

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 M.D. 2001

In Re Large Deductible Reimbursements,

**PRAECIPE TO SUBSTITUTE CERTAIN PAGES OF MEMORANDUM OF LAW IN
SUPPORT OF LIQUIDATOR'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON
LARGE DEDUCTIBLE PETITION**

To the Clerk of Commonwealth Court:

Kindly substitute the enclosed pages 10 and 15 to The Liquidator's Memorandum Of Law In Support Of Liquidator's Motion For Partial Summary Judgment On Large Deductible Petition which was filed together with Liquidator's Motion For Partial Summary Judgment On Large Deductible Petition on April 30, 2004.

Respectfully submitted,

By:



JEROME R. RICHTER
ANN B. LAUPHEIMER
ALAN C. GERSHENSON
ANTHONY VIDOVICH
One Logan Square
Philadelphia, PA 19103-6998
(215) 569-5500
Attorneys for Petitioner
M. Diane Koken, Insurance Commissioner of the
Commonwealth of Pennsylvania, in her capacity as
Liquidator of Reliance Insurance Company

Dated: May 6, 2004

parties the outcome of that issue will decide whether the estate is also entitled to the economic benefit of the Insured-Funded large deductible policies.

C. Large Deductible Policies Were Developed In a Competitive Environment for Workers Compensation Policies To Reduce The Taxes, Surcharges And Assessments Attendant To Large Premiums And To Provide Benefits Of Self Insurance Without Onerous Regulatory Requirements

Large deductible policies were developed primarily for workers compensation insurance and the vast majority of policies at issue in the Liquidator's Petition involve workers compensation insurance. (Watson Aff. ¶¶4, 5, 6, 10).

Workers compensation insurance is one of the most highly regulated lines of insurance, and virtually all states require that employers either obtain workers compensation insurance from a licensed insurer or that the employer qualify under strict and often onerous statutory requirements to be self-insured. See generally Tex. Lab. Code 406.001, et seq. Further, when an employer purchases workers compensation insurance from a licensed carrier, most states require that the insurance company become primarily and directly liable to the injured worker. See generally California Ins. Code § 11650, 11651; Tex. Ins. Code §5.55- 5.68.

With one limited exception, workers' compensation insurance must be purchased by employers. The traditional worker's compensation insurance policy during this period was sold either on a guaranteed cost basis where the insured paid a set rate per class of employees, or on a retrospectively-rated basis, pursuant to which the policyholder/employer paid an initial estimated premium designed to be adjusted up or down depending on the loss experience of the policyholder/employer. Both of these types of policies resulted in large premiums for large insureds, and these large premiums were subject to premium taxes and other assessments such as second injury fund assessments and guaranty association surcharges. These premium-based

underlying the particular issue before the court.” *Myers*, 485 A.2d at 1115-1116. In so doing, the court “must analyze the extent to which one state rather than another has demonstrated, by reason of its policies and their connection and relevance to the matter in dispute, a priority of interest in the application of its rule of law.” *Id.* at 1116. Further, in evaluating the interests of one jurisdiction over another, a court “must view the factors qualitatively as opposed to quantitatively.” *Id.* Factors considered vital in the analysis include “the place of injury, domicile of the parties, and the place where the relationship between the parties is centered.” *Myers*, 465 A.2d at 1035.

Here, there can be no dispute that Griffith requires application of Pennsylvania law. While many insurers do business in multiple states or nationwide, United States domestic insurance companies are state-regulated entities which, regardless of the scope of their activities, must choose a domicile in one state, whose insurance department becomes their primary regulator. It is from this state that the insurer obtains its initial charter and certificate of authority, and it is to this state that the insurer subjects itself for determination of its required minimum capital and surplus requirements. Reliance was a Pennsylvania domestic insurer and the Pennsylvania Insurance Department was by law the primary regulatory authority over its affairs.

It is undeniable that state regulation of insurance companies reaches its apex during liquidation, magnifying the interest of the domiciliary state. The domiciliary state bears the full responsibility for the management and oversight of the winding up of the affairs of its insolvent domestic insurers. When a domestic insurer goes into liquidation proceedings within Pennsylvania, the Pennsylvania Insurance Commissioner becomes the Receiver, which fact alone

two conflict of laws issues, involving: (i) subrogation rights in a workers compensation dispute; and (ii) a claim by a domestic insurer against a foreign insurer for reimbursement of medical benefits paid under Pennsylvania’s No-

CERTIFICATE OF SERVICE

I, Norman B. La Croix, hereby certify that on or about this day, pursuant to the Court's Order of April 1, 2004, service of the foregoing was made on the attached Master Service List through the transmission of a Notice of Filing and through posting of a true and correct copy in PDF file format on the Reliance Documents website (www.reliancedocuments.com).

Dated: May 6, 2004

Norman B. La Croix
Paralegal

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)

Steve Davis, Esquire
Chief Counsel
Pennsylvania Insurance Department
1341 Strawberry Square
Harrisburg PA 17120
(717) 783-1975
(Attorneys for the Pennsylvania Insurance
Department)

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
Hangle 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 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. Coppula
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 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, Entekin & 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
Suite 3626, Gulf Tower
707 Grant St.
Pittsburgh, PA 15219
(Attorney 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)

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)

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.)

Michael B. Dubin, Esquire
Semanoff, Ormsby, Greenberg & Torchia
Suite 200 Jenkins Court
610 Old York Road
Jenkintown, PA 19046
(215-887-0200)
(215-887-5356) fax
(Attorneys for Integrated Health Services, Inc.)

Deborah Fuchs Cohen, Esquire
Eric Jonathan Rothschild, Esquire
Pepper Hamilton LLP
3000 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103
(215) 981-4470
(Attorney for M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania)

Leonard P. Goldberger, Esquire
Amy Elizabeth Vulpio, Esquire
White and Williams LLP
1800 One Liberty Place
Philadelphia, PA 19103-7395
(215) 864-6376
(Attorneys for Insurance Company
of North America)

Harold S. Horwich, Esquire
Bingham McCutchen
One State Street
Hartford, CT 06103
(860) 240-2700
(Attorneys for St. Joseph's Medical Center)

Michael Joseph Cawley, Esquire
Margolis Edelstein
Independence Square West, Fourth Floor
601 Walnut Street
Philadelphia, PA 19106
(215) 922-1100
(Attorneys for Phoenix Assurance PLC, Commercial
Union Assurance Co., The British Aviation Insurance
Company, Ltd., Marine Insurance Company Ltd., and
The Yorkshire Insurance Company)

Susan J. Guerrieri, Esquire
Stephen C. Baker, Esquire
John B. Dempsey, Esquire
Drinker Biddle & Reath LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996
(215) 988-2700
(Attorneys for Mawson & Mawson, Inc.)

Joseph F. Orso, III, Esquire
Casale & Bonner, P.C.
Suite 202
33 West Third Street
Williamsport, PA 17701
(570) 326-7044
(Attorneys for Richard Ruhl)

Arthur Makadon, Esquire

Geoffrey A. Kahn, Esquire
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
(215) 665-8500
(Attorneys for Deloitte & Touche LLP)

Douglas Y. Christian, Esquire
Reed Smith
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103-7301
(215) 851-8256
(Attorneys for American Longshore Mutual
Association)

Lisa M. Salazar, Esquire
McCarter & English LLP
Mellon Bank Center, Suite 700
1735 Market Street
Philadelphia, PA 19103-7501
(215) 979-3800
(Attorneys for Robert M. Steinberg)

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)

Malcolm C. Lindquist, Esquire
McGavick Graves, PS
1102 Broadway, Suite 500
Tacoma, WA 98401-1317
(253) 627-1181
(Attorney for Labor Ready, Inc.)

James W. Kutz, Esquire
Diane M. Tokarsky, Esquire
Kimberly M. Colonna, Esquire
McNees Wallace & Nurick, LLC
100 Pine St, P.O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(Attorneys for Earth Tech, Inc.)

Guy A. Cellucci, Esquire
Laura M. Spear, Esquire
White and Williams LLP
1800 One Liberty Place
Philadelphia, PA 19103-7395
(215) 864-7000
(Attorneys for Hartford Fire Insurance Co., Hartford Specialty Co., and the Hartford Financial Services Group, Inc.)

Brian T. Guthrie, Esquire
Daniel W. Krane, Esquire
Drinker Biddle & Reath LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996
(215) 988-2700
(Attorneys for Lexington Insurance Co.)

Edward G. Biester, Esquire
Duane Morris LLP
One Liberty Place
1650 Market Street
Philadelphia, PA 19103
215 979-1000
(Attorneys for Florida Workers' Compensation Insurance Guaranty Association Incorp.)

Christine G. Russell, Esquire
White and Williams LLP
1800 One Liberty Place
Philadelphia, PA 19103

(215) 864-6301
Fax: (215) 789-7598
-and-
Lawrence Licitra
Julie Pollack
Swiss Reinsurance America Corporation
175 King Street
Armonk, NY 10504
(Attorneys for Swiss Reinsurance America Corp.)

Daryn E. Rush, Esquire
Kimberly M. Dolan, Esquire
Leonard P. Goldberger, Esquire
White and Williams LLP
1800 One Liberty Place
Philadelphia, PA 19103-7395
(215) 864-7000
(Attorneys for Travelers Casualty and Surety Co.)

Marcy L. Colkitt, Esquire
Colkitt and Associates, P.C.
Post Office Box 607
Indiana, PA 15701
(724) 463-3570
(Attorneys for Equimed)

John C. Connell, Esq.
Jerrold S. Kulback, Esq.
Archer & Greiner, PC
One Centennial Square
Haddonfield, NJ 08033
(856) 795-2121
(Attorneys for New Mexico Mutual Casualty Company and Southwest Casualty Company)

Kevin F. Brady, Esq.
Skadden, Arps, Slate, Meagher & Flom, LLP
One Rodney Square
Wilmington, DE 19801
(302) 651-3001
(Attorneys for Zenith Insurance Company)