

CSW

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petition for Approval of Direct Payment
Pursuant to 40 P.S. § 221.34 by HPI, Limited

Petitioner M. Diane Koken, Commissioner of the Insurance Department 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 HPI, Ltd. (“HPI”) to Apartment Investment Management Company, successor to NHP Partners, Inc. (“AIMCO / NHP Partners”) in accordance with the direct coverage obligations assumed by HPI for the policy issued by Reliance to AIMCO / NHP Partners, as set forth below. For purposes of this Petition, “Reliance” will refer to Reliance Insurance Company (In Liquidation).

1. For the year January 31, 1997 to January 31, 1998, Reliance issued one policy of insurance to AIMCO / NHP Partners for general liability, as listed below:

NGB 0134998-00

A Copy of the Declaration Page evidencing coverage provided to AIMCO / NHP Partners under this Reliance insurance policy is attached to this Petition as Exhibit “A.”

2. The AIMCO / NHP Partners policy identified in Exhibit "A and issued by Reliance was reinsured by HPI. The relevant reinsurance agreement is attached to this Petition as Exhibit "B."

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, HPI submitted a written request to the Liquidator seeking approval of direct payments by HPI to AIMCO / NHP Partners. The written request of HPI is attached to this Petition as Exhibit "C."

5. Upon submission of documentation in support of HPI's application to the Liquidator, the Liquidator has approved the written request of HPI seeking approval of direct payment of reinsurance to AIMCO / NHP Partners. The Liquidator has concluded that HPI's reinsurance contract complies with 40 P.S. § 221.34, the Guidelines and the Order.

6. Specifically, the Liquidator has reviewed the HPI reinsurance contract and determined that it is a binding contract which specifically provides for a direct coverage obligation (a "cut through") by HPI to AIMCO / NHP Partners in the event of the insolvency of Reliance in place of and in substitution for any obligations of Reliance to AIMCO / NHP Partners, as required by Paragraph 4(b) of the Guidelines, 40 P.S. § 221.34 and the Order. In

Article XIII.C of the reinsurance agreement attached as Exhibit "B," the agreement provides as follows:

It is further agreed and understood that as to all reinsurance made, ceded, renewed or otherwise becoming effective hereunder, in the event of insolvency of [Reliance] all amounts payable under this Agreement shall be paid by [HPI] to the named Insured under the Policies when [HPI] with the consent of the Named Insureds under the Policies has assumed the obligations of [Reliance] under any of the Policies as direct obligations of [HPI] under any such policy and in substitution for the obligations of [Reliance] to such payees.

This language of the reinsurance agreement allows HPI to pay the Named Insured, AIMCO / NHP Partners, directly if HPI assumes the obligation and AIMCO / NHP Partners consents. This is accomplished by the execution of the "Assumption and Substitution by Reinsurer" document and "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

7. In addition, the Liquidator determined that the HPI reinsurance agreement in Article XIII.C., quoted in Paragraph 6 above, specifically identifies that the "cut through" payment is to be made to "the Named Insured under the Policies." Article I.A (Definitions) of the reinsurance agreements defines "Policies" as policies of insurance and any extension or renewals including endorsements...issued by Reliance to AIMCO / NHP Partners "as described in Schedule I to this agreement." "Schedule I" to the reinsurance agreement identifies the relevant policy number of the AIMCO / NHP Partners policy issued, which is listed in Paragraph 1 above. This identification of the payee within the reinsurance agreements complies with Paragraph 4(a) of the Guidelines, 40 P.S. § 221.34 and the Order.

8. HPI executed an "Assumption and Substitution by Reinsurer" on a form authorized by the Guidelines and the Order. This document provides that HPI has unequivocally assumed a direct coverage obligation to AIMCO / NHP Partners, that the "cut-through" payment

will be made in satisfaction of the coverage obligations assumed by Reliance to AIMCO / NHP Partners, and that HPI 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 "D."

9. AIMCO / NHP Partners executed an "Informed Consent to Substitution of Reliance" on a form authorized by the Guidelines and the Order. This document provides for AIMCO / NHP Partners' informed consent to the direct coverage relationship, which is in substitution for the relationship between AIMCO / NHP Partners and Reliance and consents to the release of Reliance for all claims by AIMCO / NHP Partners against Reliance relating to coverage assumed by HPI 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."

10. In accordance with Paragraph 4(e), the Liquidator has determined that there are no other contractual provisions that HPI and AIMCO / NHP Partners have to comply with, 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 HPI documentation to this Court and recommends approval of direct payment by HPI.

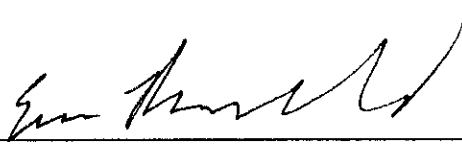
Accordingly, M. Diane Koken, Commissioner of the Insurance Department of the Commonwealth of Pennsylvania, in her official capacity as Liquidator of Reliance Insurance Company, hereby respectfully requests that this Court grant this Petition and enter the Order

attached confirming the approval of the Liquidator and permitting the direct payment from HPI, Ltd. to Apartment Investment and Management Company, successor to NHP Partners, Inc..

Respectfully submitted,

PEPPER HAMILTON LLP

By:



DEBORAH F. COHEN
ERIC ROTHSCHILD
3000 Two Logan Square
18th and Arch Streets
Philadelphia, Pa. 19103-2799
(215) 981-4000

Attorneys for Plaintiff
M. Diane Koken, Insurance Commissioner
of the Commonwealth of Pennsylvania, in her
official capacity as Statutory Liquidator of Reliance
Insurance Company

OF COUNSEL:

Jerome R. Richter
Ann B. Laupheimer
Anthony Vidovich
Blank Rome Comisky & McCauley LLP
One Logan Square
Philadelphia, PA 19103-6998
(215) 569-5500

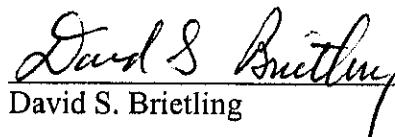
Dated: August 28, 2003

VERIFICATION

I, David S. Brietling, have been retained by M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, and am responsible for the on-site insurance and financial operations of Reliance Insurance Company (in Liquidation). I am also responsible for coordinating the activities of the Pennsylvania Insurance Department's Reliance liquidation team. I am authorized by William S. Taylor, Deputy Insurance Commissioner of the Pennsylvania Insurance Department, Office of Liquidations, Rehabilitations and Special Funds, to make this verification on behalf of the 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 HPI, Ltd. to Apartment Investment Management Corporation, successor to NHP Partners, Inc. and hereby verify that the facts set forth in the foregoing Petition 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 P.S. § 4904 relating to unsworn falsification to authorities.

Date: August 28, 2003



David S. Brietling

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2003 I caused a copy of the Petition for Approval of Direct Payment pursuant to 40 P.S. § 221.34 by HPI, Ltd. to Apartment Investment Management Corporation, successor to NHP Partners 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:

Stephen G. Schwartz, Esq.
Schwartz & Horwitz
3301 N.W. Boca Raton Blvd.
Suite 200
Boca Raton, FL 33431



Eric Rothschild

Master Service List

M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania

v.

Reliance Insurance Company

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

Jerome R. Richter
Ann B. Laupheimer
Blank Rome LLP
One Logan Square
Philadelphia, PA 19103
(215) 569-5500
(Attorneys for M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania)

Amy L. Weber, Esquire
Deputy Chief Counsel
Preston M. Buckman, Esquire
Special Funds Counsel
Commonwealth of Pennsylvania
Insurance Department
Office of the Chief Counsel
Capitol Associates Building
901 North 7th Street
Harrisburg, PA 17102
(717) 787-6009
(Attorneys for the Pennsylvania
Insurance Department)

Marilyn K. Kincaid, Esquire
Reliance Insurance Company
(in Liquidation)
Three Parkway
Philadelphia, PA 19102
(215) 864-4205
(Attorney for Reliance Insurance
Company (in Liquidation))

Hillary C. Steinberg
James Michael Matour
Hangley Aronchick Segal & Pudlin, P.C.
One Logan Square
Philadelphia, PA 19103
(215) 568-6200
(Attorneys for Reliance Group
Holdings, Inc.)

Jeffrey B. Rotwitt
Obermayer Rebmann Maxwell & Hippel
1 Penn Center, 19th Floor
Philadelphia, PA 19103-1895
(215) 665-3000
(Attorneys for M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania)

Edward A. Perell
Debevoise & Plimpton
919 Third Avenue
New York, NY 10022
(212) 909-6000
(Attorneys for Reliance Group
Holdings, Inc.)

William Charles Bensley
George Whittaker Howard
Edward M. Nass
Howard Brenner & Nass, P.C.
1608 Walnut Street, Suite 1700
Philadelphia, PA 19103
(215) 546-8200
(Attorneys for Francine and Ted Forman)

Brad S. Karp
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000
(Attorneys for Reliance Group
Holdings, Inc.)

Robert H. Levin
Adelman Lavine Gold & Levin, P. C.
1900 Two Penn Center Plaza
Philadelphia, PA 19102
(215) 568-7515
(Attorneys for Committee of Policyholders)

Richard E. Poole
Potter Anderson & Corroon LLP
1313 North Market Street
P.O. Box 951
Wilmington, DE 19899-0951
(302) 984-6006
(Attorneys for Jason Pauley)

David Carl Franceski
Mark Jason Dorval
Stradley, Ronon, Stevens & Young, LLP
2600 One Commerce Square
Philadelphia, PA 19103-7098
(215) 564-8109
(Attorneys for Citicorp North America, Inc.)

Richard D. Batchelder, Jr.
Ropes & Gray
One International Place
Boston, MA 02110-2624
(617) 951-7000
(Attorneys for Miami Cruiseline
Holdings LLC)

Frank F. McGinn
Bartlett Hackett Feinberg, P.C.
Suite 920
10 High Street
Boston, MA 02110
(617) 422-0200
(Attorneys for Flatley Company)

James W. Creenan
Francis X. McTiernan
Wayman, Irvin & McAuley
1624 Frick Building
Pittsburgh, PA 15219
(412) 566-2970
(Attorneys for Consolidated Freightways)

Janet S. Baer
Kirkland & Ellis
200 East Randolph Drive, Suite 6500
Chicago, IL 60601
(312) 861-2200
(Attorneys for AmeriServe Food Dist.)

Robert D. Rhoad
Dechert Price & Rhoads
Princeton Pike Corporate Center
P.O. Box 5218
Princeton, NJ 08543
(609) 620-3200
(Attorneys for Acumen Re Management Corporation)

Robert A. Kaufman
Michael L. Browne
Reed Smith Shaw & McClay LLP
2500 One Liberty Place
Philadelphia, PA 19103
(215) 851-8262
(Attorneys for Vitas Healthcare Corp.
and Various State Guaranty Assocs.)

Thomas J. Madigan
Christopher A. Coppola
Cohen & Grigsby, P.C.
11 Stanwix Street, 15th Floor
Pittsburgh, PA 15222
(412) 297-4900
(Attorneys for O'Brien-Kreitzberg
& Associates, Inc.)

Stephen C. Becker
Becker Law Office
P.O. Box 192991
San Francisco, CA 94119-2991
(415) 434-8000
(Attorneys for Great Western Collection
Bureau)

Terence R. Savage
Employment Development Department
State of California
800 Capitol Mall, Legal Office
Sacramento, CA 95814
(916) 654-8410
(Attorneys for Employment Development
Department, State of California)

Peter J. Boyer
R. Nicholas Gimbel
McCarter & English, LLP
Mellon Bank Center
1735 Market Street
Suite 700
Philadelphia, PA 19103
Phone: (215) 979-3800
Fax: (215) 979-3899
(Attorneys for Brand Scaffold Services, Inc. and
Magellan Ins. Co. Ltd.)

Philip A. Ignelzi
Michael A. Murphy
Ogg, Cordes, Murphy & Ignelzi, LLP
Riverview Place
245 Fort Pitt Boulevard
Pittsburgh, PA 15222
(412) 471-8500
(Attorneys for the Estate of Richard McClintock)

Philip J. Goodman
Chadbourn & Parke LLP
120 New Hampshire Avenue, NW
Washington, DC 20036
(202) 974-5600
(Attorneys for 1741 Ivar LLC)

John Norig Ellison
Timothy Patrick Law
Anderson, Kill & Olick P.C.
1600 Market Street, 32nd Floor
Philadelphia, PA 19103
(215) 568-4202

-and-

Marvin L. Wilenzik
Elliott Reihner Siedzikowski & Egan, P.C.
925 Harvest Drive
P.O. Box 3010
Blue Bell, PA 19422
(215) 977-1050
(Attorneys for Synagro Technologies, Inc.)

Jeremy J.O. Harwood, Esquire
Healy & Baillie, LLP
29 Broadway
New York, NY 10006-3293
(212) 943-3980

-and-

Joseph M. Donley, Esquire
William E. Cox, Esquire
Kittredge, Donley, Elson, Fullem & Embick
421 Chestnut Street, 5th Floor
Philadelphia, PA 19106
(215-829-9900)
(Attorneys for Steamship Mutual Underwriting
Association (Bermuda) Ltd.)

Thomas V. White, Esquire
Joseph P. Rusnak, Esquire
Tune, Entrekin & White, P.C.
AmSouth Center, 21st Floor
315 Deaderick Street
Nashville, TN 37238
(615) 244-2770
(Attorneys for Home Builders Association of
Tennessee Self-Insured Trust)

Michele Smolin, Esquire
McDonald, Hopkins, Burke & Haber
600 Superior Avenue E
Cleveland, OH 44114-2653
(216) 348-5400
(Attorneys for United Church of Christ Insurance
Board)

Lise Luborsky, Esquire
Britt, Hankins, Schaible & Moughan
Two Penn Center Plaza, Suite 515
1500 John F. Kennedy Blvd.
Philadelphia, PA 19102-1888
(215) 569-6918
(Attorneys for the Pennsylvania Property and
Casualty Insurance Guaranty Association)

Frederick P. Santarelli, Esquire
Elliott Reihner Siedzikowski & Egan, P.C.
925 Harvest Drive
P.O. Box 3010
Blue Bell, PA 19422
(215) 977-1050
(Attorneys for Estate of Leo Frances Tenczynski)

Janice Marie Savinis, Esquire
Goldberg, Persky, Jennings & White, P.C.
1030 Fifth Avenue
Pittsburgh, PA 15219
(412) 471-3980
(Attorneys for Harold W. Thomas)

Francine L. Semaya, Esquire
Joseph James Bellew, Esquire
Jay M. Levin, Esquire
Cozen O'Connor
45 Broadway, 16th Floor
New York, NY 10006
(212-908-1270)
(Attorneys for Allied Holdings and Client Assurance
Pool)

Kathleen S. McGrath, Esquire
Marshall, Dennehey, Warner,
Coleman & Goggin
One Montgomery Plaza, Suite 1002
Norristown, PA 19401
(610-292-4440)
(Attorneys for Pottstown Memorial Medical Center)

Richard F. McMenamin, Esquire
David L. Harbaugh, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
(215-963-5596)
(Attorneys for Fuji Bank Limited)

Allan H. Gordon, Esquire
Kolsby, Gordon, Robin & Shore
1650 Market Street, 22nd Floor
Philadelphia, PA 19103
(215-851-9700)
(Attorneys for Estate of Angela Auch)

Michael E. McGilvery, Esquire
Young & McGilvery, P.C.
2011 Renaissance Boulevard
Suite 200
King of Prussia, PA 19406
(610-292-9100)
(Attorneys for Wilhelm Gerhard)

Eric P. Wilenzik, Esquire
Elliott Reihner Siedzikowski & Egan, P.C.
925 Harvest Drive
Blue Bell, PA 19422
(215-977-1000)
(Attorneys for Brandywine Realty Trust)

Michael Novak, Esquire
Freeborn & Peters
311 South Wacker Drive, Suite 3000
Chicago, IL 60606
(312-360-6000)
(Attorneys for Carolyn Corporation)

Charles T. Locke, Esquire
Locke & Herbert
Citigroup Center
153 East 53rd Street, Suite 2900
New York, NY 10022
(212-935-8787)
(Attorneys for Citicorp USA Inc.)

Charles S. Greene, III, Esquire
Hogan & Hartson, LLP
555 13th Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5797
(Attorneys for National Structured Settlements Trade
Association, General Electric Capital Assurance Co.,
First Colony Life Ins. Co., Federal Home Life Ins.
Co., and GE Life and Annuity Assurance Co.)

David W. Cranshaw, Esquire
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, GA 30326
(404-233-7000)
(Attorneys for ChoicePoint and its division
ChoicePoint Commercial Specialist)

P. Kevin Brobson, Esquire
Buchanan Ingersoll
One South Market Square
213 Market Street, 3rd Floor
Harrisburg, PA 17101
(717-237-4800)
(Attorneys for Magellan Reinsurance Company, Ltd.
and RBH Reinsurance Ltd.)

John J. Gallagher, Esquire
Carl R. Shultz, Esquire
LeBoeuf, Lamb, Greene & MacRae, LLP
200 North Third Street, Suite 300
P.O. Box 12105
Harrisburg, PA 17108-2105
(717-232-8199)

(Attorneys for CSX Insurance Company)

Bruce R. Hoffman, Esquire
Law Office of Bruce R. Hoffman, LLC
574 Sea Island Parkway
Saint Helena Island, SC 29920-4205
(843-838-5290)
(Pro Se)

Jeffrey Meyers, Esquire
Ballard Spahr Andrews & Ingersoll, LLP
Mellon Bank Center
1735 Market Street, 51st Floor
Philadelphia, PA 19103
(215-864-8325)
(Attorneys for Amstar 3 Parkway)

R. Jane Lynch, Esquire
Cox, Castle & Nicholson LLP
2049 Century Park East, Suite 2800
Los Angeles, CA 90067
(310-277-4222)
(310-277-7889) fax
(Attorneys for Lake at Las Vegas Joint Venture)

Maria Jose Morinigo, Esquire
Vaira & Riley, P.C.
1600 Market Street, Suite 2650
Philadelphia, PA 19103-7226
(215-751-2700)
(215-751-9420) fax
(Attorneys for Debbie Stephens)

Francis Patrick Newell, Esquire
Montgomery, McCracken, Walker & Rhoads LLP
123 South Broad Street
Philadelphia, PA 19109
(215-772-1500)
-and-
Kevin E. Wolff, Esquire
Robert J. Re, Esquire
McElroy, Deutsch & Mulvaney, LLP
1300 Mount Kemble Avenue
P.O. Box 2075
Morristown, NJ 07962-2075
(973-425-8717)
(Attorneys for Celanese Americas Corporation,
Elwood Insurance Limited, and Celwood Insurance
Company (f/k/a Hoechst Celanese Insurance
Company, Ltd.)

Robert E. Kelly, Jr., Esquire
Anthony W. Parker, Esquire
Kelly Hoffman & Goduto LLP
Commerce Towers
300 North Second Street, 10th Floor
P.O. Box 62003
Harrisburg, PA 17106-2003
(717) 920-8100
(Attorneys for Petitioner South Carolina School
Boards Insurance Trust)

Joseph M. Hennelly, Jr., Esquire
Hennelly & Steadman, PLC
Goldworthy House
322 West Roosevelt
Phoenix, AZ 85003
(602) 230-7000
(Attorneys for Mark D. Tharp as Arizona's Special
Ancillary Receiver of Reliance)

Rowe W. Snider, Esquire
Steven T. Whitmer, Esquire
Julie L. Young, Esquire
Lord, Bissell & Brook
115 South LaSalle Street
Chicago, Illinois 60603
(312) 443-0700
(Attorneys for NCIGF)

Paul G. Witco, Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
Station Plaza #4, 2nd Floor
22 South Clinton Ave.
P.O. Box 117
Trenton, NJ 08625-0117
(609) 777-3512
(Attorney for New Jersey Workers Compensation
Bureau)