



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

**ORDER**

This matter having come before the Court on the Petition of M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania as Liquidator of Reliance Insurance Company to Approve the Settlement between Moody International, Inc. and The Dow Chemical Company (the "Settlement").

IT IS on this \_\_\_ day of \_\_\_\_\_, 2001, hereby ORDERED that the Petition is GRANTED; IT IS further ORDERED that :

1. The Settlement is APPROVED;
2. The Liquidator is AUTHORIZED to proceed with the Settlement including, without limitation (i) to execute and perform a Settlement Agreement between the parties; and (ii) make all such payments due under the Settlement to The Dow Chemical Company; and

RECEIVED AND FILED  
PHILADELPHIA  
COMMONWEALTH COURT  
OF PENNSYLVANIA  
NOV 21 12 19 PM '01

3. Lloyd's is AUTHORIZED to fund the settlement with insurance proceeds due under Policy No.823/FD9701593 in respect of the Settlement.

---

James Gardner Collins, Judge

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

**PETITION TO APPROVE SETTLEMENT BETWEEN MOODY  
INTERNATIONAL, INC. AND THE DOW CHEMICAL COMPANY**

Petitioner M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner"), in her capacity as Liquidator of Reliance Insurance Company ("Liquidator"), respectfully requests that this Court enter an order approving a settlement between Moody International, Inc. ("Moody") and The Dow Chemical Company ("Dow"). In support of this Petition, the Liquidator avers as follows:

1. Moody is a subsidiary of RCG-Moody International Limited, which is a subsidiary of RCG International, Inc., which in turn is a subsidiary of Reliance Insurance Company ("Reliance"). Moody has been in existence for 90 years. It provides consulting services in the area of quality assurance, quality control, inspection and other engineering and technical services to a wide range of industries.

2. Dow is and has been a valued client of Moody for many years. Between January 1, 2001 and October 15, 2001 alone, Moody invoiced Dow approximately \$1.4

million for services rendered within the United States. Dow is a significant, ongoing client of Moody and its affiliates worldwide.

3. In June 1999, a dispute arose between Dow and Moody. Dow claimed it had suffered damages of approximately \$1.8 million as a result of Moody's allegedly negligent inspection of a caustic evaporator for Dow. A caustic evaporator is a large pressure vessel used in the manufacture of caustic soda.

4. In its demand letter, Dow specifically alleged that Moody "failed to discover and report unacceptable workmanship and quality control by Dow's supplier, Beard Industries, in connection with a caustic evaporator being manufactured for Dow's Plaquemine, Louisiana site." See Affidavit of Gregory P. Candela sworn to November 20, 2001 ("Candela Aff.") at ¶6; Ex. A. Consequently, according to Dow, the "defective caustic evaporator" leaked in numerous locations within six months of its installation. Id. The parties have attempted to resolve their dispute and Dow did not file a lawsuit against Moody.

5. Instead, they informally exchanged documents and commenced a series of negotiations. In connection with Dow's claim against Moody, Moody made a claim for coverage under Lloyd's Consultants Professional Liability Insurance Policy No. 823/FD9701593 (the "Policy"). Candela Aff. ¶7; Ex. B. The Policy is an "in-fill" policy separate and distinct from the Lloyd's Blended Policy that is the subject of the Emergency Petition for Preservation of Insurance Policy Assets of Estate filed with this Court on June 4, 2001. The Lloyd's Blended Policy is not involved in this Petition.

6. The Policy provides professional liability coverage of up to \$2.5 million with respect to the consulting services provided by, among other entities, Moody. It provides for

a \$250,000 deductible, which was amended to a \$100,000 deductible effective May 21, 1999. Reliance is not a named insured under the Policy. While Reliance Group Holdings, Inc. ("RGH") is an additional insured under the Policy, neither Reliance nor RGH perform covered "Professional Services" as defined in the Policy.

7. In April 2001, Moody and Dow reached an agreement in principle to settle their dispute for \$210,000. Counsel for the Underwriters of the Policy was closely involved in the settlement negotiations and consented to the proposed settlement on behalf of the Underwriters. Under the terms of coverage provided by the Policy, Moody would pay approximately \$85,000 (representing the \$100,000 deductible under the Policy minus approximately \$15,000 that Moody had incurred in attorneys fees) and the Underwriters would pay the balance of approximately \$125,000 from the proceeds of the Policy.

8. Before Reliance's rehabilitation and liquidation, the parties agreed that the settlement was fair and reasonable and represented an advantageous outcome for two parties with an ongoing business relationship. However, before the settlement was consummated, Reliance commenced rehabilitation proceedings and RGH filed for bankruptcy.

9. By letter dated July 23, 2001, counsel for the Underwriters of the Policy, Eugene V. Elsbree III, informed Reliance that because of these proceedings and what he characterized as this Court's "position" that actions which "directly or indirectly negatively impact or diminish the assets of the Reliance Insurance Company" must be approved by the Commissioner and the Commonwealth Court of Pennsylvania, the Underwriters would require the approval of (i) the Commissioner, (ii) this Court, and (iii) the RGH Bankruptcy


court as conditions precedent to payment under any Lloyd's policy involving Reliance entities. Candela Aff. ¶11; Ex. C.

10. Since that time, the settlement has been in abeyance. Without the Court's approval the settlement cannot proceed because the Underwriters of the Policy will not pay out the insurance proceeds for the covered portion of the settlement.

11. The Liquidator has determined that the settlement will permit and promote the continuation of Moody's relationship with Dow, thereby enhancing and preserving the value of Reliance and the estate. Moreover, Reliance is not an insured under the Policy. The Liquidator believes that the terms of the settlement are fair to Reliance and in the best interests of the insurer's estate, its policyholders, claimants and the general public, because the settlement will preserve a valuable business relationship of a subsidiary, and therefore preserve and enhance the value of the subsidiary. See 40 P.S. §221.1(c); see also 40 P.S. §221.23(6)(authorizing the Liquidator to do such "acts as are necessary or expedient to collect, conserve or protect its assets or property").

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.

BLANK ROME COMISKY & MCCAULEY LLP

By:   
JEROME R. RICHTER  
ANN B. LAUPHEIMER  
One Logan Square  
Philadelphia, PA 19103-6998  
(215) 569-5500

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


OF COUNSEL:  
David F. Simon  
Chief Counsel  
The Pennsylvania Insurance Department  
1341 Strawberry Square  
Harrisburg, PA 17120  
(717) 787-6009

Dated: November 21, 2001

CERTIFICATE OF SERVICE

I, Mojirade James, hereby certify that this day a true and correct copy of the foregoing Petition was served on all persons listed on the attached Master Service List by facsimile and U.S. Mail, postage prepaid.

Dated: November 21, 2001

  
Mojirade James

## 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 Comisky & McCauley LLP  
One Logan Square  
Philadelphia, PA 19103  
(215) 569-5500  
(Attorneys for M. Diane Koken,  
Insurance Commissioner of the  
Commonwealth of Pennsylvania)

David F. Simon  
Chief Counsel  
Pennsylvania Insurance Department  
1341 Strawberry Square  
Harrisburg, PA 17120  
(717) 787-6009  
(Attorney for M. Diane Koken,  
Insurance Commissioner of the  
Commonwealth of Pennsylvania)

Marilyn K. Kincaid  
Reliance Insurance Company  
(in Liquidation)  
5 Hanover Square  
New York, NY 10004  
(212) 858-6500  
(Attorney for Reliance Insurance  
Company (in Liquidation))

Hillary C. Steinberg  
James Michael Matour  
Hangley 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, 19<sup>th</sup> 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  
875 Third Avenue  
New York, NY 10005  
(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)

Richard P. Coe  
Weir & Partners, LLP  
1339 Chestnut Street, Suite 500  
Philadelphia, PA 19107  
(215) 665-8181  
(Attorneys for Forestal Village Community  
Services Association, Inc. and Sutton  
Woods Condominium Assoc., Inc.)

Theodore E. Huenke  
Huenke & Rodriguez  
One Huntington Quadrangle, Suite 2S02  
Melville, NY 11747  
(631) 756-2024  
(Attorneys for Hanover Ins. Co.)

Andrew K. Stutzman  
David Carl Franceski  
Stradley, Ronon, Stevens & Young, LLP  
2600 One Commerce Square  
Philadelphia, PA 19103-7098  
(215) 564-8008  
(Attorneys for Citicorp North America, Inc.)

Roy S. Cohen  
Nicole L. Herman  
Cohen, Segalis, Pallas & Greenhall, P.C.  
1515 Market Street, 11<sup>th</sup> Floor  
Philadelphia, PA 19102  
(215) 564-1700  
-and-  
Richard D. Batchelder, Jr.  
Ropes & Gray  
One International Place  
Boston, MA 02110-2624  
(617) 951-7000  
(Attorneys for Miami Cruiseline  
Holdings LLC)

Adam B. Kutinsky  
Hertz, Schram & Saretsky  
1760 S. Telegraph Road, Suite 300  
Bloomfield Hills, MI 48302  
(248) 335-5000  
(Attorneys for Trustee of FPA Creditor  
Trust)

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  
Distribution, Inc.)

Robert D. Rhoad  
Dechert Price & Rhoads  
Princeton Pike Corporate Center  
P.O. Box 5218  
Princeton, NJ 08543  
(609) 620-3200  
(Attorneys for Acumen Re Management  
Corporation)

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.)

Gavin P. Lentz  
David Paul Heim  
Vincent J.B. Van Laar  
Bochetto & Lentz P.C.  
1524 Locust Street  
Philadelphia, PA 19102  
(215) 735-3900  
(Attorneys for Higgins Erectors &  
Haulers, Inc.)

Thomas J. Madigan  
Christopher A. Coppula  
Cohen & Grigsby, P.C.  
11 Stanwix Street, 15<sup>th</sup> 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  
McCarter & English, LLP  
One Commerce Square  
2005 Market Street, Suite 3600  
Philadelphia, PA 19103  
(215) 557-7700  
(Attorneys for Brand Scaffold Services,  
Inc.)

Philip A. Ignelzi  
Michael A. Murphy  
Ogg, Cordes, Murphy & Ignelzi, LLP  
Riverview Place  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222  
(412) 471-8500  
(Attorneys for the Estate of Richard  
McClintock)

John Norig Ellison  
Timothy Patrick Law  
Anderson, Kill & Olick P.C.  
1600 Market Street, 32<sup>nd</sup> Floor  
Philadelphia, PA 19103  
(215) 568-4202

Mariv 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.)