

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE:

**Reliance Insurance Company
In Liquidation**

NO. 1 REL 2001

PROPOSED ORDER

AND NOW, this ___ day of ____, 2014, upon consideration of Symetra Life Insurance Company f/k/a Safeco Life Insurance Company's ("Symetra") Application for Leave to Intervene for a Limited Purpose and to File Limited Objection to Application for Approval of Administration Agreements Related to Certain Structured Settlement Annuity Contracts and Transfer of Ownership of Those Annuity Contracts ("Annuity Transfer Application"), and any response

thereto, it is hereby ORDERED that,

(a) Said Application for Leave to Intervene is GRANTED, and Symetra is hereby permitted to participate as a party for the limited purpose of opposing the Annuity Transfer Application; and

(b) The proposed Limited Objection to the Annuity Transfer Application, attached as Exhibit A to the Application for Leave to Intervene, shall be deemed to have been filed with the Court as of _____, 2014.

BY THE COURT:

, J.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE:

**Reliance Insurance Company
In Liquidation**

NO. 1 REL 2001

**Application for Leave to Intervene for a Limited Purpose and to File
Limited Objection to Application for Approval of Administration Agreements
Related to Certain Structured Settlement Annuity Contracts and
Transfer of Ownership of Those Annuity Contracts**

Interested party Symetra Life Insurance Company f/k/a Safeco Life Insurance Company ("Symetra"), by its undersigned counsel, hereby respectfully submits this Application pursuant to Rules 3775 and 123 of the Pennsylvania Rules of Appellate Procedure for leave to intervene in the above-captioned matter for the limited purpose of responding to the Application for Approval of Administration

Agreements Related to Certain Structured Settlement Annuity Contracts and Transfer of Ownership of Those Annuity Contracts (the “Annuity Transfer Application”) filed on January 8, 2014, by Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania, in his capacity as Statutory Liquidator (the “Liquidator”) of Reliance Insurance Company (“Reliance” or the “Estate”), and submitting the attached Limited Objection to the Annuity Transfer Application. In support of its proposed intervention, Symetra states as follows:

1. Rule 3775(a) authorizes intervention by any person with “direct and substantial interest in the administration of the insurer’s business or estate.” Where the proposed intervenor’s “interest involves a discrete controversy relating to the administration of the insurer’s business or estate,” Rule 3775(c)(2) authorizes “limited intervention to participate as a party in the discrete controversy.” The Court is specifically authorized to grant such limited intervention to an interested party seeking to “[o]ppose an application by the receiver for an order relating to the administration of the insurer’s business or of estate.” Pa.R.A.P. 3775, *note*.

2. Symetra seeks limited intervention in this case for the purpose of opposing that portion of the Liquidator’s Annuity Transfer Application relating to transfer of ownership of the annuity contracts to certain payees. A true and correct copy of Symetra’s proposed Limited Objection, which is being filed contemporaneously with this Application, is attached hereto as Exhibit A.

3. As outlined in the proposed Limited Objection, the Liquidator’s

proposed transfer of structured settlement annuities (“SSAs”) could give rise to immediate, direct and substantial adverse consequences and burdens for Symetra, justifying Symetra’s request to be heard on this matter.

4. Symetra is a life insurance company that has issued approximately six SSAs to Reliance in order to fund its periodic payment obligations under structured settlements, which are affected by the Annuity Transfer Application.

5. Under the Annuity Transfer Application, the Liquidator proposes to transfer more than 3,400 SSAs held by Reliance to the payees under those SSAs, and to receive a discharge of the corresponding periodic payment obligations, in order to “allow for an orderly and timely closure of the Estate and the discharge of the Liquidator.” Annuity Transfer Appl. ¶ 3.

6. As explained in the attached proposed Limited Objection, the transfer of SSAs proposed by the Liquidator would, in addition to triggering potentially adverse tax consequences for the SSA payees (who have not been given adequate notice of the Annuity Transfer Application and have not been afforded the opportunity to object), requires Symetra to undertake costly tax reporting and withholding obligations and subject Symetra to liability risk.


7. Symetra’s interests are not adequately represented by the Liquidator or any other current party, as neither Liquidator nor any other current party shares Symetra’s interests and is in a position to oppose the relief sought in the Annuity Transfer Application and to promote alternative measures that may avoid or

mitigate the adverse effects of the proposed transfer.

WHEREFORE, Symetra respectfully requests that the Court enter an order (a) granting Symetra leave to intervene for the limited purpose of opposing the Liquidator's Annuity Transfer Application, and (b) accepting the filing of the proposed Limited Objection to the Annuity Transfer Application attached hereto as Exhibit A.

Dated: February 10, 2014

Respectfully submitted,


Timothy J. O'Driscoll (I.D. No. 82572)
Thomas L. Mueller (I.D. No. 308672)
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EXHIBIT A TO APPLICATION FOR LEAVE TO INTERVENE

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE:

Reliance Insurance Company

In Liquidation

NO. 1 REL 2001

**Symetra Life Insurance Company's Limited Objection to
Application for Approval of Administration Agreements Related to
Certain Structured Settlement Annuity Contracts and
Transfer of Ownership of Those Annuity Contracts**

Symetra Life Insurance Company f/k/a Safeco Life Insurance Company ("Symetra") respectfully submits this Limited Objection to the Application for Approval of Administration Agreements Related to Certain Structured Settlement Annuity Contracts and Transfer of Ownership of those Annuity Contracts (the

“Application”) submitted by Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania, in his capacity as Statutory Liquidator (“Liquidator”) of Reliance Insurance Company (“Reliance”). Symetra requests that this Court deny the Liquidator’s proposed transfer of ownership (“Proposed Transfer”) to certain payees of Reliance-owned annuity contracts issued by Symetra. The Proposed Transfer could result in unanticipated tax consequences to the payees,¹ consequences of which the payees have not been properly advised and to which they payees have not been given a chance to object. In the alternative, Symetra requests that this Court delay entering an order with respect to this portion of the Application until the payees have received sufficient notice of the Proposed Transfer and been given an opportunity to respond to the Liquidator’s Application.

I. Payee Ownership of the Structured Settlement Annuities is Incompatible with the Tax Structure of Structured Settlements.

Structured settlements are set up to allow a payee to receive compensation for a personal injury or workers’ compensation claim without tax consequences. Generally, the obligation to pay under a structured settlement may be transferred from the original liable party to an obligor by way of a “qualified assignment” within the meaning of Section 130 of the Internal Revenue Code. The obligor then

¹ Payees, also referred to as Annuitants, are those individuals entitled to payments under a structured settlement annuity contract.

purchases an annuity contract to fund its payment obligations. Because the obligor, and not the payee, has the rights and duties of ownership under the annuity contract, the payee can receive the annuity payments without tax consequences. *See* 26 U.S.C. § 130(c). However, structured settlements for workers' compensation settlements which pre-dated the expansion of Section 130(c) in 1997 are not eligible for a "qualified assignment."² To resolve Reliance's obligations under these specific structured settlements, the Liquidator proposes to transfer the ownership of the structured annuity contracts from itself to the payees.

Direct ownership of the structured annuity contract by the payee is in direct contrast to the structured settlements contemplated by the tax code:

Under [an annuity contract], the settling plaintiff and defendant both realize tax benefits from a third party's assuming the defendant's obligations, and then purchasing an annuity which names the plaintiff as an annuitant. *In order for the tax benefits to be realized, the plaintiff [the payee] cannot be the owner of the annuity.*

Monarch Life Ins. Co. v. Estate of Tarone, No. 90-734, 2011 U.S. Dist. LEXIS 49847, at *15 (E.D. Pa. May 10, 2011) (emphasis added). *See also* Rev. Rule 79-220, 1979 IRB LEXIS 104. As Judge Hart further explained, "Crucially, if the annuitant is deemed to own or control the lump-sum fund used to purchase the

² *See* Application, p. 7.

annuity, the tax benefits of the structured settlement are lost.” *Id.*, at *21 (citing Rev. Rule 79-220).

Thus, the Proposed Transfer could likely deprive the payees of the tax benefit which was a benefit of accepting periodic payments in lieu of lump-sum damages in the first place. If the Proposed Transfer is granted, the payees could find that the annuity payments they rely on are reduced by such anticipated taxes. Many payees rely on these funds to pay for basic living expenses or medical expenses, and such a tax consequence could be a substantial hardship. The Proposed Transfer is incompatible with the tax structure of structured settlements and, because it will likely subject the payees to unexpected and unanticipated tax consequences, is not fair and reasonable.

II. The Liquidator Should be Required to Provide Notice to the Affected Payees Prior to the Proposed Transfer Being Approved So That They Have an Opportunity to Object.

The Liquidator seeks entry of an Order (“Proposed Order”) allowing him to send notice to the payees of the Proposed Transfer and *simultaneously* authorizing the Proposed Transfer (albeit on a deferred basis). Under this approach, there is no opportunity for the payees to respond at all to the Application. To the contrary, the Proposed Transfer would be approved prior to the notices even being sent out. While the Proposed Transfer will not become effective until a future date, it will have already been authorized, and thus the payees will have no recourse. Because

the Proposed Transfer could substantially affect the tax consequences of these structured settlement payments for the payees, they should be given an opportunity to object.

This Court should at least delay granting the Liquidator's Application with respect to the Proposed Transfer until the affected payees have been given notice and had a reasonable opportunity to consult with tax advisors and submit responses.

III. The Liquidator's Proposed Notice is Inadequate.

The Liquidator has attached a proposed notice to be sent to the payees upon the Court's entering its Proposed Order (the "Notice").³ This Notice is inadequate. The Notice barely hints at the danger that the payees may suffer adverse tax consequences:

Delaying the transfer of ownership to you of your Annuity Contract until two years after the Claim Bar Date is intended to maintain the status quo for you with respect to the tax treatment of the periodic payments you are receiving until the date of the actual transfer of ownership. *With respect to any potential tax consequences after the transfer, you may want to consult a tax advisor or accountant. . . .*

. . . Reliance's request and the Court's response will not affect your rights to receiving continuing payments from the Annuity Issuer under your Annuity Contract.

³ See Application, Exhibit A.

Application, Exhibit A (emphasis added). This Notice is not reasonably calculated to inform the payees of the risks related to the Proposed Transfer. Reading the Notice, the payees could understandably interpret the risk of tax consequences to be minimal. Symetra suggested revisions to the Notice which would better advise the payees that they may face tax consequences, but the revisions were rejected by the Liquidator. *See* Declaration of Medora Marisseau, a true and correct copy of which is attached hereto as Exhibit A.

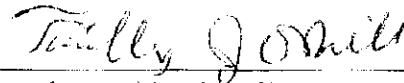
Symetra proposes that the attached Notice be approved instead of the Liquidator's Notice, so that the payees are better informed about the consequences of the Proposed Transfer.

IV. Relief Sought.

For all of the foregoing reasons, Symetra respectfully requests that this Court enter an order denying the Proposed Transfer requested in the Liquidator's Application. In the alternative, Symetra respectfully requests that this Court delay entering an order granting the Liquidator's Application with respect to the Proposed Transfer until sufficient Notice has been provided to the affected payees and the payees have had an opportunity to respond to the Liquidator's Application.

Dated: February 10, 2014

Respectfully submitted,



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Safeco Life Insurance Company

Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121 and Pa.R.A.P. 3780:

Service by first class mail addressed as follows:

Preston M. Buckman, Esquire
Department Counsel for Insurance
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Insurance Department
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Dated: February 10, 2014



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EXHIBIT A TO LIMITED OBJECTION

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE:
Reliance Insurance Company
In Liquidation

NO. 1 REL 2001

DECLARATION OF MEDORA A.
MARISSEAU

**Declaration of Medora A. Marisseau in Support of Symetra Life Insurance Company's
Limited Objection to Application for Approval of Administration Agreements Related to
Certain Structured Settlement Annuity Contracts and Transfer of Ownership of Those
Annuity Contracts**

I am national coordinating counsel for Symetra Life Insurance Company and I make this declaration based on personal knowledge.

Counsel for the Liquidator provided me with the form of notice to the payees affected by the Liquidator's proposed transfer of ownership to the payees, which is attached to the Liquidator's current Application. In order to properly advise the affected payees of the impact of the Liquidator's proposed transfer, I suggested revisions to the notice, which the Liquidator rejected. A true copy of the notice, with revisions is attached as Exhibit I.

I declare the foregoing is true and correct under penalty of perjury of the laws of the State of Pennsylvania.

Dated this 6th day of February, 2014.

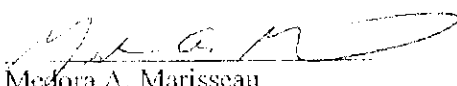

Medora A. Marisseau

EXHIBIT 1 TO DECLARATION OF MEDORA MARISSEAU

NOTICE TO PAYEE of Request to Transfer Contract Ownership

You are receiving this Notice because you receive periodic payments under a structured settlement funded by an annuity contract ("your Annuity Contract") issued by ("Annuity Issuer"), Reliance Insurance Company ("Reliance"), which is responsible for the payments under the structured settlement, purchased your Annuity Contract to fund those payments and owns your Annuity Contract. Reliance instructed the Annuity Issuer to pay you directly and so you have been receiving payments from the Annuity Issuer. Reliance is being liquidated by the Pennsylvania Insurance Commissioner pursuant to an Order of Liquidation entered by the Commonwealth Court of Pennsylvania (the "Court") in October 2001.

Reliance is seeking Court approval to transfer ownership to you of your Annuity Contract under which you receive payments, with such transfer of ownership to be effective two years after the Court enters an Order setting a date to bar the filing of any more Proofs of Claim in the Reliance liquidation ("Claim Bar Date"). Delaying the transfer of ownership to you of your Annuity Contract until two years after the Claim Bar Date is intended to maintain the status quo for you with respect to the tax treatment of the periodic payments you are receiving until the date of the actual transfer of ownership. Ownership by the payee of a qualified annuity contract which funds the structured settlement can be incompatible with the tax advantages of a structured settlement and may cause you to lose the tax benefits of your structured settlement, including subjecting you to tax consequences on payments.

With respect to any potential tax consequences after the transfer, you may want to consult a tax advisor or accountant. The Court has not yet set a Claim Bar Date and Reliance does not know when it will do so.

Because you have been receiving payments directly from the Annuity Issuer under your Annuity Contract, Reliance's obligation to make the payments has been contingent only. Reliance is seeking Court approval to be discharged and released immediately with regard to its contingent obligation to make the periodic payments to you under the structured settlement in the event the Annuity Issuer fails to meet its payment obligation and from all further liability or responsibility related to your structured settlement. Reliance is also seeking Court approval of an agreement between Reliance and the Annuity Issuer under which the Annuity Issuer will administer the annuity contract on behalf of Reliance until the transfer of ownership to you of your Annuity Contract.

Reliance is seeking to have the Court confirm that the Annuity Issuer remains responsible to make annuity payments to you in the same manner as before the transactions. Therefore, Reliance's request and the Court's response will not affect your rights to receive continuing payments from the Annuity Issuer under your Annuity Contract, although it may have tax implications for you. If the Court approves Reliance's request, you would no longer have any rights with respect to Reliance.

If you would like to receive a copy of the Liquidator's filing, you may obtain a copy:

- (1) at www.reliancejudgments.com; or
- (2) by calling Reliance at 215-861-4000; or
- (3) by e-mail inquiry to Liquidator@relianceinsurance.com (Please refer to the "Structured Settlement Annuity Filing").

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