

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

RECEIVED AND FILED  
PHILADELPHIA  
COMMONWEALTH COURT  
OF PENNSYLVANIA  
NOV 21 12 26 PM '01

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

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

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James Gardner Colins, Judge

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**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.

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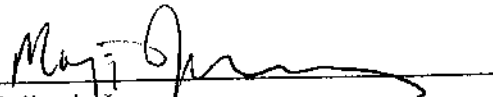
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Dated: November 21, 2001

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

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Reliance Insurance Company

No. 269 M.D. 2001 (Commonwealth Court of Pennsylvania)

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