

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 Elwood Insurance Limited, Celwood Insurance Company, and Hoechst Celanese Insurance Company Limited (collectively "the Hoechst Celanese reinsurers") and Hoechst Celanese Insurance Company ("Celanese") 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 the Hoechst Celanese reinsurers' assumption of a direct coverage obligation to Celanese upon the terms set forth in the Hoechst Celanese reinsurers' request and supporting documentation and approves the direct payment to

Celanese by the Hoechst Celanese reinsurers 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

ORDER

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Therefore, in accordance with the Liquidator's recommendation, the Court hereby confirms the approval by the Liquidator and further approves the Hoechst Celanese reinsurers' assumption of a direct coverage obligation to Celanese upon the terms set forth in the Hoechst Celanese reinsurers' requests and supporting documentation and approves the direct payment to

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BY THE COURT:

James Gardner Colins, President Judge

Policy Year 1989-90

NGA 1494620-90
NKA 1494621-00

Policy Year 1990-91

NWA 1494619-01
NGA 1494620-01
NGA 1947272-00
NKA 1494621-01
NKA 1496820-01

Policy Year 1991-92

NWA 1494619-02
NWB1499819-00
NGA 1494620-02
NGA 1497272-01
NKA 1494621-02
NKA 1496820-02

Policy Year 1992-93

NWA 1494619-03
NWA 0103071-00
NWA 0103143-00
NWA 0103063-00
NWA 0103146-00
NWA 0103061-00
NWA 0103142-00
NWA 0103062-00
NWA 0103144-00
NWA 0103064-00
NWA 0103058-00
NWA 0103060-00
NWA 0103056-00
NWA 0103057-00
NWB 1499819-01
NGA 1494620-03
NGA 1497272-02
NGA 0103065-00
NKA 1494621-03
NKA 0103017-00
NKA 1496820-03
NKA 0103025-00

Policy Year 1993-94

NWA 1494619-04
NWA 0103071-01
NWA 0103143-01
NWA 0103063-01
NWA 0103142-01
NWA 0103062-01
NWA 0103144-01
NWA 0103064-01
NWA 0103058-01
NWA 0103060-01
NWA 0103056-01
NWA 0103057-01
NWA 0109232-00
NWA 0109233-00
NWA 0109230-00
NWA 0109177-00
NWB 1499819-02
NGA 1494620-04
NGA 1497272-03
NGA 0103065-01
NKA 1494621-04
NKA 0103017-01
NKA 1496820-04
NKA 0103025-01
NKA 0108411-00

Policy Year 1994-95

NWA 0103071-02
NWA 1494619-05
NWA 0103143-02
NWA 0103063-02
NWA 0103142-02
NWA 0103062-02
NWA 0103144-02
NWA 0103064-02
NWA 0103060-02
NWA 0103056-02
NWA 0115668-00
NWA 0103057-02
NWA 0109232-01
NWA 0109233-01
NWA 0103058-02
NWA 0109177-01
NWA 0115666-00
NWB 1499819-03
NGA 1494620-05
NGA 1497272-04
NGA 0103065-02
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NKA 0103017-02
NKA 1496820-05
NKA 0103025-02
NKA 0108411-01

Policy Year 1995-96

NWA 0103071-03
NWA 1494619-06
NWA 0122131-00
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NGA 1494620-06
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NGA 0103065-03
NKA 1494621-06
NKA 0103017-03
NKA 1496820-06
NKA 0103025-03
NKA 0108411-02

Policy Year 1996-97

NWA 1494619-07
NWA 0103071-04
NWA 0103143-04
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NWA 0109233-03
NWA 0125931-01
NWA 0128858-00
NWB 1499819-05
NGA 1494620-07
NGA 0103065-04
NKA 1494621-07
NKA 0103017-04
NKA 1496820-07
NKA 0103025-04
NKA 0108411-03
NKA 0128859-00

Policy Year 1997-98

NWA 0103071-05
NWA 1494619-08
NWA 0103143-05
NWA 0103064-05
NWA 0103144-05
NWA 0128858-01
NWA 0125931-02
NWA 0135991-01
NWA 0136212-01
NWA 0129574-01
NWA 0134455-01
NWA 0133761-01
NXC 0138397-01
NWB 1499819-06
NGA 1494620-08
NGA 0103065-05
NKA 1494621-08
NKA 0103017-05
NKA 1496820-08
NKA 0103025-05
NKA 0108411-04
NKA 0128859-01

Policy Year 1998-99

NWA 0103071-06
NWA 1494619-09
NWA 0103143-06
NWA 0103064-06
NWA 0103144-06
NWA 0128858-02
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NWA 0135991-02
NWA 0136212-02
NWA 0146660-00
NWA 0134455-02
NWA 0133761-02
NWA 0138397-02
NWA 0145910-00
NXC 1499819-07
NGA 1494620-09
NGA 0103065-06
NGA 0144016-01
NKA 1494621-09
NKA 0103017-06
NKA 1496820-09
NKA 0103025-06
NKA 0108411-05
NKA 0128859-02

Policy Year 1999-2000

NWA 0103071-07
NWA 1494619-10
NWA 0103143-07
NWA 0128858-03
NWA 0135991-03
NWA 0136212-03
NWA 0146660-01
NWA 0134455-03
NWA 0133761-03
NWA 0155556-00
NXC 0138397-03
NWA 0145910-01
NGA 1494620-10
NGA 0103065-07
NKA 1494621-10
NKA 0103017-07
NKA 1496820-10
NKA 0103025-07
NKA 0108411-06
NKA 0128859-03

2. The Celanese Policies issued by Reliance that are listed in Paragraph 1 were reinsured by the Hoechst Celanese reinsurers. The relevant reinsurance agreements are attached to this Petition as Exhibit "A."

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, the Hoechst Celanese reinsurers submitted written requests to the Liquidator seeking approval of direct payments by the Hoechst Celanese reinsurers to Celanese. The written requests of the Hoechst Celanese reinsurers are attached to this Petition as Exhibit "B."¹

5. Upon submission of documentation in support of the Hoechst Celanese reinsurers' application to the Liquidator, the Liquidator has approved the written requests of the Hoechst Celanese reinsurers seeking approval of direct payment of reinsurance to Celanese, as it relates to the policies listed in Paragraph 1. The Liquidator has concluded that the Hoechst

¹ All exhibits supporting the Hoechst Celanese reinsurers' written requests are included as Exhibits "A", "D" and "E" to this petition.

Celanese reinsurers' reinsurance contracts comply with 40 P.S. § 221.34, the Guidelines and the Order, with respect to those policies.²

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

It is further agreed and understood that as to all reinsurance made, ceded, renewed or otherwise becoming effective hereunder, the reinsurance shall be payable by the [Hoechst Celanese reinsurers] to [Reliance] or to its liquidator or receiver or statutory successor, except (a) where the contract specifically provided another payee of such reinsurance in the event of the insolvency of, or (b) where the [Hoechst Celanese reinsurers] with the consent of the direct insured has assumed obligations of [Reliance] under any of the Policies as direct obligations of the [Hoechst Celanese reinsurers] 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 the Hoechst Celanese reinsurers to pay the Named Insured, Celanese, directly if the Hoechst Celanese reinsurers assume the obligation and Celanese 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.

² The Hoechst Celanese reinsurers have also requested cut-throughs for certain other policies not set forth in Paragraph 1. The requests have been denied as to those other policies, which has been communicated to the Hoechst Celanese reinsurers by letter dated October 15, 2002 (Exhibit "C").

7. In addition, the Liquidator determined that the Hoechst Celanese reinsurers' reinsurance agreements in Article XII, quoted in Paragraph 6 above, specifically provide that the "cut through" payment is to be made where another payee for the reinsurance is specifically provided for. Article I.A (Definitions) of the reinsurance agreements defines "Policies" as policies of insurance . . . issued by [Reliance] to Celanese "as described in Schedule I", as well as addenda to the agreements specifically amending Schedule I. Schedule I to the reinsurance agreements identifies the relevant policy numbers of the Celanese 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. The Hoechst Celanese reinsurers executed "Assumption and Substitutions by Reinsurer" on forms authorized by the Guidelines and the Order. These documents provide that the Hoechst Celanese reinsurers have unequivocally assumed a direct coverage obligation to Celanese, that the "cut-through" payments will be made in satisfaction of the coverage obligations assumed by Reliance to Celanese, and that the Hoechst Celanese reinsurers release 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 Substitutions by Reinsurer is attached to this Petition as Exhibit "D."

9. Celanese executed "Informed Consents to Substitution of Reliance" on forms authorized by the Guidelines and the Order. These documents provide for Celanese's informed consent to the direct coverage relationship, which is in substitution for the relationship between Celanese and Reliance. The documents consent to the release of Reliance for all claims by Celanese against Reliance relating to coverage assumed by the Hoechst Celanese reinsurers as

required by Paragraph 4(e) of the Guidelines, 40 P.S. § 221.34 and the Order. The Informed Consents to Substitution of Reliance are attached to this Petition as Exhibit "E."

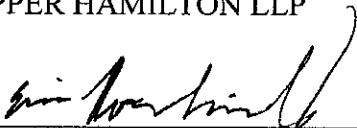
10. In accordance with Paragraph 4(e), the Liquidator has determined that there are no other contractual provisions with which the Hoechst Celanese reinsurers and Celanese have to comply, other than obtaining the consent of the insured, which they have done by obtaining the informed consent of the insured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

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

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 the Hoechst Celanese reinsurers to Hoechst Celanese Insurance Company.

Respectfully submitted,

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Dated: October 21, 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 Elwood Insurance Limited, Celwood Insurance Company and Hoechst Celanese Insurance Company, Limited to Hoechst Celanese Insurance Company 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 21, 2002.

William S. Taylor

CERTIFICATE OF SERVICE

I hereby certify that on October 25 2002 I caused a copy of the Petition for Approval of Direct Payment pursuant to 40 P.S. § 221.34 by Elwood Insurance Limited, Celwood Insurance Company, and Hoescht Celanese Insurance Company, Limited to Hoescht Celanese Insurance Company 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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Eric Rothschild

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v.

Reliance Insurance Company

No. 269 M.D. 2001 (Commonwealth Court of Pennsylvania)

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