

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

IN RE: *Baptist Health South Florida, Inc.'s Objection To The Liquidator's Denial Of A Direct Payment Request; Palm Springs General Hospital's Objection To The Liquidator's Denial Of A Direct Payment Request; The Exceptions Of The Report Of Referee James Schwartzman*

ORDER

AND NOW, this ____ day of _____, 2004, upon consideration of the Statutory Liquidator's Motion For Post-Trial Relief of the March 18, 2004 Amended Memorandum Opinion and Order, and responses thereto, it is HEREBY ORDERED AND DECREED that the March 18, 2004 Amended Memorandum Opinion and Order is VACATED.

IT IS FURTHER ORDERED AND DECREED that the Report and Recommendation of Referee Schwartzman that Baptist Health South Florida, Inc. and Palm Springs General Hospital are not entitled to direct access to reinsurance proceeds from American Health Indemnity Company is ADOPTED and that Baptist Health South Florida,

Inc.'s and Palm Springs General Hospital's Exceptions to the Referee's Report and
Recommendations are DENIED AND DISMISSED.

JAMES GARDNER COLINS, President Judge

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**STATUTORY LIQUIDATOR'S MOTION FOR
POST-TRIAL RELIEF OF THE MARCH 18, 2004
AMENDED MEMORANDUM OPINION AND ORDER**

M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Statutory Liquidator of Reliance Insurance Company, pursuant to Pennsylvania Rule of Civil Procedure 227.1, hereby submits this Motion for Post-Trial Relief of the March 18, 2004 Amended Memorandum Opinion and Order on the Exceptions filed by Baptist Health South Florida, Inc. and Palm Springs General Hospital (the "Hospitals") to the Report and Recommendation of Referee James C. Schwartzman.

For the reasons set forth in the accompanying Memorandum of Law, the Statutory Liquidator respectfully requests that the Court vacate the March 18, 2004 Amended Memorandum Opinion and Order, enter an Order adopting Referee Schwartzman's Report and Recommendation that Baptist Health South Florida, Inc. and Palm Springs General Hospital are not entitled to direct access to reinsurance proceeds from American Health Indemnity Company ("AHIC"), and dismiss the Hospitals' Exceptions to the Referee's Report and Recommendation.

In the alternative, the Statutory Liquidator respectfully requests that the Court vacate the March 18, 2004 Amended Memorandum Opinion and Order and permit the parties to take discovery and then convene an evidentiary hearing with respect to whether there was a novation of the reinsurance agreements and/or whether the Hospitals are third-party beneficiaries to the reinsurance agreements.

In support thereof, the Statutory Liquidator sets forth the following:

1. On March 17, 2004, the Court issued its Memorandum Opinion and Order as to Baptist Health South Florida, Inc.'s objection to the Statutory Liquidator's denial of a direct payment request, Palm Springs General Hospital's objection to the Statutory Liquidator's denial of a direct payment request, and the Hospitals' Exceptions to the Report and Recommendation of Referee Schwartzman. The Court also stated that the Liquidator did not contest the factual findings of the referee.

2. On March 18, 2004, the Court issued its Amended Memorandum Opinion and Order which is identical to the March 17, 2004 Memorandum Opinion and Order except that it stated that the Statutory Liquidator had filed a response to the exceptions and that the Court considered the Statutory Liquidator's response in its decision.

3. Even though there was no discovery, no affidavits, no evidentiary hearing and no agreed upon fact determinations in the proceedings before Referee Schwartzman which, by agreement of the parties, was in the nature of a motion to dismiss, the Court issued an Order on March 18, 2004 adopting the factual findings of the Referee, rejecting the Referee's legal conclusions and denying the Liquidator's motion to dismiss.

4. Pursuant to Pa.R.C.P. 227.1 and the Court's March 18, 2004 Amended Memorandum Opinion and Order, the Statutory Liquidator submits this Motion for Post-Trial

Relief and sets forth her grounds and exceptions to the Amended Memorandum Opinion and Order. Specifically, the Liquidator asserts that the Court should:

- a. vacate its Amended Memorandum Opinion and Order, enter an Order adopting Referee Schwartzman's Report and Recommendation that Baptist Health South Florida, Inc. and Palm Springs General Hospital and are not entitled to direct access to reinsurance proceeds from American Health Indemnity Company and dismiss the Hospitals' Exceptions to the Referee's Report and Recommendation;
- b. in the alternative, the Statutory Liquidator respectfully requests that the Court vacate the March 18, 2004 Amended Memorandum Opinion and Order and permit the parties to take discovery and then convene an evidentiary hearing with respect to whether there was a novation of the reinsurance agreements and/or whether the Hospitals are third-party beneficiaries to the reinsurance agreements.

5. In support of this motion, the Statutory Liquidator avers as follows:

- a. the Court erred by granting Baptist Health South Florida, Inc. and Palm Springs General Hospital direct payment of Reliance's reinsurance proceeds from AHIC even though the reinsurance agreements between Reliance and AHIC do not meet the statutory requirements of 40 P.S. §221.34;
- b. the Court erred by holding that Baptist Health South Florida, Inc. and Palm Springs General Hospital, through their course of interaction with Reliance's Reinsurer AHIC, caused a novation of the reinsurance agreements between Reliance and AHIC;
- c. the Court erred by holding that Baptist Health South Florida, Inc. and Palm Springs General Hospital are third-party beneficiaries to Reliance's reinsurance agreements with AHIC;
- d. the Court erred by making Findings of Fact without permitting the parties to take discovery and without an evidentiary hearing;
- e. the Court erred by relying on facts not supported by the record in holding that there was a novation of Reliance's reinsurance agreements with AHIC and/or that Baptist Health South Florida, Inc. and Palm Springs General Hospital are third-party beneficiaries of the reinsurance agreements between Reliance and AHIC;

- f. the Court erred by placing the interests of Baptist Health South Florida, Inc. and Palm Springs General Hospital over the interests of the ten of thousands of Reliance's other policyholders, creditors, claimants and the public.

6. The Liquidator incorporates by reference as though fully set forth herein her accompanying Memorandum of Law.

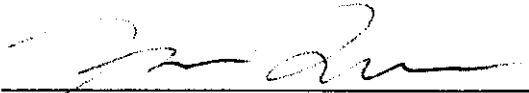
7. The Liquidator also incorporates by reference as though fully set forth herein the numerous submissions that she made to the referee and the Court in relation to this matter.

WHEREFORE, M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Statutory Liquidator of Reliance Insurance Company, respectfully requests that the Court vacate the March 18, 2004 Amended Memorandum Opinion and Order, enter an Order adopting Referee Schwartzman's Report and Recommendation that Baptist Health South Florida, Inc. and Palm Springs General Hospital are not entitled to direct access to reinsurance proceeds from American Health Indemnity Company and dismiss the Hospitals' Exceptions to the Referee's Report and Recommendation.

In the alternative, the Statutory Liquidator respectfully requests that the Court vacate the March 18, 2004 Amended Memorandum Opinion and Order and permit the parties to take discovery and then convene an evidentiary hearing with respect to whether there was a novation of the reinsurance agreements and/or whether the Hospitals are third-party beneficiaries to the reinsurance agreements.

Respectfully submitted,

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her official capacity as Statutory Liquidator
of Reliance Insurance Company

Dated: March 29, 2004