

IN 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

Synagro Technologies, Inc.,
Petitioner,

v.

M. Diane Koken
Respondent.

RECEIVED AND FILED
PHILADELPHIA
COMMONWEALTH COURT
OF PENNSYLVANIA
Mar 28 2 29 PM '01

ORDER

AND NOW, on this _____ day of _____, 2001, upon consideration of Synagro Technologies, Inc.'s Application for Relief and the respondent's response thereto and memorandum of law, the application is hereby DENIED.

J.

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Plaintiff

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Respondent.

**RESPONSE IN OPPOSITION TO SYNAGRO
TECHNOLOGIES, INC.'S APPLICATION FOR RELIEF**

M. Diane Koken, the Insurance Commissioner of the Commonwealth of Pennsylvania, as Liquidator for Reliance Insurance Company ("Liquidator"), incorporating the attached Memorandum of Law, opposes Synagro Technologies, Inc.'s ("Synagro") Application for Relief.

In its application, Synagro requests an order from this Court approving or compelling the approval of a settlement that was admittedly never approved by the Rehabilitator (now, the Liquidator) and directing the immediate funding of such settlement. Alternatively, Synagro seeks an order permitting it to recover directly from Reliance's reinsurers.

Synagro's application presents no ground for the relief Synagro is seeking and should be denied. First, the application is a claim against Reliance which, as with any and all claims against Reliance, must be submitted and adjudicated in the statutory proof of claims proceeding. Synagro's allegations in its application are denied as premature and improper conclusions of law, and the disposition of Synagro's claim must be made in the liquidation claims proceeding. There is no basis for Synagro to recover reinsurance proceeds directly from Reliance's reinsurers. Synagro does not allege any relationship with Reliance's reinsurers that would permit it to recover directly from these reinsurers. Reinsurance proceeds are assets of the estate and may not be distributed outside of the procedures set forth in the Pennsylvania Insurance Department Act, 40 P.S. § 221.1 *et seq.* ("Pennsylvania Insurance Act"). Second, even if the Liquidator were compelled to approve the settlement here, an immediate and full payment on the settlement would constitute an unlawful preference and would violate the Liquidator's duty to treat all policyholders and creditors fairly. Finally, the immediate funding of the settlement would accord Synagro's claim super priority and would violate the distribution priorities mandated by the Pennsylvania Insurance Act.

A. Synagro has a Remedy under the Pennsylvania Insurance Act which it is Required to Pursue

1. The Pennsylvania Insurance Act requires that all claims against Reliance be submitted through a "proof of claim." 40 Pa. Stat. §§ 221.37, 221.38. The Liquidation Order specifically states that "No person shall participate in any distribution of the assets of Reliance unless such claims are filed and presented in accordance with and within the time limit established by the Liquidator, subject to the provisions for the late filing of claims in 40 P.S. §221.37." Under the statutory claims procedure, the Liquidator reviews all claims filed in the liquidation. 40 Pa. Stat. § 221.45(a). The Liquidator may deny or allow a claim, in whole or in part. If a claim is allowed, the claimant will be entitled to a pro rata distribution from Reliance's estate. If a claim is denied, the Liquidator is required to provide written

notice of the determination to the claimant. 40 P.S. § 221.41(a). The claimant may then file objections with the court. *Id.* All disputed claims are ultimately resolved by the Commonwealth Court or by a referee appointed by the Commonwealth Court. 40 Pa. Stat. §221.41(b). The statutory claims process is mandatory, and the Liquidator is prohibited from paying policyholder claims or claim judgments except through the statutory claims process. 40 Pa. Stat. § 221.44.

2. Synagro's application is a claim against Reliance which must be made and ultimately adjudicated in the proof of claim proceeding. Accordingly, Synagro has a statutory remedy which it is required to pursue, and it may not circumvent the statute by filing a motion with this Court.

3. Synagro has filed its application prior to filing a proof of claim and prior to a determination as to the validity and amount of its claim in the statutory claims process. Accordingly, Synagro's application is premature. Synagro's claim is not ripe until such time that Synagro has filed an appropriate proof of claim and the Liquidator has denied the claim.

B. Synagro May Not Recover Reinsurance Proceeds from Reliance's Reinsurers

4. Any proceeds under Reliance's reinsurance contracts are assets of the estate and are subject to the distribution scheme set forth in the Pennsylvania Insurance Act.

5. Synagro alleges no relationship with Reliance's reinsurers that would permit it to recover directly from these reinsurers. In such cases, Pennsylvania law clearly prohibits insureds from recovering directly against its insolvent insurer's reinsurers.

6. The relief Synagro seeks is prohibited by law. Further, in seeking to recover directly from Reliance's reinsurers, Synagro is attempting to circumvent the mandatory statutory claims procedure.

C. The Requested Relief Sought by Synagro Would Constitute an Unlawful Preference

7. Upon the entry of the Liquidation Order, the Liquidator is required by law to comply with the Pennsylvania Insurance Act and the Liquidation Order, and is charged with the responsibility to protect the interests of all policyholders. She may not, therefore, take any action that favors one policyholder over another, such as permitting a distribution of assets to pay immediately the claim of one policyholder in full. Indeed, the Liquidation Order, at paragraph 21, expressly prohibits any person from “obtaining of preferences, judgments, attachments . . . against Reliance assets, property . . .

8. Even if the Liquidator were compelled to approve the settlement here, any payment on the settlement would be a distribution of assets to pay immediately the claim of one policyholder in full and would constitute an unlawful preference. Synagro would receive a full recovery on its claim while other policyholders would receive a pro rata share of the distribution of Reliance’s assets. The relief Synagro seeks is prohibited by statute.

D. The Relief Sought by Synagro Would Violate the Distribution Priority Mandated by the Pennsylvania Insurance Act

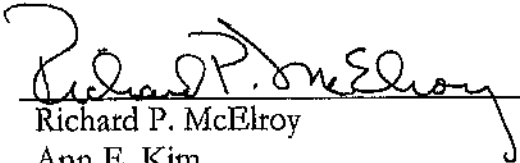
9. The immediate funding of any settlement in the Lopez case would also violate the distribution priority mandated by the Pennsylvania Insurance Act in that it would accord special priority to Synagro’s claim. The Pennsylvania Insurance Act requires that the order of distribution of claims be in accordance with Section 221.44 which provides first priority to “costs and expenses of administration.” The immediate funding of the settlement would improperly elevate Synagro’s claim to a priority equal to or higher than administrative expenses.

10. The Liquidator’s immediate funding of the settlement requested by Synagro would be violative of the distribution priority mandated by law and is prohibited.

WHEREFORE, the Liquidator requests that this Court enter an Order denying Synagro's Application for Relief.

Respectfully submitted,

BLANK ROME COMISKY & McCAULEY LLP

By: 
Richard P. McElroy
Ann E. Kim
One Logan Square
Philadelphia, PA 19103-6998

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

OF COUNSEL:
David F. Simon, Esquire
Chief Counsel
The Pennsylvania Insurance Department
Office of Chief Counsel
1341 Strawberry Square
Harrisburg, PA 17104

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