

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

**LIQUIDATOR'S RESPONSE TO PETITION OF STEAMSHIP MUTUAL
UNDERWRITING ASSOCIATION (BERMUDA) LTD. TO COMPEL LIQUIDATOR TO
DISCLOSE THE CONFIDENTIAL AFFIDAVIT FILED UNDER SEAL OR, IN THE
ALTERNATIVE, PETITION TO VACATE ORDER GRANTING LIQUIDATOR
LEAVE TO FILE CONFIDENTIAL AFFIDAVIT UNDER SEAL**

M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, as Statutory Liquidator of Reliance Insurance Company (In Liquidation), submits this Response to the Petition of Steamship Mutual Underwriting Association (Bermuda) Ltd. ("Steamship") to Compel the Liquidator to Disclose the Confidential Affidavit of Keith Kaplan or, In the Alternative, Petition to Vacate this Court's Order dated February 19, 2004, Granting the Liquidator Leave to File the Confidential Affidavit Under Seal (hereinafter, the "Steamship Petition").

The Steamship Petition seeks the disclosure of the Confidential Affidavit of Keith Kaplan ("Confidential Affidavit"), one of the exhibits submitted by the Liquidator in support of her Amended Petition for Approval of Commutation Agreement and Novation Agreements ("Amended Petition"), currently pending before the Court. The Confidential Affidavit, together

with its own set of exhibits, contain information supporting the Liquidator's confidential analyses and business valuations concerning the Commutation Agreement and Novation Agreements (the "Agreements"). It sets forth the Liquidator's rationale for entering into the Agreements and how the parties arrived at the final commutation and novation figures. The Liquidator filed a Petition for Leave to File this Confidential Affidavit Under Seal on December 8, 2003 (the "Seal Petition"). By Order dated February 19, 2004, this Court granted the Seal Petition and directed the Chief Clerk to mark the Confidential Affidavit on the docket as filed under seal.

On March 12, 2004, simultaneously with the filing of the Steamship Petition, the Liquidator filed with the Court her Reply Memorandum in Further Support of the Amended Petition ("Reply Memorandum"). In the Reply Memorandum the Liquidator addressed Steamship's prior request for a copy of the Confidential Affidavit. See Reply Memorandum at 5, n.4. For purposes of this Response, we incorporate by reference and reiterate the Liquidator's position herein.

Steamship seeks to defeat the Amended Petition because the Agreements might impede its improper efforts to re-direct reinsurance proceeds from the Estate of Reliance to Steamship's own coffers in contravention of this Court's liquidation orders and guidelines. See Reply Memorandum at 2-3, 5-7. Steamship intends to use the Confidential Affidavit to create additional "issues" concerning the Agreements where none exist in furtherance of this end run around the liquidation process. Furthermore, the abuse of discretion standard applicable to these approval proceedings, as discussed in the Reply Memorandum, does not require this Court to conduct a de novo assessment of, inter alia, the merits of the underlying disputes giving rise to the Agreements and the valuation of the Liquidator's claims. Yet, this is precisely the kind of

second guessing Steamship will attempt to engage in should it obtain a copy of the Confidential Affidavit.

Having said that, the Liquidator previously has made her position clear concerning disclosure of the Confidential Affidavit in the Seal Petition she filed last December, and which was subsequently granted by this Court. The Seal Petition provides that “if any policyholder or creditor of the Reliance Estate (other than another reinsurer of Reliance) with a demonstrable interest in the subject matter of the Agreements wishes to review the Confidential Affidavit, the Liquidator, subject to the Court’s approval, will provide it to that person or entity upon its execution of a confidentiality agreement limiting the use of and prohibiting disclosure of the information contained therein.” *Id.*, ¶5. (emphasis supplied). Consistent with that approach, the Liquidator will disclose the Confidential Affidavit to Steamship provided that it (1) obtains the approval of this Court and, if approval is so given, (2) executes a confidentiality agreement.

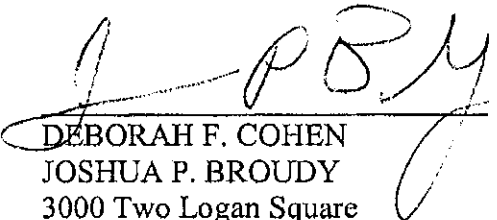
In light of the Liquidator’s position concerning disclosure, Steamship’s alternative petition to vacate the Court’s February 19, 2004 Order granting the Seal Petition, which is simply being proffered by Steamship as additional grounds for obtaining the Confidential Affidavit, has been rendered moot. However, even if the Court does consider the merits of Steamship’s alternative arguments, they should be rejected in their entirety. Steamship provides no new justification for reconsideration of the Court’s February 19, 2004 Order. It simply rehashes the same arguments for disclosing the Confidential Affidavit to the public that it made when it opposed the Seal Petition, all of which have already been reviewed and rejected by this Court. As set forth in the Seal Petition, it is essential that the Confidential Affidavit be maintained under seal because (1) important governmental interests are served by preserving the confidentiality of the information contained in the Confidential Affidavit; and (2) the Liquidator,

and Reliance's policyholders and creditors, would be unduly prejudiced if details of the Liquidator's strategies, business valuations, and rationales behind the Agreements were to be disclosed to the public. See Seal Petition, ¶¶ 2-5.

In sum, this Court rejected Steamship's arguments for making the Confidential Affidavit available to the public before and it should again. Accordingly, the Liquidator respectfully requests that this Court deny Steamship's alternative Petition to Vacate the Court's February 19, 2004 Order.

Respectfully submitted,
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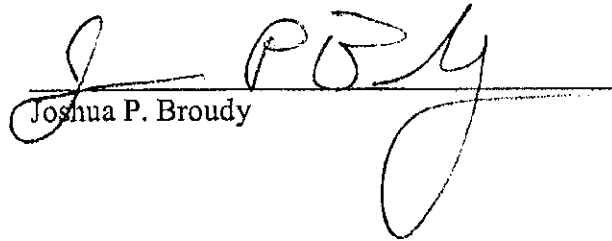
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Dated: March 26, 2004

CERTIFICATE OF SERVICE

I, Joshua P. Broudy, hereby certify that on March 26, 2004, I caused a true and correct copy of the Liquidator's Response to the Petition of Steamship Mutual Underwriting Association (Bermuda) Ltd. to Compel the Liquidator to Disclose the Confidential Affidavit Filed Under Seal or, In the Alternative, Petition to Vacate Order Granting the Liquidator Leave to File the Confidential Affidavit Under Seal to be served via first class mail, postage prepaid, on all persons listed on the attached Master Service List.


Joshua P. Broudy

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