

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 Objections of Phoenix Assurance PLC, Commercial Union Assurance Co., The British Aviation Insurance Company, Ltd., Marine Insurance Company, Ltd., and The Yorkshire Insurance Company, Ltd. to the Statutory Liquidator's Denial of a Direct Payment Request and the Response and Memorandum of Law of M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania in her official capacity as Statutory Liquidator of Reliance Insurance Company ("Statutory Liquidator"), the Court finds that the Direct Payment Request is not 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, the Court hereby affirms the denial of the Direct Payment Request by the Statutory Liquidator.

BY THE COURT:

James Gardner Colins, President Judge

b. The Objectors have not obtained the named insured's informed consent to the reinsurer's substitution for Reliance in the direct coverage relationship; and

c. The Objectors have not submitted documentary proof of its unequivocal assumption of Reliance's coverage obligations to the insured.

In its Objection, Objectors do not deny these three grounds upon which the Statutory Liquidator based its denial. In support of its Objections, however, they argue that: (1) failure to include an insolvency clause in the reinsurance contract makes the insolvency statute and this Court's Guidelines inapplicable; (2) under *Fidelity & Deposit Insurance Co v. Pink*, 302 U.S. 224, *reh. denied*, 302 U.S. 780 (1937), the Statutory Liquidator lacks authority to marshal the proceeds of the reinsurance contract; and (3) public policy considerations suggest that this Court should allow direct payment to the ABC Members.


The absence of an insolvency clause in the parties' reinsurance agreements does not relieve Objectors from the application of the insolvency statute, including Section 221.34. Absent satisfaction of the statute and Guidelines, a direct payment to the ABC Members would be an impermissible preference under the Pennsylvania insolvency laws. The Objectors' reliance upon *Pink* is misplaced, as that decision does not address the permissibility of direct payments from a reinsurer to the insured of an insolvent insurer. Lastly, the Objectors' public policy arguments do not preempt the application of the insolvency statute and this Court's Guidelines to Objectors' direct payment request.

Accordingly, the Statutory Liquidator respectfully requests that this Court enter an Order in the form attached affirming the Statutory Liquidator's denial of the request for direct payment.

Respectfully submitted,

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