

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN,
 Insurance Commissioner of the
 Commonwealth of Pennsylvania,

Plaintiff,

v.

RELIANCE INSURANCE CO.,

Defendant.

No. 269 M.D. 2001

RECEIVED AND FILED
 PHILADELPHIA
 COMMONWEALTH COURT
 OF PENNSYLVANIA
 Aug 20 3 23 PM '01

ORDER

AND NOW, this day of , 2001, upon consideration of the
 Petition of Citicorp North America, Inc. to Compel Payment of Rent and for Relief from
 Stay, and the Answer of M. Diane Koken, Insurance Commissioner of the Commonwealth
 of Pennsylvania, in her capacity as Rehabilitator of Reliance Insurance Company, it is hereby
ORDERED that the Petition is **DENIED**.

BY THE COURT:

 James Gardner Colins, J.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN,
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff,

v.

RELIANCE INSURANCE CO.,

Defendant.

No. 269 M.D. 2001

**ANSWER OF THE REHABILITATOR TO
PETITION OF CITICORP NORTH AMERICA, INC.
TO COMPEL PAYMENT OF RENT AND FOR RELIEF FROM STAY**

Plaintiff/Respondent M. Diane Koken (the "Rehabilitator"), Insurance Commissioner of the Commonwealth of Pennsylvania, in her capacity as Rehabilitator of Reliance Insurance Company ("Reliance"), by her undersigned counsel, hereby submits this Answer to the Petition of Citicorp North America, Inc. to Compel Payment of Rent and for Relief from Stay.

1. On May 29, 2001, this Court entered an order placing Reliance in rehabilitation and appointing Plaintiff/Respondent as Rehabilitator, pursuant to Section 221.15 of the Insurance Department Act of Pennsylvania, 40 P.S. § 221.15.

2. The Pennsylvania Legislature enacted the provisions of Article V of the Insurance Department Act to set forth a statutory mechanism for the rehabilitation or liquidation of troubled insurers domiciled in Pennsylvania.

3. Paragraph 3 of the May 29 Order directs the Rehabilitator to take immediate possession of the “property, business and affairs” of Reliance, and “to take such action as the nature of this case and the interests of the policyholders, certificateholders, creditors, or the public may require.”

4. Paragraph 20 of the May 29 Order enjoins the commencement of any suit against Reliance.

5. Paragraph 22 of the May 29 Order imposes a stay of all actions against Reliance.

6. One purpose of these provisions is to allow the Rehabilitator adequate time to develop a plan of rehabilitation for Reliance, or to make a determination as to whether rehabilitation is feasible. If the Rehabilitator finds that rehabilitation is not possible, Section 221.18 of the Insurance Department Act permits the Rehabilitator to petition the Court for an order of liquidation. 40 P.S. § 221.18.

7. The remedy for potential creditors of Reliance under either a plan of rehabilitation or in the event of liquidation is the filing of a proof of claim against the estate of Reliance at the appropriate time under either a plan of rehabilitation or in the event of liquidation. At the present time, no such procedure is in place, and would be premature.

8. In the present matter, Citicorp North America, Inc. (“CNA”), has not provided this Court with any justification or legal basis for its request for relief from the stay of actions against Reliance, or its request to be provided more favorable treatment than the other potential creditors of Reliance. CNA’s motion for relief from the stay should be denied, and it should be directed to seek any appropriate relief against Reliance by filing a

proof of claim at the proper time in accordance with a plan of rehabilitation for Reliance or in the event Reliance is liquidated.

As Answer to the Petition to Compel payment of Rent, the Rehabilitator states as follows:

First Defense

1. After reasonable investigation, the Rehabilitator is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 1.
2. After reasonable investigation, the Rehabilitator is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 2.
3. Admitted.
4. After reasonable investigation, the Rehabilitator is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 4.
5. Admitted.
6. Admitted.
7. No response is necessary.
8. Admitted.
9. Denied. The averments of paragraph 9 concern the contents of a document, which speaks for itself.
10. Denied. the Rehabilitator has not yet determined the amount of rent, if any, presently due and owing.
11. Denied. The averments of paragraph 11 concern the contents of a document, which speaks for itself.

12. Denied. The Rehabilitator has not yet determined the amount of electricity charges, if any, presently due and owing.
13. Admitted.
14. Denied. The Rehabilitator has not yet determined the amount, if any, presently due and owing. The remaining averments of paragraph 14 are conclusions of law to which no response is necessary.
15. Denied. The Rehabilitator did not receive any demand for payment for amounts claimed under the Petition prior to its receipt of the Petition.
16. Denied. By letters dated August 10, 2001 (copies of which are attached as Exhibit A), the Rehabilitator disavowed the Sublease. Effective that date, Reliance has vacated the subject property.
17. Denied as a legal conclusion to which no response is necessary.
18. Denied. The Rehabilitator has not yet determined the amount, if any, presently due and owing.
19. Denied. The averments of paragraph 19 concern the contents of a document, which speaks for itself.
20. Denied as a legal conclusion to which no response is necessary.
21. Denied. Reliance has vacated the subject property.
22. Denied. The Rehabilitator has not yet determined the amount, if any, presently due and owing. The Rehabilitator also has a claim against Petitioner for breach of the Sublease based upon Petitioner's failure to provide adequate HVAC systems for the subject property.

23. Denied. Reliance has vacated the subject property, and the Rehabilitator has not yet determined the amount, if any, presently due and owing.

Second Defense

The Petition, insofar as it seeks monetary damages, was improperly filed under Pa.R.A.P. 123. Petitioner cannot recover monetary damages by petition, nor can it request that the Court award it such damages by petition.

Third Defense

The Petition is an attempt by Petitioner to place itself in a superior position to other potential creditors of Reliance. There exists no legal authority for affording Petitioner this priority.

Fourth Defense

The Rehabilitator disavowed the Sublease by notice given on August 10, 2001.

Fifth Defense

Reliance vacated the Sublease property effective August 10, 2001.

Sixth Defense

The Rehabilitator has a counterclaim or setoff against Petitioner for breach of the Sublease based upon Petitioner's failure to provide adequate climate control systems for the subject property.

Seventh Defense

Petitioner is not entitled to recover its attorney's fees in this matter.

WHEREFORE, the Rehabilitator respectfully requests that the Petition be denied in its entirety.

Respectfully submitted,

BLANK ROME COMISKY & McCAULEY LLP

By:



JEROME R. RICHTER
DANIEL H. WHEELER
One Logan Square
Philadelphia, PA 19103
(215) 569-5500 (Phone)
(215) 569-5555 (Facsimile)

Counsel for Plaintiff/Respondent,
M. DIANE KOKEN, Insurance Commissioner of the
Commonwealth of Pennsylvania and Rehabilitator of
RELIANCE INSURANCE COMPANY

Dated: August 20, 2001

EXHIBIT A



EXECUTIVE OFFICES

COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT
STRAWBERRY SQUARE
HARRISBURG, PA. 1712C

August 10, 2001

BY FACSIMILE AND FEDEX MAIL

Citicorp North America Inc.
ATTN: Salvatore Milazzo, III
c/o Corporate Realty Services
One Court Square, 8th Floor
Long Island City, New York, NY 11120

Re: Sublease (the "Sublease") between Citicorp North America, Inc. ("Citicorp"), as Sub-Landlord, and Reliance (as said term is defined below), as Sub-Tenant, for the 7th, 8th, 9th and 19th Floors in the Sub-Tenant building located at 77 Water Street, New York, New York

Dear Sir or Madam:

On May 29, 2001, pursuant to the Pennsylvania Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, as amended, the Commonwealth Court of Pennsylvania appointed M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania (the "Commissioner"), as Rehabilitator of Reliance Insurance Company (In Rehabilitation), including the following former subsidiaries of Reliance Insurance Company which were previously merged into Reliance by approval of the Commissioner: Reliance National Indemnity Company, Reliance National Insurance Company, United Pacific Insurance Company, Reliance Direct Company, Reliance Surety Company, Reliance Universal Insurance Company, United Pacific Insurance Company of New York and Reliance Insurance Company of Illinois. All references in this letter to "Reliance" shall refer collectively to Reliance Insurance Company and said former subsidiaries.

A copy of the Commonwealth Court's Order of May 29, 2001 (the "Commonwealth Court Order") is enclosed herewith.

Pursuant to Paragraph 16 of the Commonwealth Court Order, the Rehabilitator hereby disavows and terminates the above-referenced Sublease and forfeits to Citicorp and immediately returns to Citicorp the space. Accordingly, no further rent or other charges will be paid at this time pursuant to the above-referenced Sublease.

On behalf of Reliance, the Rehabilitator hereby agrees that you may immediately relet the premises demised pursuant to the above-referenced Sublease, and the Rehabilitator hereby demands that you do so immediately in a commercially reasonable manner so as to mitigate your damages and losses.

Your attention is further directed to Paragraphs 20, 22 and 23 of the Commonwealth Court Order which, among other things, enjoins all persons from instituting or further prosecuting any action in law or equity against Reliance or the Rehabilitator.

The Rehabilitator will be required to determine whether Reliance shall be rehabilitated or shall be liquidated. At such time as such determination is made, you will be advised in writing of the process for submitting claims.

Sincerely,

M. DIANE KOKEN,
INSURANCE COMMISSIONER OF THE
COMMONWEALTH OF PENNSYLVANIA,
IN HER CAPACITY AS REHABILITATOR
OF RELIANCE INSURANCE COMPANY
(IN REHABILITATION)

By: William S. Taylor
William S. Taylor, Deputy Insurance
Commissioner, on behalf of the
Rehabilitator



COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT

STRAWBERRY SQUARE
HARRISBURG, PA. 17120

EXECUTIVE OFFICES

August 10, 2001

BY FACSIMILE AND FEDEX MAIL

CNA/Citibank Real Estate Legal Department
ATTN: General Counsel
666 Fifth Avenue
4th Floor/Zone 1
New York, New York 10103

Re: Sublease (the "Sublease") between Citicorp North America, Inc. ("Citicorp"), as Sub-Landlord, and Reliance (as said term is defined below), as Sub-Tenant, for the 7th, 8th, 9th and 19th Floors in the Sub-Tenant building located at 77 Water Street, New York, New York

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Sincerely,

M. DIANE KOKEN,
INSURANCE COMMISSIONER OF THE
COMMONWEALTH OF PENNSYLVANIA,
IN HER CAPACITY AS REHABILITATOR
OF RELIANCE INSURANCE COMPANY
(IN REHABILITATION)

By: William S. Taylor
William S. Taylor, Deputy Insurance
Commissioner, on behalf of the
Rehabilitator

VERIFICATION

I, William S. Taylor, am the authorized agent and representative of the Statutory Rehabilitator in this action and hereby verify that the statements made in the foregoing Answer are true and correct to the best of my knowledge, information, and belief.

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

Date: 8-16-01

William S. Taylor
William S. Taylor
Deputy Insurance Commissioner
Pennsylvania Insurance Department
Office of Liquidations, Rehabilitations and
Special Funds

CERTIFICATE OF SERVICE

I, Daniel H. Wheeler, hereby certify that on August 20, 2001, I served a copy of the foregoing Answer of the Rehabilitator to Petition of Citicorp North America, Inc. to Compel Payment of Rent and for Relief from Stay upon the following, by regular mail:

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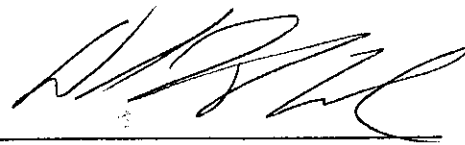
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Daniel H. Wheeler