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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN, INSURANCE
COMMISSIONER OF THE
COMMONWEALTH OF PENNSYLVANIA

No. 269 M.D. 2001

v.

RELiance INSURANCE COMPANY

**REPLY OF M. DIANE KOKEN, INSURANCE COMMISSIONER OF THE
COMMONWEALTH OF PENNSYLVANIA TO DELOITTE & TOUCHE LLP'S
MEMORANDUM OF LAW IN OPPOSITION TO PETITION TO ENFORCE THE
SUBPOENA *DUCES TECUM* ISSUED TO DELOITTE & TOUCHE LLP,
PURSUANT TO THE AUTHORITY GRANTED TO HER UNDER 40 P.S. § 221.23(5)**

M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania (the "Liquidator"), in her capacity as Liquidator of Reliance Insurance Company, all affiliates, divisions, and subsidiaries thereof, including former subsidiaries previously merged into Reliance Insurance Company, including Reliance National Indemnity Company, Reliance National Insurance Company, United Pacific Insurance Company, Reliance Direct Company, Reliance Surety Company, Reliance Universal Insurance Company, United Pacific Insurance Company of New York and Reliance Insurance Company of Illinois ("Reliance"), by and through her attorneys, Blank Rome Comisky & McCauley LLP, respectfully submits this Reply to Deloitte & Touche LLP's Memorandum of Law in Opposition ("Response") to her Expedited

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OF PENNSYLVANIA

Petition to Enforce the Subpoena *Duces Tecum* Pursuant to the Authority Granted to Her Under 40 P.S. § 221.23(5).

The Response filed by Deloitte & Touche LLP (“Deloitte”) asserts two issues which require a reply.¹ *First*, Deloitte argues that the request for documents relating to all of its work for Reliance for the year 2000 are not “reasonably relevant” to the Liquidator’s investigation since they do not relate to any “identified claim.” *See* Response at p. 6. *Second*, Deloitte argues that the accountant-client privilege precludes the production of certain documents pertaining to Reliance Group Holdings, Inc. (“RGH”), Reliance Financial Services Corporation (“RFSC”) and Reliance non-insurance entities. Deloitte’s position as to each of these issues is without merit.

I. Deloitte’s Documents Relating to Reliance Work for the Year 2000 Are Reasonably Relevant and Relate To The Liquidator’s Investigation of the Collapse of Reliance.

Instead of complying with the Subpoena, properly issued by the Liquidator in accordance with her statutory powers pursuant to 40 Pa.C.S.A. § 221.23(5), Deloitte has resisted production². It seeks to impose upon the Liquidator its own, extra-judicial requirement that the Liquidator limit her request for documents relating to services rendered by Deloitte in calendar year 2000 to those “relating to any identified claim.” *See* Response at p. 6. Deloitte’s attempted imposition of a requirement that the Liquidator first identify “claims” as a prerequisite to receiving documents is the reddest of herrings.

The Liquidator’s statutory purpose is, *inter alia*, to investigate the collapse of Reliance, which includes investigating and identifying claims that should be brought and against whom

¹ This Reply only addresses two issue because all of the other responses raised in the Response were adequately addressed in the Liquidator’s moving papers.

² While Deloitte has produced some documents in response to the Subpoena since the filing of the Petition, Deloitte remains steadfast in its position that the Liquidator must articulate specific claims to which the document request apply before it will produce all responsive documents. Further, while Deloitte has stated its willingness to produce some “documents in specific areas specific topics [for year 2000]” it has generally objected to the production. *See* Response at p. 6.

they should be brought. By writing a requirement into the statute that does not exist (*i.e.*, that the Liquidator specifically identify the “claims” to which the document request relate), Deloitte is attempting to frustrate the Liquidator and impose burdens that simply do not exist in the statute or case law.

The fact that the Liquidator is not now prepared to articulate definitive claims, without access to Deloitte’s documents, is indicative of the purpose of an investigatory subpoena issued by an agency – to investigate whether any wrongs have been committed. See United States v. Morton Salt, 338 U.S. 632, 642-43 (1950) (“[An administrative agency] has a power of inquisition ... which is not derived from judicial function.... When investigative and accusatory duties are delegated by statute to an administrative body, it, too, may take steps to inform itself as to whether there is probable violation of the law.”); see also, Pennsylvania Human Relations Comm’n. v. Lansdowne Swim Club, 515 Pa. 1, 10, 526 A.2d 758, 763 (1987) (quoting Morton Salt). As such, Deloitte’s attempts to constrict impermissibly the scope of the Liquidator’s investigation, before it even begins, should not be countenanced by the Court. The Subpoena should be enforced.

II. The Statutory Exception to the Accountant-Client Privilege Is Applicable and Production of Deloitte’s Documents Should Be Compelled.

Pennsylvania has a narrow statutory provision conferring a limited privilege for communications between an accountant and a client. As demonstrated by the Liquidator’s moving memorandum (*see* pp. 12-13 of the Liquidator’s Memorandum of Law in Support of Expedited Petition), this narrow privilege does not apply because of a broad exception.³

³ The broad exception is codified at 63 Pa.C.S.A. § 9.11a as follows: “Nothing in this section shall be taken or construed as prohibiting the disclosure of information required to be disclosed by the standards of the profession in reporting on the examination of financial statements, or in making disclosures ... in disciplinary investigations or proceedings when the professional services of the ... firm are at issue in an ... investigation or proceeding in which the ... firm is a party.”

Resisting production, Deloitte claims that it is not a “party” to proceedings pursuant to which the Liquidator issued the Subpoena and, therefore, many still unidentified documents in its possession need not be produced. (*see* Response at p. 3). Deloitte’s reliance on a narrow reading of the exception is incorrect, particularly because Deloitte received notice from the Liquidator that “there may well be claims made **against Deloitte** in connection with its work for Reliance, or for RGH and RFS as it relates to Reliance.” See, Exhibit C to the Liquidator’s Petition (emphasis added). The Liquidator made clear that her investigation into the collapse of Reliance *included* the financial information in possession of Deloitte regarding Reliance and the related entities, RGH and RFS.

Further, because Deloitte served as both Reliance’s accountant and actuary, and because the accounting and actuarial practices of Reliance are a part of the Liquidator’s investigation, the “professional services” of Deloitte *are* at issue. Therefore, the exception to the accountant-client privilege, codified at 63 Pa.C.S.A. §9.11a, is applicable. Concomitantly, the Subpoena should be enforced and Deloitte should be compelled to produce documents responsive thereto.

The Liquidator respectfully requests this Honorable Court enter an Order directing Deloitte to comply with the Subpoena and produce all of the requested documents in accordance with the terms of the proposed Order and ordering such other relief the Court deems just and proper.

Respectfully submitted,

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Dated: March 28, 2002

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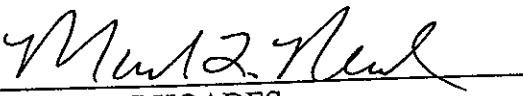
CERTIFICATE OF SERVICE

I, Mark L. Rhoades, hereby certify that a true and correct copy of the foregoing Reply of M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania to Deloitte & Touche LLP's Memorandum of Law in Opposition to Petition to Enforce the Subpoena *Duces Tecum* Issues to Deloitte & Touche LLP Pursuant to the Authority Granted to Her Under 40 P.S. § 221.23(5) was served as follows:

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The following parties on the attached Master Service List were served a copy of the Reply via pre-paid United States First Class Mail.


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