

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 Citicorp Insurance USA, Inc. ("CIUSA") and Citicorp USA, Inc ("Citicorp") 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 CIUSA's assumption of a direct coverage obligation to Citicorp upon the terms set forth in CIUSA's request and supporting documentation and approves the direct payment to Citicorp by CIUSA in accordance with its direct payment obligations resulting from the assumption.

BY THE COURT:

\_\_\_\_\_  
James Gardner Colins, President Judge

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

Petition for Approval of Direct Payment  
Pursuant to 40 P.S. § 221.34 by Citicorp Insurance USA, Inc.

Petitioner M. Diane Koken, Commissioner of the Insurance Department of the Commonwealth of Pennsylvania, in her official capacity as Statutory Liquidator ("Liquidator") of Reliance Insurance Company, respectfully requests that this Court enter an Order in the form attached approving the direct payment by Citicorp Insurance USA, Inc. ("CIUSA") to Citicorp USA, Inc. and its subsidiaries ("Citicorp") in accordance with the direct coverage obligations assumed by CIUSA for policies of insurance issued by Reliance to Citicorp, as set forth below. For purposes of this Petition, "Reliance" will refer to Reliance Insurance Company (In Liquidation).

1. Pursuant to various policies of insurance, Reliance issued policies of insurance to Citicorp for automobile liability and workers compensation risks as listed below:

NKA 1499371-00  
NKA 1499372-00  
NWA 1499374-00  
NWA 1499373-00  
NWA 1499373-01  
NWA 1499374-01  
NKA 1499371-01

NKA 1499372-01  
NWA 1499374-02  
NWA 1499373-02  
NKA 1499371-02  
NKA 1499372-02  
NKA 0109602-00  
NKA 0111096-00  
NKA 0110083-00  
NWA 1499373-03  
NKA 1499371-03  
NKA 1499372-03  
NKA 0109602-01  
NKA 0111096-01  
NWA 1499373-04  
NKA 1499371-04  
NKA 1499372-04  
NKA 0109602-02  
NKA 0111096-02  
NWA 1499373-05  
NWA 0123167-00  
NKA 1499371-05  
NKA 1499372-05  
NKA 0109602-03  
NKA0111096-03  
NWA 1499373-06  
NKA 1499371-06  
NKA 1499372-06  
NKA 0109602-04  
NWA 1499373-07  
NKA 1499371-07  
NKA 1499372-07  
NKA 0109602-05  
NWA 1499373-08

Copies of the Declaration Pages evidencing coverage provided to Citicorp under these policies ("Citicorp Policies") are attached to this Petition as Exhibit "A." With respect to two automobile policies listed above, NKA 1499371-00 (covering the period of April 1, 1991 to July 1, 1992) and NKA 1499371-01 (covering the period of July 1, 1992 to July 1, 1993), after due diligence, CIUSA, Citicorp and Reliance have been unable to locate these policies. All indications are that

these policies were issued and were reinsured; accordingly, these policies are included in this Petition but the declarations pages are not included in Exhibit "A."

2. The Citicorp Policies identified in Exhibit "A" and issued by Reliance were reinsured by CIUSA. 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, CIUSA submitted a written request to the Liquidator seeking approval of direct payments by CIUSA to Citicorp. The written request of CIUSA is attached to this Petition as Exhibit "C."

5. Upon submission of documentation in support of CIUSA's application to the Liquidator, the Liquidator has approved the written request of CIUSA seeking approval of direct payment of reinsurance to Citicorp. The Liquidator has concluded that CIUSA's reinsurance contracts comply with 40 P.S. § 221.34, the Guidelines and the Order.

6. Specifically, the Liquidator has reviewed the CIUSA reinsurance contracts and determined that they are binding contracts which specifically provide for a direct coverage obligation (a "cut through") by CIUSA to Citicorp in the event of the insolvency of Reliance in place of and in substitution for any obligations of Reliance to Citicorp, as required by Paragraph

4(b) of the Guidelines, 40 P.S. § 221.34 and the Order. In Article XIII. 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 [CIUSA] to the Named Insured under the Policies when [CIUSA] 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 [CIUSA] to the payees under any such policy and in substitution for the obligations of [Reliance] to such payees.

This language of the reinsurance agreements allows CIUSA to pay the Named Insured, Citicorp, directly if CIUSA assumes the obligation and Citicorp consents. This is accomplished by the execution of the "Assumption and Substitution by Reinsurer" document and the "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 CIUSA reinsurance agreements in Article XIII. 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 Citicorp "as described in Schedule I." Schedule I to the reinsurance agreements identifies the insured as Citicorp, together with the relevant policy numbers of the Citicorp Policies issued, as identified 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. CIUSA executed an "Assumption and Substitution by Reinsurer" on a form authorized by the Guidelines and the Order. This document provides that CIUSA has unequivocally assumed a direct coverage obligation to Citicorp, that the "cut-through" payment

will be made in satisfaction of the coverage obligations assumed by Reliance to Citicorp, and that CIUSA 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. Citicorp executed an "Informed Consent to Substitution of Reliance" on a form authorized by the Guidelines and the Order. This document provides for Citicorp's informed consent to the direct coverage relationship, which is in substitution for the relationship between Citicorp and Reliance and consents to the release of Reliance for all claims by Citicorp against Reliance relating to coverage assumed by CIUSA 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 CIUSA and Citicorp 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.

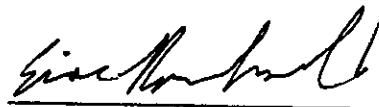
11. Pursuant to Paragraph 11 of the Guidelines and the Order, the Liquidator submits the CIUSA documentation to this Court and recommends approval of direct payment by CIUSA.

Accordingly, M. Diane Koken, Commissioner of the Insurance Department of the Commonwealth of Pennsylvania, in her official capacity as Statutory 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 Citicorp Insurance USA, Inc. to Citicorp USA, Inc. and its subsidiaries.

Respectfully submitted,

PEPPER HAMILTON LLP

By:



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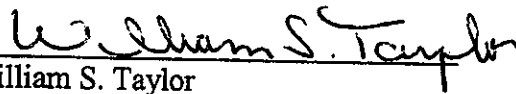
Dated: July 15, 2002

**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 Citicorp Insurance USA, Inc. to Citicorp. USA, Inc. 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.

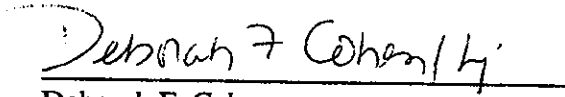
Executed on July 12, 2002.

  
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 Citicorp Insurance USA, Inc. to Citicorp USA, Inc. by Petitioner M. Diane Koken, Insurance Commissioner of the Commonwealth 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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