

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

\_\_\_\_\_  
M. DIANE KOKEN :  
Insurance Commissioner of the :  
Commonwealth of Pennsylvania, :  
 :  
Plaintiff, :  
 :  
v. :  
 :  
RELIANCE INSURANCE COMPANY, :  
 :  
Defendant :  
\_\_\_\_\_

DOCKET NO. 269 MD 200

RECEIVED AND FILED  
PHILADELPHIA  
COMMONWEALTH COURT  
OF PENNSYLVANIA  
JUL 31 11 49 AM '01

ORDER

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, 2001, upon consideration of petitioner's Emergency Petition to Extend the 60-Day Stay Pursuant to Paragraph 22 of the Commonwealth Court's May 29, 2001 Order, it is hereby ORDERED that the petition is GRANTED. Any and all proceedings and actions, including but not limited to discovery, in each of the cases identified in Exhibit "A" hereto are hereby stayed for a period of 180 days, such period to commence on the date of this order.

\_\_\_\_\_  
COLINS, J.

## EXHIBIT A

1. Bank One:

In re Bank One Securities Litigation, United States District Court for the Northern District of Illinois (Eastern Division), No. 00-CV-0767 (First Chicago).

Levitan v. McCoy, United States District Court for the Northern District of Illinois, No. 00-CV-5096 (First Commerce).

Kenneth Carlson, et al. v. McCoy, et al., United States District Court for the Eastern District of Texas, No. 500CV 259

In re Old Banc One Shareholders Securities Litig., United States District Court for the Northern District of Illinois, No. 2100.

2. Bank of America:

In re BankAmerica Corp. Securities Litigation, United States District Court for the Eastern District of Missouri (Eastern Division), MDL No. 1264.

3. Marine Military Academy:

John Peter, et al. v. Marine Military Academy, 197th Judicial District Court, Cameron County, Texas, Cause # 98-07-2761-C;

Debbie Wayne, et al. v. Marine Military Academy, et al., 197th Judicial District Court, Cameron County, Texas, Cause # 98-01-119-C;

Samuel Elza v. Marine Military Academy, et al., 197th Judicial District Court, Cameron County, Texas, Cause # 99-02-863-C;

Parents of John Doe, et al. v. Marine Military Academy, 404th Judicial District Court, Cameron County, Texas, Cause # 97-11-7227-E.

4. Towers, Perrin, Forster & Crosby:

The Los Angeles County Employees Retirement Association, et al. v. Towers, Perrin, Forster & Crosby, Inc., et al., United States District Court for the Central District of California (Western Division), Case No. CV-01-1351-DDP (CTX).

5. Oxford Health Plans:

In re Oxford Health Plans, Inc. Securities Litigation and In re Oxford Health Plans, Inc. Derivative Litigation, United States District Court for the Southern District of New York, MDL Docket No. 1222-D (CLB).

6. Xerox, Inc.:

Russell Carlson, et al. v. Xerox Corporation, et al., United States District Court for the District of Connecticut, Case No. 3:00-CV-1621 (securities class action);

In re Xerox Derivative Actions, Index No. 00-114687, Supreme Court of the State of New York, County of New York.

7. Kutak Rock:

Waynesburg College, et al. v. Terry L. Church, et al., United States District Court for the Southern District of West Virginia, Civil Action No.: 1-00-CV-0081.

8. Cell Pathways:

In re Cell Pathway Securities Litig., United States District Court for the Eastern District of Pennsylvania, Master.

Robert Frutkin, et al. v. Cell Pathways, Inc., et al., United States District Court of Pennsylvania, Civil Action No. 01-CV-1348.

9. Foxmeyer Health Corp.:

Zuckerman v. Foxmeyer Health Corp., et al., United States District Court for the Northern District of Texas, Case No. 3-96CV-2258-t.

10. Cendant:

In re Cendant Corp. Derivative Action, United States District Court for New Jersey, No. 98-1998.

Dr. Phoebe T. Corwin, et al. v. Henry R. Silverman, Delaware Chancery Court, New Castle County, C.A. No. 16347.

11. Fruit of the Loom, Inc.:

New England Health Care Employees Pension Fund v. Fruit of the Loom, Inc., et al., United States District Court for the Western District of Kentucky (Bowling Green Division) No. 1:98-CV-99M.

Carol Bradley, derivatively on behalf of Fruit of the Loom, Inc. v. William Farley, et al., United States District Court for the Western District of Kentucky (Bowling Green Division), No. 1:98-CV-149M.

12. Columbia/HCA:

Sidney Morse v. R. Clayton McWhorter, et al., United States District Court for the Middle District of Tennessee, Civil Action No. 3-97-0370.

H. Carl McCall, et al. v. Richard L. Scott, et al., United States District Court for the Middle District of Tennessee, Civil Action No. 3-97-0838.

Charles Ferguson v. Columbia/HCA Healthcare Corp., et al., Circuit Court for Washington County, Tennessee, Case No. 18679.

Kemp Hoop et al. v. Columbia/HCA Healthcare Corporation, et al., District Court of Johnson County, Texas, 249<sup>th</sup> Judicial District, Case No. 249-171-97.

13. IKON Office Solutions, Inc.:

Whetman, et al., v. IKON Office Solutions, Inc., et al., MDL Docket No. 1318 (E.D.Pa.).

14. United Companies Financial Corp.:

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Amy Bergeron, et al. v. U.S. Trust Co. of Calif., et al., United States District Court for the Middle District of Louisiana, No. 00-174-D-M3.

Rebecca Donaldson, et al. v. U.S. Trust Co. of Calif., et al., United States District Court for the Middle District of Louisiana, No. 00-509-D-M3. Three cases have been consolidated.

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16. Woodbridge Films:

Fuji Bank, Claimant v. Woodbridge Films, Respondent (arbitration).

17. Allegheny Health Education and Research Foundation (AHERF):

In re Allegheny Health Education and Research Foundation, et al., United States District Court for the Western District of Pennsylvania, Miscellaneous No.: 00-40; Civil Action No.: 99-854, 99-1124, 99-1125, 99-1907, 99-2069; 00-231, 00-668, 00-2019, 00-2081, 01-04, 01-270, 01-441, 01-493; and all other related proceedings.

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M. DIANE KOKEN	:	
Insurance Commissioner of the	:	
Commonwealth of Pennsylvania,	:	
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Plaintiff,	:	
	:	
v.	:	DOCKET NO. 269 MD 2001
	:	
RELIANCE INSURANCE COMPANY,	:	
	:	
Defendant	:	

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**EMERGENCY PETITION TO EXTEND THE 60-DAY  
STAY PURSUANT TO PARAGRAPH 22 OF  
THE COMMONWEALTH COURT'S MAY 29, 2001 ORDER**

Petitioner M. Diane Koken, Insurance Commissioner, as Rehabilitator for Reliance Insurance Company ("Rehabilitator"), by her undersigned counsel, respectfully petitions this Court, pursuant to paragraph 22 of the Court's May 29, 2001 order, to extend the 60-day stay for an additional 180 days with respect to certain claims against insureds of Reliance Insurance Company that are identified in Exhibit "A" hereto. In support of her petition, the Rehabilitator states:

**A. The Statutory Scheme in Pennsylvania for  
Rehabilitation of a Troubled Insurer**

1. The Pennsylvania Legislature enacted the Pennsylvania Insurance Department Act, 40 Pa. Stat. §§ 221.1 - 221.18 (the "Insurance Department Act"), which sets forth a statutory mechanism for the rehabilitation of a troubled insurer domiciled in Pennsylvania.

2. The Insurance Department Act expressly permits the Insurance Commissioner to petition the Commonwealth Court for an order authorizing her to

rehabilitate a domestic insurer. See 40 Pa. Stat. § 221.15(a). The Act further provides that the Court, in its discretion, may issue such an order. 40 Pa. Stat. §221.12(a). The Act requires the Court, when it issues a rehabilitation order, to appoint the Insurance Commissioner as rehabilitator and to “direct the rehabilitator forthwith to take possession of the assets of the insurer . . .” 40 Pa. Stat. § 221.15(c).

3. The Insurance Department Act confers broad powers upon the rehabilitator. Specifically, it confers upon the rehabilitator all the powers of the directors, officers and managers of the insurer and full power to deal with the property and business of the insurer. 40 Pa. Stat. § 221.16. It also confers upon the rehabilitator the power to take any action she deems necessary or expedient to correct the condition or conditions which caused the order of rehabilitation to be entered. Id.

4. To facilitate the performance of the duties of a receiver (which, by definition, includes rehabilitators (see 40 Pa. Stat. § 221.3)), the Insurance Department Act provides that the rehabilitator may at any time:

apply for and the Commonwealth Court may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent . . . (iii) interference with the receiver or with the proceeding . . . (vi) the institution of further prosecution of any actions or proceedings; (vii) the obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets or its policyholders; (viii) the levying of execution against the insurer, its assets or its policyholders . . . .

40 Pa. Stat. § 221.5(a).

5. The Insurance Department Act further provides that the rehabilitator may prepare a plan for the reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer. 40 Pa. Stat. § 221.16(d).

**B. This Court's Rehabilitation Order**

6. On May 29, 2001, the Commonwealth Court of Pennsylvania entered an Order ("Rehabilitation Order") placing Reliance, a national property and casualty insurer that writes insurance policies throughout the United States and internationally, into rehabilitation pursuant to the Insurance Department Act.

7. Consistent with the Insurance Department Act, the Rehabilitation Order appointed petitioner M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, and her successors in office, Rehabilitator of Reliance.

8. Paragraph 3 of the Rehabilitation Order directs the Rehabilitator "to take immediate possession of Reliance's property, business and affairs" and "to take such action as the nature of this case and interests of policyholders, certificateholders, creditors or the public may require." In addition, the Rehabilitation Order, at paragraph 4, vests in the Rehabilitator full power and authority to perform her duties and responsibilities as rehabilitator of Reliance.

9. To facilitate the Rehabilitator's performance of her duties, paragraph 20 of the Rehabilitation Order expressly enjoins and restrains "[a]ll persons, in the Commonwealth or elsewhere" from, *inter alia*, "(a) instituting or further prosecuting any action in law or equity against Reliance or the Rehabilitator; (b) obtaining preferences, judgments, attachments, garnishments or liens, including obtaining collateral in any litigation, mediation, or arbitration involving Reliance, the Rehabilitator, or Reliance's assets and property . . . ."

10. The Rehabilitation Order contains stay provisions. Paragraph 22 mandates that all actions against Reliance be stayed indefinitely. It also mandates that all actions against Reliance insureds be stayed for a minimum of 60 days. The Order expressly directs

that "[a]ll actions currently pending in the Courts of the Commonwealth of Pennsylvania or elsewhere against an insured of Reliance are stayed for 60 days or such additional time as the Rehabilitator may request." (Emphasis added). By its own express terms, paragraph 22 of the Rehabilitation Order authorizes the Rehabilitator to request an extension of the 60-day stay.

11. The Rehabilitation Order further enjoins all persons, corporations and other entities, wherever located, from "interfering in any manner with the Rehabilitator's possession, title and rights to the assets and property of Reliance and from interfering in any manner with the conduct of the rehabilitation of Reliance."

C. The Current Status Of Reliance's Rehabilitation

12. As a national insurer, Reliance wrote policies throughout the United States and has litigation pending in virtually every state in the United States and internationally.

13. Since this Court's entry of the Rehabilitation Order, the Rehabilitator has been engaged in the monumental task of evaluating the nature and extent of pending litigation against Reliance and/or its insured for the purpose of determining Reliance's total financial exposure. This task is absolutely critical to determining whether Reliance can be rehabilitated or whether liquidation is necessary. In contrast to liquidation, rehabilitation avoids the necessity to call on the state guaranty fund, with inevitable limits on recovery and assessment to other insurers. Accordingly, Reliance's successful rehabilitation is of exceptional importance to Reliance policyholders, the Commonwealth of Pennsylvania, other states and their guaranty associations and the general public.

14. While the Rehabilitator has not yet completed her evaluation of the extent of pending litigation and her analysis of the magnitude of Reliance's financial exposure, she

estimates that, at the time of this Court's entry of the Rehabilitation Order, there were over 190,000 claims and over 15,000 lawsuits pending against Reliance and/or its insureds. Further, there are over 4,500 outside counsel handling claims throughout the United States, most of who are handling multiple claims or lawsuits. The potential exposure has been estimated to exceed \$9 billion.

15. In addition, the Rehabilitator has been communicating with each of the law firms that are responsible for handling Reliance cases to determine the volume of cases and their status. Because fees owed to outside counsel by Reliance for work performed before May 29, 2001 are not being processed for payment, but instead would be claims against the estate of Reliance to be addressed in any Rehabilitation Plan, the Rehabilitator is in the process of confirming each lawyer's willingness to continue to act as counsel for Reliance or for a Reliance insured. To the extent that a lawyer is unwilling to continue as counsel, the Rehabilitator is attempting to secure new counsel to handle the defense of such cases.

16. Due to the sheer volume of the pending cases and the number of law firms handling Reliance cases, the Rehabilitator is still continuing her evaluation of the pending cases.

17. The sixty-day stays obtained in the early stages of Reliance's rehabilitation as to actions against Reliance insureds expired on July 29, 2001.

18. The Rehabilitator has determined not to seek a blanket extension of the 60-day stay for all cases and, in most cases, she will not be seeking an additional stay beyond the initial 60-day stay period. She has decided to seek an extension of the 60-day stay only with respect to a few cases that pose significant financial exposure to Reliance.

**D. Significant Claims Against Reliance Insureds**

19. Based upon her review to date, the Rehabilitator has identified a very small number of claims, each of which she has determined may present a significant financial exposure to Reliance<sup>1</sup>. These 17 claims are identified in Exhibit "A" hereto. While these claims represent significantly less than 1% of total number of lawsuits (approximately 15,000), the total potential exposure that these claims present may be well in excess of \$100 million. Accordingly, these claims potentially pose a significant financial drain on Reliance's resources and would have a substantial impact on the viability of Reliance's rehabilitation.

20. Because these claims present a significant exposure to Reliance and directly impact the Rehabilitator's ability to rehabilitate the insurer, the Rehabilitator believes that she and her staff need to carefully analyze the status of each case, its posture and merits, settlement value and potential for settlement, as well as defense strategy, and adequacy of trial counsel and, in some cases, whether replacement counsel is warranted.

21. Due to the number of cases pending against Reliance and its insureds in general and the significance of the claims identified in Exhibit "A" in particular, the Rehabilitator believes that an additional stay of 180 days is necessary and warranted in order to permit her sufficient time to properly evaluate the cases identified in Exhibit "A".

22. In expressly providing that actions "against an insured of Reliance are stayed for 60 days or such additional time as the Rehabilitator may request," the Rehabilitation Order specifically contemplates an extension of the 60-day stay period in cases, such as those identified by the Rehabilitator here, where the Rehabilitator needs additional time.

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<sup>1</sup> As the Rehabilitator continues her survey of pending cases, there may be a few additional cases, which may require her to seek stay relief from the Court.

23. Whatever prejudice may occur as a result of the requested extension of the 60-day stay is clearly outweighed by the absolutely critical necessity of the extension for the Rehabilitator to perform her duty to assess the financial status of Reliance and attempt to maintain a successful rehabilitation.

WHEREFORE, the Rehabilitator requests that this Court clarify or modify its May 29, 2001 order to grant a stay of an additional 180 days with respect to the cases identified in Exhibit "A," such stay period to commence on the date of this Court's order.

BLANK ROME COMISKY & MCCAULEY LLP

By:



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of the Commonwealth of Pennsylvania, as  
Rehabilitator for Reliance Insurance Company

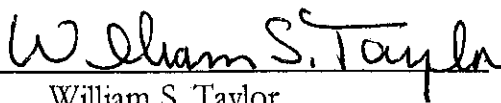
OF COUNSEL:  
David F. Simon  
Chief Counsel  
The Pennsylvania Insurance Department  
1341 Strawberry Square  
Harrisburg, PA 17120  
(717) 787-6009

Dated: July 31, 2001

## VERIFICATION

I, William S. Taylor, am the Deputy Insurance Commissioner, Pennsylvania Insurance Department, Office of Liquidations, Rehabilitations and Special Funds, and the Deputy Rehabilitator of Reliance Insurance Company. I hereby verify that the statements contained in the foregoing petition are true and correct to the best of my knowledge, information and belief.

I understand that the statements in this petition are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
William S. Taylor

Date: July 31, 2001

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CERTIFICATE OF SERVICE

The undersigned certifies that on July 31, 2001 she served a copy of the foregoing Emergency Petition to Extend the 60-Day Stay upon the following individual by first class mail, postage prepaid:

M. Diane Koken  
Insurance Commissioner of the  
Commonwealth of Pennsylvania  
Pennsylvania Department of Insurance  
13<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120



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ANN E. KIM