

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN :  
Insurance Commissioner of the :  
Commonwealth of Pennsylvania, :  
 :  
Plaintiff, :  
 :  
v. :  
 :  
RELIANCE INSURANCE COMPANY, :  
 :  
Defendant. :  
\_\_\_\_\_ :

DOCKET NO. 269 MD-2001

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COMMONWEALTH COURT  
OF PENNSYLVANIA  
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ORDER

AND NOW this \_\_\_ day of \_\_\_\_\_, 2003, this Court having considered the  
Petition of M. Diane Koken, Insurance Commissioner of the Commonwealth of  
Pennsylvania, in her capacity as Liquidator ("Liquidator") of Reliance Insurance Company  
("Reliance"), for Approval of Sale of Tax Parcel 926500-0030-05, King County, Washington  
("Petition") to Life Care Centers of America, Inc., and considering that the purchase price is  
consistent with the appraised value of said property, the Petition is GRANTED. The  
Agreement of Sale marked as Exhibit A and attached to the Petition is hereby APPROVED;  
and the Liquidator is authorized to take any and all actions necessary to execute, deliver,  
perform, and consummate the Agreement of Sale and any related documents.

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

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Insurance Commissioner of the :  
Commonwealth of Pennsylvania, :  
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Plaintiff, :  
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RELIANCE INSURANCE COMPANY, :  
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Defendant. :  
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**PETITION FOR APPROVAL OF SALE OF  
TAX PARCEL 926500-0030-05, KING COUNTY, WASHINGTON**

Petitioner M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania (the "Commissioner"), in her official capacity as Liquidator ("Liquidator") of Reliance Insurance Company ("Reliance"), respectfully requests that this Court enter an order authorizing the Liquidator to transfer real property held by Reliance and approving the Agreement of Sale ("Agreement") between Reliance and Life Care Centers of America, Inc. ("Life Care Centers"). Pursuant to the Agreement, if approved, Reliance intends to convey to Life Care Centers real property known as King County Tax Parcel 926500-0030-05, consisting of approximately 1.43 acres, and which is also known as Lot 3, West Campus Office Park (the "Property"). The Property is described below and in the Agreement. A copy of the executed Agreement is attached as Exhibit A.

In support of this Petition, the Liquidator avers the following:

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1. On October 3, 2001, this Court found Reliance insolvent and appointed the Commissioner as Liquidator of Reliance pursuant to Article V of the Insurance Department Act of 1921, 40 P.S. § 221.1 et seq. (hereinafter, the "Act").

2. The Act confers broad powers on the Liquidator to dispose of the assets of Reliance in order to maximize the value of the insolvent insurer's estate for eventual distribution to its policyholders and creditors. See 40 P.S. § 221.23.

3. At the time of its declared insolvency, Reliance's assets included several parcels of real property in King County, Washington, including the Property that is the subject of the Agreement.

4. The Property was purchased in 1993 as part of Reliance's acquisition of 5.73 acres for a purchase price approximating \$1.5 million, or \$6.00 per square foot. The property acquired was raw land.

5. Reliance and Life Care Centers have completed their negotiations, and have executed the Agreement attached at Exhibit A.

6. GVA Kidder-Matthews ("Broker") represented Reliance as its broker in connection with the marketing and sale of the Property.

7. The Broker has been actively engaged in marketing the Property and adjoining properties for the past three years. This is the second offer for the Property received by the

Broker, and the first on which the parties were able to reach agreement. Reliance has had no other offers for the Property, but may be nearing agreement on a second parcel.

### **SUMMARY OF THE TERMS OF THE AGREEMENT**

8. The Agreement is expressly contingent upon approval of this Court as set forth in Section 10.1(b) of the Agreement.

9. Pursuant to Paragraph 3.1 of the Agreement, the purchase price to be paid for the Property by Life Care Centers is Four Hundred Ten Thousand Dollars (\$410,000), or \$6.56 per square foot ("Purchase Price").

10. Pursuant to Paragraph 3.1(a) of the Agreement, Life Care Centers was to pay an initial deposit of Twenty Five Thousand Dollars (\$25,000.00) on signing the Agreement.

11. Pursuant to Paragraph 5.1 of the Agreement, Life Care Centers has agreed to accept the property in an "as-is" condition.

12. Pursuant to Paragraph 14 of the Agreement, Life Care Centers has a "Purchasers Review Period" extending until April 5, 2004, during which time it has the right to perform due diligence and, if it finds anything objectionable, to terminate the Agreement and have its deposit refunded.

13. Pursuant to Paragraph 15 of the Agreement, Life Care Centers has the right to seek site plan approval for the construction of certain improvements on the Property, at its

own cost. Reliance's only obligation would be to cooperate as necessary to allow Life Care Centers to pursue such approvals.

14. Pursuant to Paragraph 15 of the Agreement, if the necessary approvals are not obtained by the end of the Purchaser Review Period, three (3), thirty (30) day extensions are available to Life Care Centers upon the payment to Reliance of a of Five Thousand Dollar ("\$5,000"), non-refundable fee for each such extension. These fees are not applicable to the Purchase Price.

15. Pursuant to Paragraph 15 of the Agreement, Life Care Centers is to be responsible for the costs attendant to any required approvals.

16. Pursuant to Paragraph 9.2 of the Agreement, Reliance's closing expenses are limited to its cost of preparing the Deed, its payment of real estate transfer taxes, the costs of a standard owner's title insurance policy (customary in Washington state), half of any settlement escrow or closing fees, and its own attorneys' fees.

17. Pursuant to Paragraph 13.1 of the Agreement, Reliance is to pay GVA Kidder- Matthews a commission. This commission is established by Reliance's brokerage agreement with Kidder-Matthews at 6% due to the fact that this sale included a co-Broker.

18. Based on the \$410,000 purchase price, the Broker's fee payable to GVA Kidder-Matthews by Reliance at closing would total approximately \$24,600.

**THE TRANSACTION IS IN  
THE BEST INTEREST OF THE ESTATE**

19. The Liquidator has taken steps to determine whether the Purchase Price constitutes fair value to Reliance for the Property. See 40 P.S. § 221.23(7), (9) (authorizing the Liquidator to sell assets of the insurer on fair and reasonable terms). After reviewing the terms of the transaction and obtaining independent, professional advice as to the fair market value of the Property, the Liquidator is satisfied that this transaction will yield fair value to Reliance.

20. The Liquidator believes that the purchase price represents fair value because it obtained the advice of Cushman & Wakefield's appraisal unit, which unit prepared an appraisal report dated March 24, 2003. This report indicates a fair market value for the Property (identified therein as Parcel 3) of \$425,000. A copy of this appraisal report is attached as Exhibit B.

21. The Liquidator believes that the terms of this transaction are fair to Reliance and are in the best interests of the insurer's estate, its policyholders, claimants and the general public. See 40 P.S. § 221.1(c); see also 40 P.S. § 221.23(7)(9) (authorizing the Liquidator to "conduct public and private sales of property of the insurer" and to "acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of the insurer at its market value or upon terms and conditions as are fair and reasonable.") (emphasis added).

22. The Liquidator believes that a price approximating 97% of the appraised value clearly constitutes fair value.

23. The Liquidator further believes that the sale of the Property will help her in achieving the objectives of liquidation under the Act, 40 P.S. § 221.1 et seq. This transaction will assist the Liquidator in marshalling the insurer's assets to minimize and apportion equitably any unavoidable loss to policyholders, claimants and creditors resulting from Reliance's insolvency and hazardous financial condition. See 40 P.S. § 221.1(c).

24. The Liquidator believes that Life Care Centers, which is a privately held company principally engaged in the ownership, operation or management of over 250 nursing care and/or retirement/assisted living facilities throughout the United States, is financially able to consummate this transaction. Life Care Centers has over \$500 million in assets, a net worth of over \$75 million and has been profitable for the past 2 years. Life Care Centers has provided assurances that it has unused and available lines of credit totaling \$5 million which can be used to fund this transaction.

25. Accordingly, the Liquidator respectfully requests that this Court (1) approve the terms of the Agreement; and (2) authorize the Liquidator to take all actions necessary to perform under the Agreement and to consummate the transaction pursuant to her authority under the Act.

WHEREFORE, the Liquidator respectfully requests that this Court grant the Petition, enter an Order in the form attached hereto, and order such other relief as this Court deems necessary and appropriate.

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By: 

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

Dated: March 15, 2004

VERIFICATION

I, ARTHUR W. MULLIN, verify that: (1) I am President of Mullin Management Consultants, LLC and Special Asset Consultant for the Pennsylvania Insurance Department, Office of Liquidations, Rehabilitations and Special Funds; (2) I am authorized to take this verification on behalf of M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Liquidator of Reliance Insurance Company; (3) the facts set forth in the foregoing Petition for Approval of Sale of Tax Parcel 926500-0030-05, King County, Washington are true and correct to the best of my knowledge, information and belief.

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

*Arthur W. Mullin*

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ARTHUR W. MULLIN

Dated: March 15, 2004