

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert L. Pratter, Acting Insurance
Commissioner of the Commonwealth
of Pennsylvania, acting in his official capacity
as Statutory Liquidator of Reliance Insurance
Company (In Liquidation),

Plaintiff,

v.

Reliance Insurance Company,

Defendant.

NO. 269 M.D. 2001

2010 OCT 19 P 3:05

RECEIVED AND FILED
COMMONWEALTH COURT
OF PA (PHILA)

*In re: Malcolm John Cox On His Own Behalf And On Behalf Of Underwriting Members Of
Syndicate 990 At Lloyd's For 1995 and 1996 Years of Account, Respondents.*

MEMORANDUM OF LAW IN SUPPORT OF APPLICATION
OF THE STATUTORY LIQUIDATOR TO ENJOIN MALCOLM JOHN COX
AND THE UNDERWRITING MEMBERS OF SYNDICATE 990 FOR THE 1995 AND 1996
YEARS OF ACCOUNT FROM PROSECUTING THE ACTION IN LONDON, ENGLAND

Reliance Insurance Company (In Liquidation) ("Reliance") requests that the Court enjoin Malcolm John Cox and the Underwriting Members of Syndicate 990 at Lloyd's for the 1995 and 1996 Years of Account (collectively, "Syndicate 990") from prosecuting the litigation they commenced in London, England that was filed in flagrant violation of the anti-suit injunction in Paragraph 22 of this Court's Liquidation Order, Section 526(a) of the Insurance Department Act of 1921, *as amended*, 40 P.S § 221.26(a) (the "Act"), and the parties' agreement to arbitrate, and to order the parties to proceed with their pending arbitration and to submit all disputes to the arbitration panel for resolution.

Reliance and Syndicate 990 agree that this dispute is arbitrable and have selected an arbitration panel that is ready to initiate the arbitration proceeding and resolve this dispute. Reliance and Syndicate 990 authorized the arbitration panel to resolve "[a]ny unresolved difference of opinion" about their reinsurance treaties and to "adopt their own rules and

procedures” for doing so, including the issue of the “seat” of the arbitration that is the subject of the action that Syndicate 990 filed in London. Despite the fact that Syndicate 990 freely admits that all issues of substantive and procedural law should be decided by the arbitration panel, Syndicate 990 has requested that the arbitration panel delay initiating the arbitration proceeding until the English court rules.¹

This Court has the inherent power to enforce its own orders and should exercise that power here because, if Syndicate 990 is allowed to proceed with its action in London, it will not only be in direct violation of the Liquidation Order and the Act, but may disrupt and delay the ongoing arbitration commenced by Reliance, and will interfere with the arbitration panel’s right to decide the location and law applicable to this arbitration. *Friedman v. Friedman*, 277 Pa. Super. 428, 433, 419 A.2d 1221, 1223 (1980) (quoting *Kardon v. Portate*, 466 Pa. 306, 310, 353 A.2d 368, 370 (1976)) (“[t]he determination of where an arbitration should be held is a procedural question” that properly is left to the arbitrator, not the court, to decide).

To be clear, Reliance is not asking this Court to rule on the applicable law or appropriate location of the arbitration nor does it seek to have this Court enjoin or make any order directed to the English court. Reliance requests only that this Court enjoin Syndicate 990, a private party over which this Court has both personal and subject matter jurisdiction pursuant to 40 P.S. § 221.4(b)(ii), from prosecuting the action that it commenced in London and immediately to submit that dispute to the arbitration panel which is authorized to rule on all the issues in dispute.

¹ The issue before the court in England is whether the English court or the arbitration panel decides the juridical “seat” of the arbitration, i.e., whether the English Arbitration Act applies to the arbitration.

A. Background

Reliance and Syndicate 990, a London reinsurer, presently are arbitrating a dispute under two reinsurance treaties for claims that Syndicate 990 has refused to pay. The dispute falls squarely within the broadly worded arbitration clause which provides:

[a]ny unresolved difference of opinion between the Reinsurer and the Company [Reliance] with respect to the interpretation of this certificate or the performance of the obligations under this certificate shall be submitted to arbitration. Each party shall select an arbitrator within one month after written request for arbitration has been received from the party requesting arbitration. These two arbitrators shall select a third arbitrator within 10 days after both have been appointed. Should the arbitrators fail to agree on a third arbitrator, each arbitrator shall select one name from the list of three names submitted by the other arbitrator, and the third arbitrator shall be selected by lot between the two names chosen. The arbitrators shall be impartial and shall be present and former officials of other property or casualty insurance or reinsurance companies. The arbitrators shall adopt their own rules and procedures, and shall render their decision with a view to effecting the intent of the parties. The decision of the majority of the arbitrators shall be final and binding on the parties. The cost of the arbitration, including the fees of the arbitrators, shall be shared equally unless the arbitrators decide otherwise.

1995 Treaty², Reinsuring Agreement and Conditions, attached as Exhibit "A" to the Application at ¶ N (emphasis supplied). Syndicate 990 agrees that this dispute is arbitrable; Syndicate 990 already has selected their party-appointed arbitrator, Reliance has selected their arbitrator and, in the process dictated by the arbitration clause, the two arbitrators, in turn, have selected an umpire. The arbitration panel is fully constituted, and ready to convene to resolve all of the issues related to this dispute.

The key issue in this dispute is what law applies to whether Reliance's claims are time-barred: the law of the U.S. or England. While the arbitration panel was being selected, this

² The parties are still conferring about the 1996 Treaty wordings.

Court decided another Reliance case that also involved a London reinsurer, in which the issue also was what law should be applied to determine if Reliance's claims were time barred.³ See *Ario v. Underwriting Members of Lloyd's of London Syndicates 33, 205 and 506*, No. 553 M.D. 2008 (Commw. Ct. June 4, 2010), designated as reported Memorandum Opinion (Commw. Ct. June 16, 2010) ("*Ario*"), attached to the Application as Exhibit "F." In *Ario*, this Court held that U.S., not English, law provided the applicable statute of limitations, and that Reliance's claims were not time-barred under either Pennsylvania or New York's limitations period. *Id.* at 13-16. While the Court granted Reliance's motion for summary judgment with respect to the statute of limitations defense, it denied Reliance's motion with respect to the Syndicates' late notice defense because there were questions of fact about the notice requirement and the notice/prejudice issue that were not susceptible to resolution on the existing record. *Id.* at 16-17.⁴

Because of the similarity of facts and issues in *Ario* and this dispute, Reliance forwarded *Ario* to Syndicate 990 and asked if it still wanted to proceed with the arbitration. See June 21, 2010 email from J. Hyle to G. Bassford, attached to the Application as Exhibit "F." While Syndicate 990 indicated a willingness to discuss settlement (which ultimately was unsuccessful), assuming the arbitration went forward, Syndicate 990 suggested that the arbitration panel decide the "question of applicable law as a preliminary issue ... to save costs." July 1, 2010 email from G. Bassford to J. Hyle, attached to the Application as Exhibit "H." However, once it became apparent to Syndicate 990 that, if the arbitration panel followed *Ario*,

³ The Liquidator sued Syndicates 33, 205 and 506 in the Commonwealth Court because the treaty at issue in that case had no arbitration clause.

⁴ After the Court issued its ruling in *Ario*, the parties settled and the case was dismissed. See Praecipe to Discontinue, Settle and End with prejudice, attached to the Application as Exhibit "G."

Reliance, not Syndicate 990, would win the arbitration, Syndicate 990 undertook to undermine the arbitration process by seeking a ruling from the English court that England, not the U.S., is the proper “seat” of the arbitration. *See* Claim Form and First Witness Statement of Geoffrey Ian Bassford (“Bassford Witness Statement”) at ¶ 30, attached as Exhibit “I” to the Application.⁵ However, Syndicate 990 concedes, that even if the English court rules in its favor, the arbitration panel alone, not a court, decides what substantive and procedural law applies to this dispute. *Id.* at ¶ 26.

Since Syndicate 990’s proceeding in London was commenced in violation of this Court’s order enjoining such actions and, since Syndicate 990 concedes that the arbitration panel, not the English court, is authorized by the parties to rule on all procedural and substantive issues, Reliance provided Syndicate 990 with a copy of the Liquidation Order and requested that Syndicate 990 withdraw its action voluntarily. *See* Sept. 22, 2010 letter from D. Cohen to R. Jones, attached to the Application as Exhibit “J.” Syndicate 990 refused. *See* Sept. 24, 2010 letter from Elborne Mitchell, Solicitors, to D. Cohen attached to the Application as Exhibit “K.” Reliance requests that the Court exercise its power under Section 505 of the Act, 40 P.S. § 221.5, and issue a specific order directed to Syndicate 990 to enjoin Syndicate 990 from proceeding in London, order that it withdraw that action with prejudice, and that it immediately proceed with the arbitration.⁶

⁵ Syndicate 990 even appended a copy of *Ario* to the papers that it filed in London. Exhibit “GIB3” to the Bassford Witness Statement, attached to the Application as Exhibit “I.”

⁶ Reliance will not respond now to the merits of Syndicate 990’s arguments made by it in the action in London beyond stating that it expressly disagrees with Syndicate 990’s position and reserves all of its rights to respond at the appropriate time to that action should Syndicate 990 be allowed to proceed with it, or to the arguments that Syndicate 990 will make before the arbitration panel where Syndicate 990 will have a full and fair opportunity to arbitrate this issue.

B. Argument

1. Syndicate 990 violated this Court's Order and Section 526(a) of the Act by commencing the action in London.

Syndicate 990's proceeding in London was commenced and is continuing in flagrant violation of this Court's Liquidation Order and Section 526(a) of the Act. 40 P.S. § 221.26(a).

Paragraph 22 of the Liquidation Order sets out the automatic stay. It plainly provides that “[u]nless the Liquidator consents thereto in writing, no action at law or equity, or arbitration or mediation, shall be brought against Reliance or its Liquidator, whether in this Commonwealth or elsewhere....” Order of Liquidation at ¶ 22, attached to the Application as Exhibit “B.” The stay of litigation mandated by Paragraph 22 of the Liquidation Order and the Act is effective automatically upon the filing of a liquidation order. Its purpose is to prevent interference with the administration of the estate, waste of the estate's assets and the initiation of or continuation of new proceedings outside of the liquidation proceedings. To ensure compliance with the automatic stay, Section 505(a) provides:

(a) Any receiver appointed in a proceeding under this article may at any time apply for and the Commonwealth Court may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent: (i) the transaction of further business; (ii) the transfer of property; (iii) interference with the receiver or with the proceeding; (iv) waste of the insurer's assets; (v) dissipation and transfer of bank accounts; (vi) the institution or further prosecution of any actions or proceedings.

40 P.S. § 221.5(a) (emphasis supplied). As this Court observed, “it is clear we may enter injunctive orders...if they are ‘necessary and proper,’ and if they prohibit...actions that would interfere with a company's rehabilitation, waste its assets, lessen the company's value or cause

prejudice to policyholders and creditors rights.” *Koken v. Fidelity Mutual Life Ins. Co.*, 803 A.2d 807, 817 (Pa. Commw. 2002).⁷

Reliance has not given any consent to the commencement of the English action against it seeking a ruling from the English court. To the contrary, from the outset Reliance consistently has taken the position that this is a U.S. arbitration to be conducted in the U.S. applying U.S. law. See April 1, 2010 letter from M. Maier to Markel International Insurance Company Limited (“Markel”) and XL and April 1, 2010 demand for arbitration from M. Maier to Markel and XL,⁸ attached to the Application as Exhibits “C” and “D.” In response, Syndicate 990 seeks to delay and interfere with the arbitration panel’s resolution of this dispute, by seeking a ruling from the English court that is not and cannot be binding on the arbitration panel. If

⁷ Outside the context of an ongoing arbitration, this Court has enjoined parties from proceeding in actions or on claims seeking affirmative relief from the Estate that were commenced without the Liquidator’s consent or this Court’s approval. See *Koken v. Reliance Insurance Company*, 269 M.D. 2001, 2003 Pa. Commw. Lexis 974 *2-5 (Commw. Ct. Dec. 17, 2003) (dismissing declaratory action filed by state guaranty associations). See also *Koken v. Research Underwriters, LLC*, 70 M.D. 2004, 2005 Pa. Commw. LEXIS 804 *4-5 (Commw. Ct. Jan. 20, 2005) (striking defendant’s counterclaim). Moreover, the fact that the Liquidator exercises his “authority to pursue claims on behalf of the estate in no way diminishes the estate’s protection from litigation against it.” *Koken v. GGIS, et al.*, No. 377 M.D. 2005, slip op. at 4-9 (Pa. Commw., July 3, 2006) (defendants enjoined from further prosecution of action against Legion and Villanova Insurance Companies (In Liquidation) in California state court filed post-liquidation because it violated the automatic stay). A copy of the *GGIS* opinion and order is attached to the Application as Exhibit “M.”

There are cases in which this Court has declined to enjoin parties from prosecuting actions in other jurisdictions. For example, in a case that did not involve an ongoing arbitration, former President Judge Colins refused to issue an injunction against Tribune in a suit brought by Tribune Company against Swiss Reinsurance America Corporation seeking a cut-through in the United States District Court for the Northern District of Illinois on the basis that he could not interfere with a federal district court. See *Koken v. Swiss Reinsurance America Corp.*, No. 860 M.D. 2003, slip op at 3 (Pa. Commw. Ct., March 18, 2004). In fact, contrary to the holding of the court, the Liquidator sought the injunction against Tribune and not against the federal district court. Swiss Re then moved to join Reliance in the Illinois case as an indispensable party, after which the federal judge in Illinois abstained in favor of the liquidation proceeding in Pennsylvania, see *Tribune Company v. Swiss Reinsurance America Corp.*, No. 02 C 4772, slip op at 7 (N.D. Ill., March 21, 2005), where the dispute about whether Tribune had a right of direct access to the reinsurance ultimately was resolved. See *Ario v. Swiss Reinsurance America Corporation*, 940 A.2d. 552 (Pa. Commw. Ct. 2007). Copies of the two unreported opinions are attached to the Application as Exhibit “N.”

⁸ XL is the company that is managing the run-off for Syndicate 990. Markel is another London reinsurer that also had failed to pay its share of the claims. Reliance demanded arbitration against both Markel and XL as the run-off manager for Syndicate 990. Syndicate 990 opposed a joint arbitration with Markel. That issue has been resolved and the arbitration at issue here is only between Reliance and Syndicate 990. Markel also is not a party to the action in London.

Syndicate 990 is allowed to prosecute that action, it will interfere with the administration of the Estate and waste Estate assets on unnecessary additional and substantial legal fees incurred to retain counsel in London to appear and defend Reliance against that action, while also arbitrating the same dispute before the arbitration panel. That action also may interfere with the arbitration, and delay resolution of this issue by the arbitration panel which is the forum selected by the parties to resolve this dispute.

This Court plainly has the inherent authority to enforce its own orders. *Davin v. Davin*, 842 A.2d 469, (Pa. Super. 2004); *Mulligan v. Severino Piczon*, 739 A.2d 605, 610, 611 n. 7 (Pa. Commw. Ct. 1999) (citing 42 Pa. C.S. § 323 as authorizing the court to “enforce its own orders”). It should exercise that power here by enjoining Syndicate 990 from proceeding with its action in London.

2. The action in London violates the public policy favoring arbitration.

Clearly and unquestionably, Syndicate 990’s action in London also is contrary to U.S. federal and state law and public policy which strongly favors arbitration, and expressly authorizes the arbitration panel, not a court, to rule on all issues except arbitrability.⁹ *Rent-A-*

⁹ The U.S. policy favoring arbitration applies equally to disputes arising out of international commercial transactions. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 630-31 (1985) (recognizing the strong presumption favoring arbitration in international commerce and enforcing an agreement to resolve antitrust claims by arbitration); *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 516-17, 519 (1974) (refusing to allow the parties to repudiate their agreement to arbitrate claims arising out of their international commercial transaction that otherwise would fall within a federal court’s jurisdiction). The Commonwealth shares this same strong general public policy favoring arbitration:

It is unquestioned that arbitration is a process favored today in the Commonwealth to resolve disputes. By now it has become well established that settlement of disputes by arbitration [is] no longer deemed contrary to public policy. In fact, our statutes encourage arbitration and with our dockets crowded and in some jurisdictions congested, arbitration is favored by the courts.

Gaffer Ins. Co., Ltd. v. Discover Reinsurance Co., 936 A.2d 1109, 1113 (Pa. Super. 2007) (citations omitted).

Center, West, Inc. v. Jackson, 130 S. Ct. 2772, 2776 (2010). When, as here, the parties agree that a dispute is arbitrable, the United States Supreme Court repeatedly has made abundantly clear that “procedural questions which grow out of the dispute and bear on its final disposition’ are presumptively not for the judge, but for the arbitrator, to decide.” *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002) (quoting *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557 (1964)).

Pennsylvania law is the same. When asked to rule on whether a court or arbitration panel should decide the location of an arbitration, the Pennsylvania Superior Court made clear that “[t]he determination of where an arbitration should be held is a procedural question” that properly is left to the arbitrator, not the court, to decide. *Friedman*, 277 Pa. Super. at 433, 419 A.2d at 1223 (quoting *Kardon v. Portate*, 466 Pa. 306, 310, 353 A.2d 368, 370 (1976)). This rule applies even more forcefully here where the parties already expressly authorized the arbitration panel, which is fully constituted, to resolve “[a]ny unresolved difference of opinion ... with respect to the interpretation of this certificate or the performance of the obligations under [it]” and to “adopt their own rules and procedures” for resolving the dispute under the arbitration clause. See Arbitration Clause at ¶ N, attached to the Application as Exhibit “A.”

English law generally shares the same strong public policy favoring arbitration as in the U.S., but is even more deferential to the arbitration panel which is empowered to decide even issues of arbitrability. See English Arbitration Act at §30, attached to the Application as Exhibit “L.” Section 30 of the English Arbitration Act provides, in relevant part:

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, that is, as to
 - (a) whether there is a valid arbitration agreement,

- (b) whether the tribunal is properly constituted, and
- (c) what matters have been submitted to arbitration in accordance with the arbitration agreement.

Id.

Syndicate 990 concedes that, even if it secures a ruling from the English court, it still will be required to proceed with the arbitration and that all procedural and substantive issues are a “matter for the [arbitration] tribunal to determine.” *See* Bassford Witness Statement, Exhibit “I” at ¶26. Nevertheless, in the English court, Syndicate 990 contends that resolution of the “seat” of the arbitration is within the purview of that court under Section 3 of the English Arbitration Act, which provides:

In this Part “the seat of the arbitration” means the juridical seat of the arbitration designated –

- (a) by the parties to the arbitration agreement, or
- (b) by any arbitral or other institution or person vested by the parties with powers in that regard, or
- (c) by the arbitral tribunal if so authorized by the parties, or determined, in the absence of such designation, having regard to the parties’ agreement and all of the relevant circumstances.

Exhibit “L” at § 3 and Bassford Witness Statement, Exhibit “I” at ¶ 31. While this Court need not consider the merits of Syndicate 990’s argument before the English court in deciding whether to enjoin Syndicate 990 from further prosecuting that action, it is telling that Syndicate 990 fails to even discuss the scope or effect of the broad authorization given to the arbitration panel in the arbitration agreement to resolve “any dispute” and to “adopt their own rules and procedures” for resolving the dispute under the arbitration clause. *See* Exhibit “A” at ¶ N. Instead, Syndicate 990 simply recites Section 3 of the English Arbitration Act and states, without support, that sub-

sections 3(a), (b) and (c) “do not apply here.” See Bassford Witness Statement, Exhibit “I” at ¶ 32.

Also remarkable for its absence is citation to any cases decided under English law that address what constitutes “authorization” by the parties, pursuant to Section 3(c) of the English Arbitration Act or that considers language that is similar to the authorization in the arbitration clause at issue here. As such, Syndicate 990’s argument that the English court, rather than the arbitration panel, is the proper forum for deciding the “seat” of the arbitration is without merit and will not obviate the obligation of both parties to submit all issues to the arbitration panel which, by agreement of the parties, alone is authorized to rule on them.

However, even assuming that Syndicate 990’s claim in London had any merit (which it does not), this Court should still enjoin Syndicate 990 from prosecuting that action to prevent unnecessary and wasteful depletion of the assets of the Reliance Estate, and to avoid interference with an ongoing arbitration. Syndicate 990 already has inflicted substantial prejudice on Reliance by frustrating Reliance’s statutory right to collect reinsurance proceeds pursuant to the Act and its right to arbitrate this dispute promptly and efficiently. If Syndicate 990 is allowed to proceed with the action in London, it will be a very expensive and unnecessary proceeding parallel to the arbitration that may well yield a ruling in London that conflicts with the arbitration panel’s rulings.

Syndicate 990 also is interfering with the orderly administration of the Estate and wasting Estate assets by requiring the Estate to incur substantial legal fees and costs to retain both a Solicitor and Barrister¹⁰ in London to appear and defend Reliance in that action. Reliance

¹⁰ Reliance was required to retain both a Solicitor and a Barrister for representation in London because only a Barrister can make arguments and appear in the court in which the action is pending.

has been advised that, if Syndicate 990 is not enjoined from proceeding in London, that the English court likely will have a hearing on the jurisdictional issue in December (Reliance disputes that the English court has jurisdiction). If the court rules that it has jurisdiction, the parties will then proceed to the actual issue of the “seat” which likely will not be resolved until well into 2011. Reliance’s legal fees and expenses incurred in connection with the London action are in addition to its costs associated with the arbitration, as well as its costs to file this action seeking to enjoin Syndicate 990 from proceeding.

Nor can Syndicate 990 complain that issuance of the injunction will somehow prejudice it since it already has the right to make all of these same legal arguments about the “seat” of the arbitration and applicable statute of limitations before the arbitration panel, and has admitted that it fully intends to do so. *See Bassford Witness Statement, Exhibit “I” at ¶ 26.*

C. Conclusion

Because Syndicate 990’s action in London not only violates the Insurance Department Act, but also violates this Court’s Liquidation Order, it is appropriate for this Court to enforce its Order and to enjoin Malcolm John Cox on his own behalf and on behalf of the Underwriting Members of Syndicate 990 at Lloyd’s for the 1995 and 1996 Years of Account from further prosecution of the action in High Court of Justice, Queen’s Bench Division in London, England captioned *Malcolm John Cox On His Own Behalf And On Behalf Of Underwriting Members Of Syndicate 990 At Lloyd’s For 1995 and 1996 Years of Account v. Reliance Insurance Company (In Liquidation)*, Claim No. 2010 Folio 1090, except as necessary to withdrawn that action or to have it dismissed.

Consistent with the parties’ agreement to arbitrate and Syndicate 990’s admission in Paragraph 26 of its submission to the English court that all procedural and substantive issues are a “matter for the [arbitration] tribunal to determine,” *see Bassford Witness Statement, Exhibit*

"I", at ¶ 26, Malcolm John Cox on his own behalf and on behalf of the Underwriting Members of Syndicate 990 at Lloyd's for the 1995 and 1996 Years of Account and Reliance Insurance Company (In Liquidation) should be ordered to proceed with their pending arbitration and to submit all disputes to the arbitration panel for resolution.

Respectfully submitted,



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Dated: October 19, 2010

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert L. Pratter, Acting Insurance
Commissioner of the Commonwealth
of Pennsylvania, acting in his official capacity
as Statutory Liquidator of Reliance Insurance
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NO. 269 M.D. 2001

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*In re: Malcolm John Cox On His Own Behalf And On Behalf Of Underwriting Members Of
Syndicate 990 At Lloyd's For 1995 and 1996 Years of Account, Respondent*

ORDER

AND NOW, this ___ day of _____, 2010, upon consideration of the
Application of the Statutory Liquidator to Enjoin Malcolm John Cox and the Underwriting
Members of Syndicate 990 at Lloyd's for the 1995 and 1996 Years of Account From Further
Prosecution of the Action in London, England, and all responses thereto, it is hereby ORDERED
as follows:

1. Because an order pursuant to Section 505(a) of the Insurance Department
Act of 1921, Act of May 17, 1921, P.L. 789, *as amended*, 40 P.S. § 221.5(a) (the "Act") is
required to prevent Syndicate 990 from prosecuting an action that was commenced by it in
London, England in violation of Paragraph 22 of the Liquidation Order and Section 526 (a) of
the Act that will result in "waste of the insurer's assets" and "might lessen the value of the
insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the
administration of the [liquidation] proceeding," and also will interfere with an ongoing

arbitration, the Application of the Statutory Liquidator of Reliance Insurance Company (In Liquidation) to enjoin Syndicate 990 is GRANTED.

2. Malcolm John Cox on his own behalf and on behalf of the Underwriting Members of Syndicate 990 at Lloyd's for the 1995 and 1996 Years of Account is ORDERED to cease further prosecution of the action in High Court of Justice, Queen's Bench Division in London, England captioned *Malcolm John Cox On His Own Behalf And On Behalf Of Underwriting Members Of Syndicate 990 At Lloyd's For 1995 and 1996 Years of Account v. Reliance Insurance Company (In Liquidation)*, Claim No. 2010 Folio 1090, except as necessary to withdraw that action or to have it dismissed.

3. Consistent with the parties' agreement to arbitrate and Syndicate 990's admission in Paragraph 26 of its submission to the English court that all procedural and substantive issues are a "matter for the [arbitration] tribunal to determine," *see* Bassford Witness Statement, Exhibit "G" at ¶ 26, Malcolm John Cox on his own behalf and on behalf of the Underwriting Members of Syndicate 990 at Lloyd's for the 1995 and 1996 Years of Account and Reliance Insurance Company (In Liquidation) are ordered to proceed with their pending arbitration and to submit all disputes to the arbitration panel for resolution.

BY THE COURT:
