonnie Brigance Leadbetter, President Judge

Trinity under these Reliance insurance policies (hereinafter, the "Policies") are attached to this Petition as Exhibit "A"

2. The Policies issued by Reliance to Trinity were reinsured by IIC, a captive insurance company affiliate of Trinity. The pertinent reinsurance agreements are attached to this Petition as Exhibit "B".

3. Pursuant to the terms of a certain Transfer, Assumption and Release Agreement dated March 13, 1997 ("the Transfer Agreement"), IIC, with Reliance's consent, transferred to Offshore Marine Indemnity Company ("OMIC") and OMIC unequivocally assumed all of IIC's liabilities under the Policies relating to the "Halter Business" as defined in the Transfer Agreement. Such liabilities shall be hereinafter referred to as the "Halter Liabilities". A copy of the Transfer Agreement is annexed hereto as Exhibit "C".

II. The Guidelines and IIC's Direct Payment Request

4. Following an Order of Liquidation declaring Reliance insolvent on October 3, 2001, the Liquidator petitioned this Court for the approval of "Guidelines for Enforcement of 40 P.S. § 221.34" ("Guidelines") relating to the process and standards for permitting a reinsurer of Reliance to make direct payments to a Reliance policyholder.

5. The Guidelines were approved, and by Order of this Court dated April 26, 2002 (the "Order"), the necessary conditions precedent to any agreement by the Liquidator to permit direct payment by a reinsurer were established. The Order (incorporating by reference the Guidelines) is attached to this Petition as Exhibit "D".

6. Pursuant to Paragraph 3 of the Guidelines, IIC submitted a written request to the Liquidator seeking approval of direct payments by IIC to Trinity. The written request of IIC is attached to this Petition as Exhibit "E".

III. The Liquidator's Review and Recommendation

7. Upon submission of documentation in support of IIIC's application to the Liquidator, the Liquidator has approved the written request of IIIC seeking approval of direct payment of reinsurance to Trinity. The Liquidator has concluded that IIIC's reinsurance contract complies with 40 P.S. § 221.34, the Guidelines and the Order.

8. Specifically, the Liquidator has reviewed the IIIC reinsurance agreements and determined that they specifically provide for a direct coverage obligation (a "cut through") from IIIC to Trinity in the event of the insolvency of Reliance in place of and in substitution for any obligations of Reliance to Trinity, as required by Paragraph 4(b) of the Guidelines, 40 P.S. 40 P.S. § 221.34 and the Order.

9. In addition, the Liquidator also determined that the IIIC reinsurance agreement specifically identifies that the "cut through" payment is to be made to Trinity, in accordance with Paragraph 4(a) of the Guidelines, 40 P.S. 40 P.S. § 221.34 and the Order.

10. Article I.A. (Definitions) and Article XII C. (Insolvency) of the IIIC reinsurance agreements attached as Exhibit B, provide in pertinent part:

"Policy" or "Policies" – Policies of insurance and any extension or renewals including endorsements written through Sedgwick James of Texas, Inc., under Producer Code 84-0656, and issued by the Company to Trinity Industries, Inc., and as described in Schedule I to this Agreement.

It is further agreed and understood that as to all reinsurance made, ceded, renewed or otherwise becoming effective hereunder, in the event of insolvency of the **Company** the reinsurance shall be payable by the **Reinsurer** to the Named Insured under the Policies when the **Reinsurer** with the consent of the Named Insureds under the **Policies** has assumed the obligations of the **Company** under any of the Policies as direct obligations of the **Reinsurer** to the payees under any such policy and in substitution for the obligations of the **Company** to such payees.

11. IIC executed an “Assumption and Substitution by Reinsurer” on a form authorized by the Guidelines and the Order. This document provides that IIC has unequivocally assumed a direct coverage obligation to Trinity, that the “cut-through” payment will be made in satisfaction of the coverage obligations assumed by Reliance to Trinity, and that IIC releases Reliance from all liability as required by Paragraphs (b), (c) and (e) of the Guidelines, 40 P.S. 40 P.S. § 221.34 and the Order. The Assumption and Substitution by Reinsurer is attached to this Petition as Exhibit “F.”

12. With respect to the reinsured policies, Trinity executed an “Informed Consent to Substitution of Reliance” on a form authorized by the Guidelines and the Order. This document provides for Trinity’s informed consent to the direct coverage relationship, which is in substitution for the relationship between Trinity and Reliance and consents to the release of Reliance for all claims by Trinity against Reliance relating to coverage assumed by IIC as required by Paragraph 4(e) of the Guidelines, 40 P.S. 40 P.S. § 221.34 and the Order. The Informed Consent to Substitution of Reliance is attached to this Petition as Exhibit “G.”

13. The Liquidator acknowledges and agrees that the Halter Liabilities were legally transferred from IIC and assumed by OMIC with Reliance’s consent prior to the liquidation of Reliance and are therefore not properly included in the Assumption and Substitution by Reinsurer that is the subject of this petition.

14. As set forth in the Affidavit of Robert Bellusci, attached to this Petition as Exhibit “H”, the Liquidator states that no person or firm has earned or will earn any contingent fee or extra remuneration of any type from Reliance as a result of this transaction.

15 As set forth in the Affidavit of Susan Jackson (the “Jackson Affidavit”) attached to this Petition as Exhibit “I”, no person or firm has earned or will earn any contingent fee or extra remuneration of any type from either Trinity or IIC as a result of this transaction.

16. As further set forth in the Jackson Affidavit, upon review of actuarial reports prepared by IIC’s independent consulting actuaries, and Trinity’s claims management database, which contains loss data provided by Trinity’s third party claims administrator Gallagher Bassett Services, Inc. (“GBS”), Trinity has confirmed that IIC has, from the October 3, 2001 date of Reliance’s liquidation to March 31, 2008, made direct reinsurance payments to Trinity in the amount of \$26,588,834.

17. The best estimate of potential additional amounts to be paid directly by IIC under the Policies, as stated in the Jackson Affidavit, has been determined by reference to the loss data provided to IIC by GBS. After thorough analysis of this loss data, IIC views its future exposure under the proposed cut-through to be \$17,157,360.

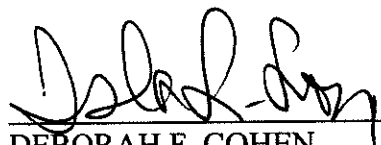
18. In accordance with Paragraph 4(e) of the Guidelines, the Liquidator has determined that IIC and Trinity have complied with all other contractual provisions regarding the direct payment or assumption and the proper disclosure has been made with respect to the consequences of consenting to the direct coverage relationship with the reinsurer.

19. Pursuant to Paragraph 5 of the Guidelines and the Order, the Liquidator is submitting the IIC documentation to this Court and recommends approval of direct payment, excluding the Halter Liabilities, by IIC.

Accordingly, Joel S. Ario, Commissioner of the Insurance Department of the Commonwealth of Pennsylvania, in his capacity as Statutory Liquidator of Reliance Insurance Company, hereby respectfully requests that this Court grant this Petition and enter the Order

attached permitting the direct payment of reinsurance proceeds, excluding the Halter Liabilities, from IIC to Trinity.

Respectfully submitted,



DEBORAH F. COHEN
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Philadelphia, Pa. 19103-2799

Attorneys for Plaintiff
JOEL S. ARIO,
Insurance Commissioner of the Commonwealth of
Pennsylvania as Statutory Liquidator of Reliance
Insurance Company

Dated: August 5, 2008

CERTIFICATE OF SERVICE

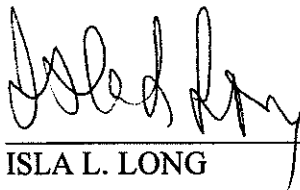
I hereby certify that on August 5, 2008, true and correct copies of the Petition for Approval of Direct Payment pursuant to 40 P.S. § 221.34 by IIC Insurance Company to Trinity Industries, Inc. by Petitioner Joel S. Ario, Insurance Commissioner of the Commonwealth of Pennsylvania, in his official capacity as Statutory Liquidator of Reliance Insurance Company, Proposed Order and Verification were served upon the following:

Via Electronic Mail and Regular U.S. Mail

Gene H. Heskett
President
IIC Insurance Company
c/o Trinity Holdings, Inc.
P.O. Box 35920
20445 Emerald Parkway, S.W. #250
Cleveland, OH 44135-0290

Via Notice of Filing

Members of Reliance Master Service List


ISLA L. LONG

VERIFICATION

I, David S. Brietling, Chief Liquidation Officer for Reliance Insurance Company, in liquidation, am authorized by Joel S. Ario, Insurance Commissioner of the Commonwealth of Pennsylvania, pursuant to 40 P.S. §221.23, to act on his behalf in his capacity as the Statutory Liquidator of Reliance Insurance Company. I hereby verify that the facts set forth in the foregoing Petition are true and correct to the best of my knowledge, information and belief.

I understand that this Verification is made subject to the penalties of 18 P.S. §4904 relating to unsworn falsification to authorities.

Executed on July 31, 2008



DAVID S. BRIETLING