

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 \_\_\_\_\_, 2003, 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 the Hilton Insurance Corporation, ("Hilton Insurance"), and the Hilton Hotels Corporation ("Hilton Hotels") 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 Hilton Insurance's assumption of a direct coverage obligation to Hilton Hotels upon the terms set forth in Hilton Insurance's request and supporting documentation and approves the direct payment to Hilton Hotels by Hilton Insurance in accordance with its direct payment obligations resulting from the assumption.

BY THE COURT:

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



2. The Hilton Hotel Policies issued by Reliance that are listed in Paragraph 1 were reinsured by Hilton Insurance. 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, Hilton Insurance submitted a written request to the Liquidator seeking approval of direct payments by Hilton Insurance to Hilton Hotels. The written request of Hilton Insurance is attached to this Petition as Exhibit "B."

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

6. Specifically, the Liquidator has reviewed the Hilton Insurance reinsurance contracts and determined that they are binding contracts which specifically provide for a direct coverage obligation (a "cut through") by Hilton Insurance to Hilton Hotels in the event of the insolvency of Reliance in place of and in substitution for any obligations of Reliance to Hilton Hotels, as required by Paragraph 4(b) of the Guidelines, 40 P.S. § 221.34 and the Order. In

Article XV of the 1995-1996 reinsurance agreement, and Article XIV of each of the reinsurance agreements for 1996 – 2000, all attached as Exhibit “A,” the agreements provides as follows:

In the event of the insolvency of the Company, reinsurance under this Agreement shall be payable by the Reinsurer to the Company or to its liquidator, receiver, or statutory successor, . . . except:

(a) Where the Agreement specifically provides another payee such as Hilton Hotels Corporation of such reinsurance in the event of the insolvency of the Company, and

(b) Where the Reinsurer, with the consent of the direct insured or insureds, has assumed such policy Obligations of the Company as direct Obligations of the Reinsurer to the payees under such policies and in substitution for the Obligations of the Company to such payees.

This language of the reinsurance agreements allows Hilton Insurance to pay the Named Insured, Hilton Hotels, directly if Hilton Insurance assumes the obligation and Hilton Hotels consents.

This is accomplished by the execution of the “Assumption and Substitution by Reinsurer” document and the “Informed Consent to Substitution of Reliance” documents, all of which were executed and are discussed in Paragraphs 8 and 9 below, as Exhibits “C” and “D,” respectively.

7. In addition, the Liquidator determined that the Hilton Insurance reinsurance agreements, in Article XV of the 1995-1996 agreement and Article XIV of all other agreements, quoted in Paragraph 6 above, specifically identify that the “cut through” payment is to be made to “another payee such as Hilton Hotels Corporation.” Article IV (Definitions) of the reinsurance agreements defines “Policies” as any and all binders, certificates, policies and contracts of insurance . . . issued by [Reliance] to Hilton Hotels “accepted or held covered provisionally or otherwise and listed in Article I hereof.” Article I to the reinsurance agreements identifies the insured as Hilton Hotels, together with the relevant policy numbers of the Hilton Hotels 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. Hilton Insurance executed an "Assumption and Substitution by Reinsurer" on a form authorized by the Guidelines and the Order. This document provides that Hilton Insurance has unequivocally assumed a direct coverage obligation to Hilton Hotels, that the "cut-through" payment will be made in satisfaction of the coverage obligations assumed by Reliance to Hilton Hotels, and that Hilton Insurance 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 "C."

9. Hilton Hotels executed "Informed Consents to Substitution of Reliance" on forms authorized by the Guidelines and the Order. These documents provide for Hilton Hotels' informed consent to the direct coverage relationship, which is in substitution for the relationship between both companies and Reliance. The documents consent to the release of Reliance for all claims by Hilton Hotels against Reliance relating to coverage assumed by Hilton Insurance 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 "D."

10. In accordance with Paragraph 4(e), the Liquidator has determined that there are no other contractual provisions with which Hilton Insurance and Hilton Hotels 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.

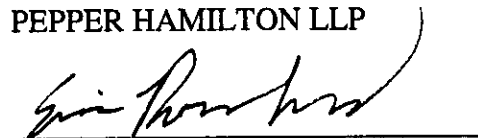
11. Pursuant to Paragraph 11 of the Guidelines and the Order, the Liquidator submits the Hilton Insurance documentation to this Court and recommends approval of direct payment by Hilton Insurance.

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 Hilton Insurance Corporation to Hilton Hotels Corporation.

Respectfully submitted,

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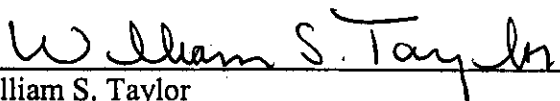
Dated: June 25, 2003

## 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 Hilton Insurance Corporation to Hilton Hotels Corporation 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 June 24, 2003.

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

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2003 I caused a copy of the Petition for Approval of Direct Payment pursuant to 40 P.S. § 221.34 by Hilton Insurance Corporation to Hilton Hotels Corporation 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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