

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania,
Plaintiff

v.

Reliance Insurance Company,
Defendant

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: No. 269 M.D. 2001

APR 16 9 23 AM '02

IN RE: Liquidator's Expedited Petition to Enforce Subpoena
Issued to Deloitte and Touche LLP;
Liquidator's Supplemental Expedited Petition to Enforce
Subpoena Issued to Deloitte and Touche LLP

ORDER

AND NOW, this 16th day of April 2002 consideration having been given to the Expedited Petition of M. Diane Koken in her capacity as Liquidator, Reliance Insurance Company, to enforce the *Subpoena Duces Tecum* issued to Deloitte and Touche, LLP, and the Supplemental filing made thereto, and in further consideration of the Objections to the *Subpoena Duces Tecum* filed on behalf of Deloitte and Touche, LLP, said **Objections are Overruled; the Petition is GRANTED as follows:**


1. For the years 1998, 1999, 2000, 2001, and through and including March 29, 2002, Deloitte and Touche LLP, and/or its affiliate(s), shall produce to the Liquidator all documents that pertain, directly or indirectly, to the

accounting and auditing of Reliance Insurance Company (as that company is defined in this Court's order of October 3, 2001), that was conducted by Deloitte Touche LLP or others on behalf of, or at the direction of Deloitte Touche LLP;

2. No later than June 1, 2002, Deloitte Touche LLP, and/or its affiliate(s) shall produce all other documents responsive to the *Subpoena Duces Tecum* in the manner designated by the Liquidator.

3. The production of all documents by Deloitte Touche LLP and/or its affiliate(s) shall be in accordance with the terms of the Confidentiality Stipulation which is incorporated herein, attached hereto and marked as "A".

It is FURTHER ORDERED that, Deloitte Touche LLP, through its counsel, is hereby directed to serve a copy of this order, forthwith, upon all parties listed on the master service list that is maintained by the Liquidator, via U.S. mail and, where designated, fax and/or e-mail. Deloitte Touche, through its counsel, is directed to file with the court in the Office of the Prothonotary, 9th Floor the Widener Building, 1339 Chestnut Street, Philadelphia, PA 19107, by **3:00 p.m. April 19, 2002** an affidavit, that service, as outlined above, has been effectuated.



JAMES GARDNER COLINS, President Judge

EXHIBIT "1"

AGREEMENT/ORDER FOR THE PROTECTION AND
EXCHANGE OF CONFIDENTIAL INFORMATION

AND NOW, on this 16TH day of APRIL 2002 it is hereby **ORDERED** and **DECREED** by the Court, as follows:

1. In connection with the Subpoena issued by 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 and all other related entities, to Deloitte & Touche, LLP ("Deloitte"), any party may, by written notice, or by a statement on the record at a deposition, designate any non-public document, material, or information as "Confidential" under the terms of this Protective Order.

2. Any documents, material or information to be designated "Confidential" may be so designated by stamping the documents, material or information with the legend "CONFIDENTIAL" prior to their production or by identifying such documents by designation to counsel. Stamping such a legend on the cover of any multi-page document shall not mean that the entire document is "Confidential." Rather, the producing party shall so designate all pages of such document that are "Confidential". "Confidential" information shall include (a) all auditors' and actuaries' workpapers and related documents and (b) a trade secret or confidential research, development or commercial information and all documents which the producing party reasonably believes may contain such information.

3. The inadvertent production of any document, material or other information during discovery in this action shall be without prejudice to any claim that such material is privileged under the attorney-client or other applicable privilege or protected from discovery as work

product within the meaning of Rule 4003.3 of the Pennsylvania Rules of Civil Procedure and no party shall be held to have waived any rights by such inadvertent production.

4. In the event counsel for the party receiving documents, material, or information designated as "Confidential" objects to such designation of any or all of such items, which objection shall be made within 20 days of receipt of such documents absent agreement by the parties, said counsel shall advise the party producing the items (the "Producing Party") of such objections and the reasons therefore. If the producing party objects to the proposed disclosure within 20 days of receiving the other party's objection, all the items shall be treated as Confidential pending a resolution of the parties' dispute, and it shall be the obligation of the party receiving the items designated as "Confidential" to obtain a prompt hearing before this Court with respect to the propriety of the designation. In the event that the receiving party seeks such a hearing, the Producing Party will cooperate in obtaining a prompt hearing with respect thereto.

5. If a party wishes to use or inquire at any deposition concerning documents, material, or information designated as "Confidential" the portion of the deposition transcript which would disclose such documents, material, or information shall be designated and treated as Confidential and subject to the confidentiality provisions hereof and such designation shall be made no later than 10 days after receipt of the deposition transcript.

6. Documents or material (including portions of deposition transcripts) designated as "Confidential" or information that would reveal such information, may only be disclosed or made available by the party receiving such information to "Qualified Persons," who are defined to consist solely of:

- (a) The Court;

(b) The Liquidator and Deloitte which shall be limited to those officers, directors, and employees of each deemed necessary to aid counsel in the prosecution and defense of this action;

(c) Counsel (including "in-house" counsel) to the Liquidator and Deloitte and the paralegal, clerical, and secretarial staff employed by such counsel;

(d) Court reporters;

(e) Witnesses or potential witnesses at any deposition, trial or investigation regarding actual or potential litigation;

(f) Experts and/or advisors consulted by the parties or their counsel in connection with this investigation and potential litigation, whether or not retained to testify at trial who has/have agreed to be bound by this Protective Order by execution of a letter in the form attached hereto as Exhibit "A".

(g) Employees or former employees of the parties who have agreed to be bound by this Protective Order by execution of a letter in the form attached hereto as Exhibit "A";

(h) Any other person as to whom the producing party agrees in writing prior to disclosure.

7. Documents and materials designated as "Confidential" or information that would reveal such information, shall be used by the person receiving them only for the purposes of the Liquidator's investigation and potential subsequent litigation, relating to such investigation.

8. Nothing herein shall impose any restrictions on the use or disclosure by a party or witness of documents or information obtained lawfully by such party or witness independently of the discovery proceedings in this investigation, whether or not such documents or information are also obtained through the Subpoena.

9. If documents and material (including portions of deposition transcripts) designated as "Confidential" or information that would reveal such information, are to be included in any papers to be filed in Court or proffered at hearing or trial, such papers shall be designated "Confidential -- Subject to Court Order" and filed under seal and kept under seal until

further Order of the Court; provided, however, that information marked "Confidential" may be used in any Complaint, Answer, New Matter, Counterclaim or Third Party Complaint filed of record and that such filing need not be under seal.


10. Each non-lawyer given access to documents, material or information designated "Confidential" pursuant to the terms hereof shall be advised that the documents, material, or information are being disclosed pursuant to and subject to the terms of this Order and may not be disclosed other than pursuant to the terms hereof.

11. Complying with the terms of this Protective Order shall not: (a) operate as an admission by any party that any particular documents, material, or information contain or reflect currently valuable proprietary or commercial information; or (b) prejudice in any way the right of a party at any time: (i) to seek a determination by the Court of whether any particular documents, item of material, or piece of information should be subject to the terms of this Protective Order; or (ii) to seek relief on appropriate notice from any provision(s) of this Protective Order, either generally or as to any particular documents, item of material, or piece of information.

12. Upon termination of this investigation and potential subsequent litigation, including all appeals, the parties shall return to counsel for the producing party all documents or material designated as "Confidential" and all copies thereof (except that outside counsel for each party may maintain in its files pleadings, briefs and other documents filed with the Court and deposition transcripts and exhibits, provided that all such documents otherwise remain subject to the terms of this Protective Order), or the parties may agree upon other appropriate methods of destruction. Notwithstanding the foregoing, to the extent that documents reflecting attorney work-product contain material or information designated as "Confidential" counsel in possession of such documents may, in lieu of returning them to the producing party, certify in writing to the

producing party that such documents have been destroyed in a manner that insured the security and confidentiality of the documents.

13. Nothing in this Protective Order shall be construed to prohibit a party from producing documents, material, or information designated as "Confidential" in its possession pursuant to a subpoena or other legal process provided that, the party in possession of such documents, materials, or information, if subpoenaed, shall give notice of such subpoena to the originally producing party as soon as possible and, in any event within five days after receiving such subpoena. The subpoenaed party shall not produce any of the producing party's "Confidential" documents, material or information for a period of at least five days after providing the required notice to the producing party. If, within five days of receiving such notice, the producing party opposes production of its "Confidential" documents, material or information pursuant to the subpoena, the subpoenaed party shall reasonably cooperate with the producing party in seeking to quash such subpoena and shall not thereafter produce such documents, material or information pursuant to the subpoena except pursuant to a court order requiring compliance with the subpoena.



JAMES GARNDER COLNS, President Judge

EXHIBIT A

LIMITED SPECIAL APPEARANCE AND AGREEMENT FOR ACCESS TO CONFIDENTIAL DOCUMENTS AND INFORMATION

I hereby acknowledge and affirm that I have read the terms and conditions of the Protective Order entered by the Court in the above-captioned matter on the ____ day of _____, 2002. I understand the terms of the Court's Order and under oath consent to be bound by the terms of the Court's Order as a condition to being provided access to confidential documents and information furnished by Deloitte & Touche LLP.

By executing this Agreement, I hereby consent to the jurisdiction of the above-captioned Court for the special and limited purpose of enforcing the terms of the Court's Protective Order.

I recognize that any violation of this Order may be punishable as a contempt of court. All civil remedies for violation of this Order are specifically reserved by the parties and are not waived by the disclosure provided for herein. Further, in the event of any violation of this Order, I recognize that any party to this action may pursue all civil remedies available to each, individually, jointly, or severally.

I hereby declare under the penalty of perjury under the laws of the United States of America that the above statements are true and correct.

Dated: _____

(signature)

(name)

(title)

(affiliation)

(address)