

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 RBH Reinsurance Ltd. ("RBH") and Warrantech Automotive, Inc. ("Warrantech") 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 RBH's assumption of a direct coverage obligation to Warrantech upon the terms set forth in RBH's request and supporting documentation and approves the direct payment to Warrantech by RBH 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 RBH REINSURANCE LTD.

Petitioner M. Diane Koken, Insurance Commissioner 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 RBH Reinsurance Ltd. ("RBH") to Warrantech Automotive, Inc. ("Warrantech") in accordance with direct coverage obligations assumed by RBH under reinsurance agreements reinsuring policies of insurance issued by Reliance to Warrantech, as set forth below.

For purposes of this Petition, "Reliance" will refer to Reliance Insurance Company (In Liquidation).

I. The Relevant Policies and Reinsurance Agreements

1. Reliance entered into agreements with Warrantech that have been denominated service contract contractual liability insurance policies covering risks associated with motor vehicle service contracts issued through Warrantech to certain car dealerships. The contract reimbursement insurance policies relevant to this Petition are Policy Number VSC –

0000002 and Policy Number VSC – 0004004. Copies of the Declaration Pages evidencing coverage provided to Warrantech by Reliance under these contracts (hereinafter, the “Policies”) are attached to this Petition as Exhibit “A.”

2. Warrantech is engaged in the business of providing motor vehicle service contracts designed to extend many aspects of the vehicle manufacturer’s original factory warranty. The service contracts typically are sold through car dealerships to the motor vehicle owners, referred to in the industry as service contract holders.

3. The Policies are intended to serve two purposes. First, the Policies provide that, in return for a premium for each service contract insured, Reliance will reimburse the service contract provider for claims made for payments and services by the service contract holder. Second, many states have enacted legislation requiring service contract providers, like Warrantech, to obtain insurance coverage which permits the service contract holders, in the event the service contract provider defaults on its obligations, to be reimbursed for the expenses incurred in having the contract services performed by another provider. These Policies are intended to satisfy the statutory requirement to ensure performance on the service contract provider’s obligations.

4. The service contract holders generally are provided with a certificate as part of the service contract. The certificate identifies the insurer responsible for ensuring performance of a service contract provider’s obligations.

5. With respect to the insurance coverage at issue here, the Policies comply with the laws of Texas regulating the service contract industry by permitting the service contract holders, in the event the service contract provider defaults on its obligations, to be reimbursed for the expenses incurred in having the contract services performed by another provider.

6. Pursuant to the "Contractual Reimbursement Insurance Reinsurance Agreement," attached as Exhibit "B" ("the RBH Reinsurance Agreement"), RBH obligated itself to assume any and all of Reliance's obligations and liabilities under the Policies with respect to vehicle service contracts sold through business sources identified in the Reinsurance Agreement, including claims for reimbursement made by the Warrantech and claims made directly by the designated service contract holders. As set forth in Article I, the Insuring Clause of the Reinsurance Agreement states:

[Reliance] hereby obligates itself to cede to [RBH] and [RBH] hereby obligates itself to accept 100% of [Reliance's] obligations and liabilities as herein provided and specified under and all Policies issues or entered into by [Reliance] through Warrantech providing coverage of vehicle service contracts sold through business sources identified in Exhibit A to this Agreement"

See Exhibit B, Article I.A.

7. Exhibit A of the RBH Reinsurance Agreement lists several related car dealerships, collectively referred to herein as "the Don Davis Dealerships." See Exhibit "B." Accordingly, the RBH Reinsurance Agreement reinsures Reliance for any and all claims made on service contracts sold through the Don Davis Dealerships; the RBH Reinsurance Agreement does not assume liability for any other claims which may be made under the Policies.¹

II. The Guidelines and RBH's Direct Payment Request

8. 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.

¹ The Statutory Liquidator does not seek approval for direct payment by RBH to Warrantech except with respect to claims under the Don Davis Dealership service contracts.

9. On April 1, 2002, RBH filed a joint petition for leave to intervene in these proceedings for the purpose of objecting to the Guidelines.² The Liquidator and RBH settled the disputed issues giving rise to RBH's objection; thereafter, RBH withdrew its petition for leave to intervene.

10. Subsequently, 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.

11. Pursuant to Paragraph 3 of the Guidelines, RBH submitted a written request to the Liquidator seeking approval of direct payments by RBH to Warrantech for the entire liability to Reliance assumed by RBH under the RBH Reinsurance Agreements; that is, RBH requested approval to make direct payment (a "cut-through") to Warrantech for all claims made with respect to service contracts sold through the Don Davis Dealerships. The written request of RBH is attached to this Petition (without attachments) as Exhibit "C."

12. Upon submission of documentation in support of RBH's application to the Statutory Liquidator, the Statutory Liquidator approved the written request of RBH seeking approval of direct payment of its assumed liability under the RBH Reinsurance Agreements directly to Warrantech. As set forth more fully below, in accordance with ¶ 4(b) of the Guidelines, the Statutory Liquidator has considered the magnitude and scope of RBH's direct coverage obligation to Warrantech as governed by the language of the reinsurance contracts and concluded that RBH's reinsurance contract complies with 40 P.S. § 221.34, the Guidelines and the Order.

² RBH petitioned this Court for leave to intervene with Magellan Reinsurance Company, Ltd. A separate petition for approval of direct payments by Magellan is also being submitted to this Court.

III. The Liquidator's Review and Recommendation

13. The Statutory Liquidator has determined that the RBH Reinsurance Agreement is a binding contract which specifically provides for a direct coverage obligation by RBH to Warrantech for all obligations and liabilities under the Policies for service contracts issued through the Don Davis Dealerships, and that this direct coverage obligation will be in place of and in substitution for all of the obligations of Reliance to Warrantech for any and all liabilities assumed by RBH under the RBH Reinsurance Agreements.

14. Specifically, the Statutory Liquidator has reviewed the Reinsurance Agreement and determined that it specifically provides for a direct coverage obligation from RBH to Warrantech in the event of the insolvency of Reliance in place of and in substitution for any obligations of Reliance to Warrantech in respect of the Don Davis Dealership claims. In Article XIII.C of the RBH Reinsurance Agreements attached as Exhibit "B," the Reinsurance Agreements provide as follows:

The reinsurance shall be payable by [RBH] to [Reliance] as its liquidator, receiver, conservator, or statutory successor, except (a) where the Agreement specifically provides another payee of such reinsurance in the event of the insolvency of [Reliance], and (b) where [RBH] with the consent of the direct insured or insureds have voluntarily assumed such policy obligations of [Reliance] as direct obligations of [RBH] to the payees under such policies and in substitution for the obligations of [Reliance] to the Payees.

15. Considering Article XIII.C. (Insolvency) along with Article I.A (Insuring Clause) of the Reinsurance Agreements, the Reinsurance Agreement allows RBH to pay Warrantech directly if RBH assumes all of Reliance's obligations and liabilities to Warrantech for claims made involving the Don Davis Dealerships, and Warrantech consents to RBH's assumption of that direct coverage obligation. See Exhibit B, Art. I.A. 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 below, as Exhibits “D” and “E,” respectively.

16. The Statutory Liquidator has determined that RBH has complied with Guideline Paragraph 4(b) because Warrantech may look to RBH directly to satisfy coverage obligations in place of and in substitution for any obligations of Reliance to Warrantech under the Policies pertaining to the Don Davis Dealerships. Accordingly, with respect to these claims under the Don Davis Dealership service contracts, following the cut-through, RBH will have assumed 100% of Reliance’s liabilities and obligations to Warrantech under the Policies. Exercising her discretion under § 221.34 and the Guidelines, see Guideline 4(b), the Statutory Liquidator has determined that this comports with the purpose and intent of the Guidelines because it results in the complete substitution of Reliance regarding all of its liabilities with respect to a category of claims which may be made under the Policies, even though it does not eliminate Reliance’s responsibility for claims which may be made under the Policies arising from dealerships other than the Don Davis Dealership.

17. The Statutory Liquidator has determined that the RBH Reinsurance Agreement in Article XIII.C., quoted above, specifically identifies that the direct coverage obligation flows to Warrantech and that all direct payments under the reinsurance agreements are similarly to be made to Warrantech or the Don Davis Dealerships.

18. The Statutory Liquidator has determined that, in the context of a service contract reimbursement insurance policy where claims may be made against the policy by both Warrantech and the service contract holders, Article I.A of the reinsurance agreement identifies the individual named insureds with the particularity required by Paragraph 4(a) of the Guidelines, 40 P.S. § 221.34 and the Order. See Exhibit B, Art. I.A.

19. The Liquidator has determined that the "Assumption and Substitution by Reinsurer" submitted by RBH contains terms "substantially similar" to those contained in the form authorized by the Guidelines and the Order. In pertinent part, it provides:

- (a) that RBH has unequivocally assumed a direct coverage obligation to the Named Insureds for 100% of the obligations and liabilities of Reliance for claims arising out of the service contracts issued through the Don Davis dealerships;
- (b) that the "cut-through" payment will be made in satisfaction of the coverage obligations of Reliance to the Named Insureds with respect to claims made on Don Davis dealership service contracts; and,
- (c) that the magnitude and scope of the direct coverage obligation sought to be assumed by RBH is consistent with the language of the reinsurance agreement and will release the Reliance estate from all liability to the Named Insureds for claims covered by the reinsurer's direct coverage obligation.

The "Assumption and Substitution by Reinsurer" is attached to this Petition as Exhibit "D"; and the Liquidator has determined that the document complies with the requirements of Paragraphs (b), (c) and (e) of the Guidelines, 40 P.S. § 221.34 and the Order.

20. In conformance with Paragraph 4(e) of the Guidelines, Warrantech has executed an "Informed Consent to Substitution of Reliance" containing terms substantially similar to those contained in the form authorized by the Guidelines and the Order. This document provides for Warrantech's informed consent to the direct coverage relationship, which is in substitution for the relationship between the direct insured and Reliance with respect to service contracts issued through the Don Davis dealerships, and consents to the release of Reliance from all liability and obligations to these insureds relating to the direct coverage obligation assumed by RBH 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."

21. In accordance with Paragraph 4(e), the Liquidator has determined that there are no other contractual provisions that RBH and Warrantech have to comply with, other than obtaining consent of the direct insured, which they have done by obtaining the Informed Consent to Substitution of Reliance, as described in Paragraph 20 above.

22. Pursuant to the Guidelines and the Order, the Liquidator submits the RBH documentation to this Court and recommends approval of direct payment by RBH.

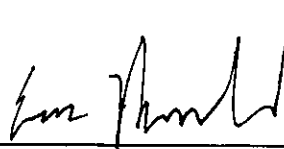
Accordingly, M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Statutory Liquidator of Reliance Insurance Company, hereby respectfully requests that this Court grant this Petition and enter the Order attached

confirming the approval of the Liquidator and permitting the direct payment from RBH to Warrantech for claims arising out of service contracts issued through the Don Davis dealerships.

Respectfully submitted,

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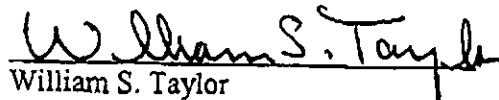
Dated: October 4, 2002

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 RBH Reinsurance Ltd. to Warrantech Automotive, 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 October 4, 2002.


William S. Taylor

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2002 I caused a copy of the Petition for Approval of Direct Payment pursuant to 40 P.S. § 221.34 by RBH Reinsurance Ltd. to Warrantech Automotive, Inc. 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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