

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN,
Insurance Commissioner of the
Commonwealth of Pennsylvania

Plaintiff,

v.

RELiance INSURANCE COMPANY,

Defendant.

No. 269 M.D. 2001

ORDER

AND NOW, this ___ day of _____, 2002, upon consideration of the Petition filed by M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania in her official capacity as Statutory Liquidator of Reliance Insurance Company ("Liquidator"), the Court finds that Clients Assurance Pool, Ltd. ("CAP") and GOMACO Corporation ("GOMACO") are in compliance with 40 P.S. § 221.34, the "Guidelines For Enforcement of 40 P.S. § 221.34" and the Order of this Court dated April 26, 2002.

Therefore, in accordance with the Liquidator's recommendation, the Court hereby confirms the approval by the Liquidator and further approves CAP's assumption of a direct coverage obligation to GOMACO upon the terms set forth in CAP's request and supporting documentation and approves the direct payment to GOMACO by CAP in accordance with its direct payment obligations resulting from the assumption.

BY THE COURT:

James Gardner Colins, President Judge

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Copies of the Declaration Pages evidencing coverage provided to GOMACO under these Reliance insurance policies are attached to this Petition as Exhibit "A."

2. The GOMACO policies identified in Exhibit "A" and issued by Reliance were reinsured by CAP. The relevant reinsurance agreements are attached to this Petition as Exhibit "B."

3. Following an Order of Liquidation declaring Reliance insolvent on October 3, 2001, the Liquidator petitioned this Court for the approval of "Guidelines for Enforcement of 40 P.S. § 221.34" ("Guidelines") relating to the process and standards for permitting a reinsurer of Reliance to make direct payments to a Reliance policyholder. The Guidelines were approved, and by Order of this Court dated April 26, 2002, the Guidelines established the necessary conditions precedent to any agreement by the Liquidator to permit direct payment by a reinsurer.

4. Pursuant to Paragraph 3 of the Guidelines, CAP submitted written requests to the Liquidator seeking approval of direct payments by CAP to GOMACO. The written requests of CAP are attached to this Petition as Exhibit "C."

5. Upon submission of documentation in support of CAP's application to the Liquidator, the Liquidator has approved the written request of CAP seeking approval of direct

payment of reinsurance to GOMACO. The Liquidator has concluded that CAP's reinsurance contracts comply with 40 P.S. § 221.34, the Guidelines and the Order.

6. Specifically, the Liquidator has reviewed the CAP reinsurance contracts and determined that they are binding contracts which specifically provide for a direct coverage obligation (a "cut through") by CAP to GOMACO in the event of the insolvency of Reliance in place of and in substitution for any obligations of Reliance to GOMACO, as required by Paragraph 4(b) of the Guidelines, 40 P.S. § 221.34 and the Order. In Article XII.C of each of the reinsurance agreements attached as Exhibit "B," the agreement provides as follows:

It is further agreed and understood that as to all reinsurance made, ceded, renewed or otherwise becoming effective hereunder, in the event of insolvency of [Reliance] the reinsurance shall be payable by [CAP] to the Named Insured under the Policies when [CAP] with the consent of the Named Insureds under the Policies has assumed the obligations of [Reliance] under any of the Policies as direct obligations of [CAP] and in substitution for the obligations of [Reliance] to such payees.

This language of the reinsurance agreements allows CAP to pay the Named Insured, GOMACO, directly if CAP assumes the obligation and GOMACO consents. This is accomplished by the execution of the "Assumption and Substitution by Reinsurer" document and "Informed Consent to Substitution of Reliance" document, both of which were executed and are discussed in Paragraphs 8 and 9 below, as Exhibits "D" and "E," respectively

7. In addition, the Liquidator determined that the CAP reinsurance agreements in Article XII.C., quoted in Paragraph 6 above, specifically identify that the "cut through" payment is to be made to "the Named Insured under the Policies." Article I.A (Definitions) of the reinsurance agreements defines "Policies" as policies of insurance issued by Reliance to GOMACO either "as described in Schedule of Reinsurance" or "as described in Schedule I." "Schedule of Reinsurance" or "Schedule I" to the reinsurance agreements identifies the relevant

policy numbers of the GOMACO policies issued, which are listed in Paragraph 1 above. This identification of the payee with particularity within the reinsurance agreements complies with Paragraph 4(a) of the Guidelines, 40 P.S. § 221.34 and the Order.

8. CAP executed an "Assumption and Substitution by Reinsurer" on a form authorized by the Guidelines and the Order. This document provides that CAP has unequivocally assumed a direct coverage obligation to GOMACO, that the "cut-through" payment will be made in satisfaction of the coverage obligations assumed by Reliance to GOMACO, and that CAP releases Reliance from all liability as required by Paragraphs (b), (c) and (e) of the Guidelines, 40 P.S. § 221.34 and the Order. The Assumption and Substitution by Reinsurer is attached to this Petition as Exhibit "D."

9. GOMACO executed an "Informed Consent to Substitution of Reliance" on a form authorized by the Guidelines and the Order. This document provides for GOMACO's informed consent to the direct coverage relationship, which is in substitution for the relationship between GOMACO and Reliance and consents to the release of Reliance for all claims by GOMACO against Reliance relating to coverage assumed by CAP as required by Paragraph 4(e) of the Guidelines, 40 P.S. § 221.34 and the Order. The Informed Consent to Substitution of Reliance is attached to this Petition as Exhibit "E."

10. In accordance with Paragraph 4(e), the Liquidator has determined that there are no other contractual provisions that CAP and GOMACO have to comply with, other than obtaining the consent of the insured, which they have done by obtaining the informed consent of the insured as described in Paragraph 9 above.

11. Pursuant to Paragraph 11 of the Guidelines and the Order, the Liquidator submits the CAP documentation to this Court and recommends approval of direct payment by CAP.

Accordingly, M. Diane Koken, Commissioner of the Insurance Department of the Commonwealth of Pennsylvania, in her official capacity as Liquidator of Reliance Insurance Company, hereby respectfully requests that this Court grant this Petition and enter the Order attached confirming the approval of the Liquidator and permitting the direct payment from Clients Assurance Pool, Limited to GOMACO Corporation and its subsidiaries.

Respectfully submitted,

PEPPER HAMILTON LLP

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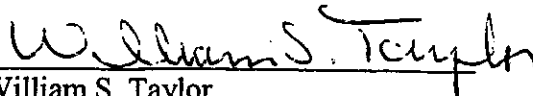
Dated: July 15, 2002

VERIFICATION

I, William S. Taylor, Deputy Insurance Commissioner of the Pennsylvania Insurance Department, Office of Liquidations, Rehabilitations and Special Funds, am duly authorized to make this Verification for and on behalf of M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, as Statutory Liquidator ("Liquidator") of Reliance Insurance Company. I have read the Petition for Approval of Direct Payment of Reinsurance Proceeds Pursuant to 40 P.S. § 221.34 by Clients Assurance Pool, Ltd. to GOMACO Corporation and verify that the matters stated therein are true and correct to the best of my knowledge, information and belief.

I understand that this Verification is made subject to the penalties of 18 Pa. C. S. § 4904 relating to unsworn falsification to authorities.

Executed on July 17, 2002.

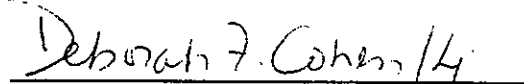


William S. Taylor

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2002, I caused a copy of the foregoing Petition for Approval of Direct Payment pursuant to 40 P.S. § 221.34 by Clients Assurance Pool, Ltd. to GOMACO Corporation by Petitioner M. Diane Koken, Insurance Commissioner of Pennsylvania, in her official capacity as Statutory Liquidator of Reliance Insurance Company, Proposed Order and Verification to be served by first class mail, postage prepaid, addressed to all persons listed on the attached Master Service List and:

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