

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken
Insurance Commissioner of the
Commonwealth of Pennsylvania

Plaintiff,

v

Docket No. 183 M.D. 2002

Legion Insurance Company
One Logan Square, Suite 1400
Philadelphia, PA 19103

Defendant.

**JURISDICTIONAL STATEMENT
IN SUPPORT OF NOTICE OF APPEAL**

The Honorable M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Statutory Liquidator (“Liquidator”) for Legion Insurance Company (“Legion”), by and through her counsel, respectfully submits this Jurisdictional Statement in Support of Her Notice of Appeal.

I. INTRODUCTION

This appeal arises from the July 25, 2003 Orders from the Honorable Mary Hannah Leavitt (“Judge Leavitt”) of the Commonwealth Court of Pennsylvania, liquidating Legion and denying the Commissioner’s Post-Trial Motion and/or Motion for Reconsideration of the June 26, 2003 Order. See July 25, 2003 Orders. (Exhibit A). The Commissioner files the instant Jurisdictional Statement in Support of her Notice of Appeal seeking review and reversal of three (3) specific provisions of Judge Leavitt’s July 25, 2003 Order liquidating Legion and seeking review and reversal, in its entirety, of the lower court’s July 25, 2003 Order denying the Commissioner’s Post-Trial Motion and/or Motion for Reconsideration (“Post-Trial Motion”).

II. REFERENCE TO OPINIONS OF THE COURT BELOW

The Commissioner appeals: Paragraph 6 (incorporating entire June 26, 2003 Opinion and Order); Paragraph 20 (Court direction and approval over administrative expenses); and Paragraph 22 (Court establishing procedure for direct access to reinsurance), from the Court's Order of July 25, 2003 liquidating Legion. The Commissioner appeals the entire Court Order of July 25, 2003 denying her Post-Trial Motion and/or Motion for Reconsideration.

III. BASIS FOR THE SUPREME COURT'S JURISDICTION

The Supreme Court of Pennsylvania has jurisdiction to review Judge Leavitt's Orders in the Pennsylvania Commonwealth Court pursuant to Rule 1101(a)(1) of the Pennsylvania Rules of Appellate Procedure.

IV. CONCISE STATEMENT OF PROCEDURAL HISTORY

The Commissioner filed her Petition for the Liquidation of Legion on August 29, 2002, and Amended Emergency Petition for Liquidation on October 18, 2002. The Commissioner asserted that Legion consented to its liquidation, was insolvent and further attempts to rehabilitate the insurer would be futile and substantially increase the risk of loss to policyholders, claimants and creditors. On September 20, 2002, Mutual Risk Management ("MRM"), Legion's ultimate parent company, was granted leave to intervene in opposition to the Petition for Liquidation. Hearings on the Petitions for Liquidation, and MRM's opposition thereto, were held on November 7, 8, 14, 15 and 22, 2002. After these initial hearings and the submission of post-hearing briefing by the Commissioner and MRM, five additional parties were granted permission to intervene in the liquidation proceedings. Specifically, by order dated February 19, 2003, the Commonwealth Court granted intervenor status to American Airlines ("American"),

Pulte Homes, Inc. (“Pulte”), Rural/Metro Corporation (“Rural/Metro”), and the Psychiatrists’ Purchasing Group (“PPG”) (collectively referred to as to “Policyholder-Intervenors”). Syndicate 271 of Those Certain Underwriters at Lloyd’s of London (“Syndicate 271”) was permitted to intervene by order of March 7, 2003.

The Commonwealth Court presided over additional hearings on March 6, 7, 19, and 20, 2003 and April 3, 2003. Specifically, the Court considered whether Legion’s reinsurance agreements contained a cut-through clause or direct funding mechanism, which would allow the intervening parties to recoup their losses directly from Legion’s reinsurers. Further, the Policyholder Intervenors presented evidence that a liquidation would be harmful to their interests. Post-hearing briefing concluded on May 27, 2003

On June 26, 2003, Judge Leavitt issued an Opinion and Order concerning the Petitions for Liquidation. That Opinion and Order is the subject of an appeal before this Court filed on Friday, July 25, 2003. Also on July 25, 2003, Judge Leavitt issued an Order of Liquidation for Legion. That same day, Judge Leavitt issued an Order denying the Commissioner’s Post-Trial Motion and/or Motion for Reconsideration of the June 26, 2003 Opinion and Order.

V. QUESTIONS PRESENTED FOR REVIEW

Judge Leavitt’s July 25, 2003 Orders liquidating Legion and denying the Commissioner’s Post-Trial Motion and/or Motion for Reconsideration should be vacated in part (Liquidation Order) and in whole (Post-Trial Motion), respectively, because they are based on a number of legal and factual errors. The questions presented before the Supreme Court of Pennsylvania are:

- 1 Whether the Court erred in unilaterally establishing a procedure to allow policyholders to intervene in Legion’s liquidation to enforce Legion contracts

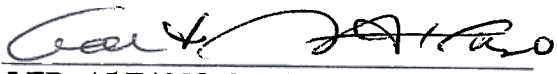
with reinsurers when the provisions of the Insurance Department Act grant the Liquidator exclusive control over all claims of the estate;

2. Whether the Court erred in granting the Policyholder Intervenors direct funding from Legion's reinsurers and directing that a procedure should be implemented to permit other similarly situated policyholders direct funding in liquidation proceedings based upon the characterization of Legion as a "fronting insurer;"
3. Whether the Court erred in granting the Policyholder Intervenors direct funding from Legion's reinsurers based upon a finding of contractual third party status notwithstanding the terms of 40 P.S. § 221.34, which apply "regardless of any provision in the reinsurance contract or other agreement" and which require a reinsurer to undertake a direct coverage obligation to the insured;
4. Whether the Court erred in holding that the Policyholder Intervenors are third party beneficiaries of the agreements between Legion and its reinsurers, particularly where the Court improperly permitted parole evidence to contradict the clear and unambiguous terms in the relevant documents;
5. Whether the Court erred in raising the interests of the four Policyholder Intervenors over the interests of the tens of thousands of Legion's other policyholders, creditors, claimants and the public, thereby creating an improper subclass of preferred policyholders;
6. Whether the Court erred in requiring that all administrative expenses of the liquidation, including, among other things, employee payroll and professional

consultant compensation, be subject to the direction and approval of the Commonwealth Court.

Respectfully submitted,

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Dated: July 29, 2003

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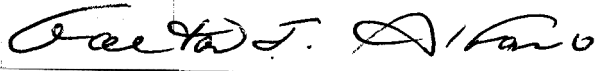
Defendant

REQUEST FOR TRANSCRIPT

A Notice of Appeal having been filed in this matter, the official Court Reporter, Melanie Palmer, is hereby ordered to produce, certify and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

Respectfully submitted,

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