

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: :
 : No. 1 REL 2001
Reliance Insurance Company :
In Liquidation :

In Re: Application for Approval of Direct Payment of Reinsurance Proceeds by National Insurance and Indemnity Corporation to FirstGroup America, Inc.

MEMORANDUM and ORDER

Presently before the Court for consideration is the Application of the Statutory Liquidator of Reliance Insurance Company for Approval of Direct Payment of Reinsurance Proceeds by National Insurance and Indemnity Corporation to FirstGroup America, Inc. (Application). No responses or objections have been filed to the Application.

In considering an application seeking approval of direct payment of reinsurance to a Reliance insured, the Court is guided by Section 534 of Article V of the Insurance Department Act of 1921 (Act),¹ 40 P.S. § 221.34, the “Guidelines for Enforcement of 40 P.S. § 221.34,” (Guidelines) and the Order of this Court dated April 26, 2002 (approving the Guidelines for direct payment of reinsurance proceeds).² In addition to these guidelines,

¹ Act of May 17, 1921, P.L. 789; Section 534 was added by the Act of December 14, 1977, P.L. 280.

² Section 534 provides:

The amount recoverable by the liquidator from reinsurers shall not be reduced as a result of delinquency proceedings, regardless of any provision in the reinsurance contract or

in *Ario v. Reliance Insurance Co.*, 981 A.2d 950 (Pa. Cmwlth. 2009), the Court recognized that direct access to reinsurance may also be permitted if the policyholder can demonstrate it is an intended third-party beneficiary of the contract between the insurer and reinsurer. *Id.* at 959-960 (discussing *Koken v. Legion Ins. Co.*, 831 A.2d 1196 (Pa. Cmwlth. 2003), *aff'd sub nom. Koken v. Villanova Ins. Co.*, 878 A.2d 51 (Pa. 2005) (*Legion*). The Court opined in pertinent part:

The [principles taken from] *Legion* provide that a policyholder will be granted direct access under the “totality of circumstances” test, which involves an analysis of the following factors: (1) whether the ceding insurer acted solely as a fronting company; (2) whether the ceding insurer entered into the transaction to generate fees as opposed to premium revenue; (3) whether the reinsurer functioned as the direct insurer by funding and processing the claims; (4) whether the ceding insurer, or the policyholder, selected the reinsurer; and (5) whether the equities favor direct access.

Ario, 981 A.2d at 960.

other agreement. Payment made directly to an insured or other creditor shall not diminish the reinsurer’s obligation to the insurer’s estate except when the reinsurance contract provided for direct coverage of an individual named insured and the payment was made in discharge of that obligation.

40 P.S. § 221.34. In order for an insured to have direct access to reinsurance coverage, the Guidelines provide, inter alia, that: the “reinsurance contract must provide for a direct coverage obligation by the reinsurer to the insured and the payment must be made in satisfaction of that coverage obligation.” *See* Guidelines, ¶ 4.b. (Exhibit B to Application). While not determinative in the present case, we note that the reinsurance agreements at issue do not provide for a direct coverage obligation.

Here, both the Liquidator and FirstGroup America, Inc. (Insured), seek approval of direct payment by National Insurance and Indemnity Corporation (Reinsurer),³ pursuant to the criteria established in *Legion* and applied in *Ario v. Reliance Insurance Co.* Insured submitted a written request to Reliance seeking approval of direct payment by Reinsurer to Insured and the Liquidator has approved Insured's request. The Liquidator now recommends that the Court approve the request for direct payment as well.

In support of her Application and recommendation, the Liquidator avers that: Reliance ceded virtually the entire premium it received to Reinsurer; the reinsurance was placed by Insured and not Reliance; and Insured engaged a third-party administrator to adjust claims under the Reliance policies and the administrator was funded by Reinsurer. Application, ¶ 7. Similarly, in its written request for direct coverage, Insured's representative states that Insured "brought" the various captive reinsurers to Reliance and Reliance "played no role in the selection" of the reinsurers. Application, Exhibit C at 2. In its written request, Insured also states that it brought the third-party administrator to Reliance; it engaged the administrator to handle claims under the program; and the administrator paid claims with funds from the reinsurers and billed the reinsurers for its expenses. According to Insured, Reliance ceded virtually the entire premium it received to the reinsurers. The Liquidator has concluded that the

³ Total Insurance Ltd was the initial reinsurer for the initial insured under the Reliance policy. The identities of both insured and reinsurer have changed to those currently identified in the Application through, among other things, a novation, share transfer and dissolution. See Application, ¶ 2.

Insured's request and supporting documents satisfy the factors set forth in *Legion* for approving a request for direct payment of reinsurance to an insured.

In addition, the Liquidator has submitted documentation demonstrating that (1) Reinsurer has consented to and unequivocally assumed Reliance's direct coverage obligation to Insured and Reinsurer's payment to Insured will satisfy Reliance's coverage obligation to Insured; (2) Insured has consented to the substitution of Reinsurer for Reliance and consents to the release of Reliance for all claims that Insured has against Reliance relating to the coverage at issue; and (3) no person or firm will earn any contingent fee or extra remuneration of any type as a result of this transaction.

Upon consideration of the Application, supporting documents and the Liquidator's representations, the Court concludes that the direct payment from Reinsurer to Insured satisfies the *Legion* criteria and is appropriate in these circumstances. Therefore, the Court enters the following Order.

AND NOW, this 8th day of March, 2017, the Application is granted. Accordingly, the Court confirms the Liquidator's approval of the direct payment by Reinsurer to Insured and further approves Reinsurer's assumption of a direct coverage obligation to Insured upon the terms set forth in Reinsurer's request and supporting documentation. Finally, the

Court approves the direct payment to Insured by Reinsurer in accordance with the direct payment obligations resulting from its assumption.



BONNIE BRIGANCE LEADBETTER,
Senior Judge

Certified from the Record

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And Order Exit