

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
STATE OF PENNSYLVANIA
COMMONWEALTH COURT
OF JUDICIAL ADMINISTRATION
DEC 19 3 27 PM '01

**ANSWER TO APPLICATION FOR RELIEF
OF SYNAGRO TECHNOLOGIES, INC.**

M. Diane Koken, Insurance Commissioner for the Commonwealth of Pennsylvania, as Liquidator for Reliance Insurance Company ("Liquidator"), opposes Synagro Technologies, Inc.'s ("Synagro") Application for Relief, which seeks the approval and funding of a settlement that the Liquidator, as Rehabilitator for Reliance, never approved. In support of her opposition to Synagro's Application, she states as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted. The complaint, a copy of which is attached to Synagro's Memorandum

of Law, speaks for itself.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted in part, denied in part. It is admitted only that the Lopez case is pending in Jackson County, Texas. The remaining allegations are denied as the Liquidator is without information or knowledge sufficient to aver the truth of the allegations.

12. Admitted.

13. Denied. It is denied that any settlement that would have resulted in the payment of \$14.6 million was "reached," tentative or otherwise. Reliance and ECS representatives consistently represented that any settlement was contingent upon obtaining the Rehabilitator's approval and that no approval had yet been obtained. Moreover, not all of the Plaintiffs in Lopez agreed to any settlement.

14. Admitted in part, denied in part. It is admitted that a Memorandum of Understanding was prepared. By way of further response, that Memorandum of Understanding expressly stated in its title that it was "contingent and conditioned upon necessary approvals" from the Rehabilitator.

15. Admitted. The Reliance-retained attorneys were never advised that the settlement would be approved and funded. They were consistently advised that the Rehabilitator would have to approve any settlement.

16. Admitted. By way of a further response, John Gaw stated in the alleged proposal that he was "continuing with the rehabilitators to obtain settlement authority." See Exhibit "A" hereto.

17. Admitted in part, denied in part. It is admitted that there was a meeting on September 10, 2001. However, not all of the reinsurers attended the meeting. Further, no one stated that the settlement was reasonable or that a settlement would be approved and funded.

18. Denied. The Liquidator denies that Reliance made or could make such representation on behalf of AON.

19. Denied. No one stated that the settlement was reasonable or that the settlement would benefit everyone. Further, any settlement was contingent upon obtaining the Rehabilitator's approval. The September 28, 2001 e-mail from John Gaw to Marcy Rothman, one of Synagro's defense attorneys, expressly states that he has no authority. See Exhibit "B" hereto.

20. Admitted.

21. Admitted in part, denied in part. It is admitted that on or about September 28, 2001, John Gaw sent an e-mail to Marcy Rothman, a Reliance-retained attorney. See Exhibit "B" hereto. It is denied that Mr. Gaw is a "Senior Claims Account Manager at Reliance." Mr. Gaw is an employee of Cambridge Integrated Services, a third party administrator, that administers Reliance claims. It is also admitted that the e-mail expressly states that the settlement had not been approved. Mr. Gaw states that "[y]ou understand that I don't have authority but this may be worth considering." In view of Mr. Gaw's statement that he has no authority, the Liquidator denies Synagro's allegation regarding the "implication and unmistakable import of the proposal."

22. Admitted in part, denied in part. It is admitted only that the Rehabilitator did not approve the settlement and that Texas counsel was so advised. The Liquidator is without knowledge or information sufficient to aver the truth of the remaining allegations contained in this paragraph.

23. Denied. The Liquidator is without knowledge or information sufficient to aver the truth of the allegations contained in this paragraph.

24. Admitted. The Notice of Stay attached as an exhibit to Synagro's Memorandum of Law speaks for itself.

25. Denied. The Liquidator is without knowledge or information sufficient to aver the truth of the allegations contained in this paragraph.

26. Denied. The Liquidator is without knowledge or information sufficient to aver the truth of Synagro's allegation that it faces potential verdict in excess of its \$26 million policy limits. The remaining allegations are denied as conclusions of law.

27. Denied. The Liquidator is without knowledge or information sufficient to aver the truth of the allegations contained in this paragraph.

28. Denied. To the contrary, throughout the settlement process, Reliance consistently advised that the settlement would have to be approved by the Rehabilitator. The remaining allegations regarding Synagro's beliefs are denied, as the Liquidator is without information or knowledge sufficient to aver the truth of the allegations.

29. Denied. The Liquidator denies Synagro's characterization that Reliance failed to conclude the settlement "for no apparent or stated reason," and that the Rehabilitator led anyone to reasonably believe that a settlement was imminent. The Liquidator denies the remaining allegations as she is without information or knowledge sufficient to aver the truth of the allegations.

30. Admitted. It is admitted that this paragraph quotes, in part, paragraph 18 of the Rehabilitation Order.

31. Admitted.

32. Denied. The allegations in this paragraph are denied as conclusions of law.

33. Denied. The allegations in this paragraph are denied as conclusions of law.

34. Admitted in part, denied in part. It is admitted that this paragraph quotes a statement from the Rehabilitator's press release. It is denied that the Liquidator's refusal to

approve and fund the settlement contravenes the Rehabilitator's statement that Reliance "continue[s] to pay claims under policies." The statement in the press release does not intimate that the Rehabilitator is obligated or intends to settle any specific claim. The remaining allegations are denied as conclusions of law.

35. Admitted only that the quotation is accurate. It is denied that the quoted language intimates that the Rehabilitator will settle any specific claim.

36. Admitted in part, denied in part. It is admitted that the Rehabilitator did not approve a settlement of the Lopez case. It is denied that that was contrary to the Rehabilitator's "reassurances and promises."

37. Denied. The Liquidator denies the allegations as conclusions of law.

38. Denied. The Liquidator denies the allegations as conclusions of law. During the settlement discussions, Reliance consistently and expressly represented to Synagro that the settlement had to be approved by the Rehabilitator.

39. Denied. The Liquidator denies the allegations as conclusions of law.

40. Admitted in part, denied in part. It is admitted that the Liquidation Order enjoins all persons from engaging in a waste of Reliance's assets. The Liquidator denies as a conclusion of law Synagro's allegation that she engaged in such waste by not funding the settlement.

41. Admitted in part, denied in part. It is admitted that Synagro purports to present two alternative "solutions." It is denied that the solutions would do equity or cure a non-existent "abuse of discretion." To the contrary, it is averred the proposed solutions are unlawful.

42. Denied. The allegations are denied as conclusions of law.

43. Admitted in part, denied in part. It is admitted that some of the reinsurance companies participated in a meeting regarding settlement. The remaining allegations are denied as conclusions of law. By way of further answer, as set forth in the Liquidator's Memorandum of Law, reinsurance proceeds are assets of Reliance's estate and Synagro may not collect directly from Reliance's reinsurers.

44. Admitted in part, denied in part. It is admitted that the first \$6 million is 100% reinsured. It is denied, however, that the first \$6 million "would not require direct payment from the Estate."

45. Admitted in part, denied in part. It is admitted that the Liquidation Order and the Pennsylvania Insurance Act (40 P.S. § 221.34) requires the reinsurance companies to pay all reinsurance proceeds to the Liquidator or potentially face a double liability. By way of further answer, this Court's approval of a direct payment would be violative of the Liquidation Order, the contracts of reinsurance, and the Pennsylvania Insurance Act.

46. Denied. The allegations are denied as conclusions of law. The relief Synagro requested is prohibited. Reinsurance proceeds are assets of the estate. Any payment on the settlement would be a preference.

47. Denied. The allegations are denied as conclusions of law. The relief Synagro requested is prohibited. Reinsurance proceeds are assets of the estate. Any payment on the settlement would be a preference.

48. Denied. The allegations are denied as conclusions of law. The relief Synagro requested is prohibited. Reinsurance proceeds are assets of the estate. Any payment on the settlement would be a preference.

49. Denied. The allegations are denied as conclusions of law. The relief Synagro requested is prohibited. Reinsurance proceeds are assets of the estate. Any payment on the settlement would be a preference.

NEW MATTER

50. The relief sought by Synagro's suggested alternative solutions are unlawful.

51. The relief sought by Synagro's suggested alternative solutions would constitute a preference and thereby violate the Liquidation Order and the Insurance Department Act, 40 P.S. § 221.1, et seq.

52. The relief sought by Synagro's suggest alternative solutions would violate Section 221.34 of the Pennsylvania Insurance Department Act which requires reinsurance proceeds to be paid only to the insurer's estate, and not directly to insureds.


53. The relief sought by Synagro's suggested alternative solutions is barred by the terms of the reinsurance contracts which have already been filed in this action as Exhibit B to the Supplemental Memorandum of Law in Opposition to Synagro Technologies, Inc.'s Application for Relief.

WHEREFORE, the Liquidator requests that this Court deny 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

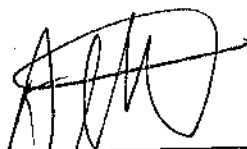
1341 Strawberry Square

Harrisburg, PA 17104

December _____, 2001

CERTIFICATE OF SERVICE

I, ALPHONSO DAVID, hereby certify that this day a true and correct copy of the foregoing Answer of M. Diane Koken to Application for Relief of Synagro Technologies, Inc. was served on all persons listed on the attached Master Service List by facsimile and U.S. Mail, postage prepaid.



ALPHONSO DAVID

Dated: December 18, 2001

VERIFICATION

I, Mel Koenig, am the First Vice President of Reliance Insurance Company (In Liquidation). I hereby verify that the statements made in the foregoing Answer to Application for Relief of Synagro Technologies, Inc. are true and correct to the best of my knowledge, information and belief.

I understand that the statements in this Answer are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


Mel Koenig

Date: December 7, 2001

Exhibit A

IN REAHABILITATION

Your FAX (713)653-5656, Reliance FAX (212) 858-5015

August 23, 2001

Re: Tarver, Lopez, Kramer v Synagro Technologies
DOL: 10/15/99
Reliance # 00198727
Cause # 00-1-11337; District Court of Jackson County Texas

Mr. Frank Spagnoletti:

Monday, September 10th 2001, is set here in NY for our meeting with the reinsurers.

We are continuing with the rehabilitators to obtain settlement authority at the appropriate level.

I've enclosed with this FAX suggested structures from Cambridge Galaher which project a guaranteed payout to all plaintiffs of **\$21,442,658** with a realistic potential, again to all plaintiffs, of **\$37,882,273**. The yield to the plaintiffs from these structures are far greater than any that could be purchased from the recommended mediation agreement and would save Reliance, and its reinsurers **\$3,000,000**.

This is not a retreat from the mediation settlement suggestions but rather a restructuring and reallocation that will prove even more generous to the plaintiffs and more appropriate to their needs.

This is a framework that should be more attractive to reinsurers and sellable to the rehabilitators without antagonizing our opponents.

Please feel free to contact me with your thoughts. We can tweak or fine tune these numbers a bit to make them more agreeable and still effect real savings.

Sincerely,

John M. Gaw

Exhibit B

REDACTED

-----Original Message-----

From: John.Gaw@reliancenational.com
[mailto:John.Gaw@reliancenational.com]
Sent: Friday, September 21, 2001 3:31 PM
To: mirothman@rothext.com
Cc: Leonard.LaGrua@reliancenational.com;
Christopher.Phillips@reliancenational.com
Subject: Re: SYNAGRO [Virus Checked]

Marcy:

As we discussed I've enclosed a breakdown of the structure we had provided earlier identifying the tax component for all 3 settlements, if purchased post-settlement, as greater than \$2,200,000. The numbers are very attractive for all three plaintiffs. You understand that I don't have authority but this may be worth considering.

As we had discussed plaintiffs' counsel may have some concerns over keeping their annuity people happy and their own piece of the pie. There's several million dollars already factored in for attorneys but if this does move things

we could provide additional cash for them and still effect savings.

Obviously, if there's not to be any savings to Reliance we may have to let this take its own course and the primary losers will be the plaintiffs themselves.

If this is a strategy you feel we can pursue let me know and we'll discuss further here.

I don't have the reinsurance documentation and time is getting short for FedEx. If I can get them out today I'll let you know. If not you can expect it Tuesday.

Unless you hear otherwise we'll talk on Monday.

John

----- Forwarded by John Gaw/RNIC/Reliance on 09/21/2001
03:52
PM -----

Kathryn_Criswell@cisgi.com on 09/21/2001 01:10:50 PM

To: John Gaw/RNIC/Reliance@Reliance
cc:
Subject: Re: SYNAGRO [Virus Checked]

John,

Attached is the first set. I have updated the annuity numbers to reflect current rates and added the information you requested at the bottom of each proposal. If this is okay with you, I will then do the proposals at \$15,000,000. Do the numbers at this level change for Tarver and Lopez or did the recommended settlement put the remaining \$3,000,000 towards the Kramer case?

Just let me know. I should be in the office all afternoon if you want to discuss (800) 648-3084.

Thanks!

Kathryn

(See attached file: Jason Tarver 09-21-2001.doc)(See attached file: gabriel lopez 09-21-2001.doc)(See attached file: Kramer Proposals 09-21-2001.doc)

John.Gaw@reliancenational.com on 09/20/2001 08:13:47 AM

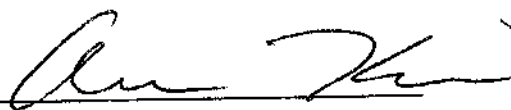
To: Kathryn Criswell/Cambridge/US/ICENET@ICENET
cc:

Subject: SYNAGRO

----- Forwarded by John Gaw/RNIC/Reliance on 09/20/2001
09:00
AM -----

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the preceding Answer to Application for Relief of Synagro Technologies, Inc. was served this 14th day of December 2001, by first class mail, postage prepaid, upon the individuals listed in the attached Master Service List.


ANN E. KIM

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, 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
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, 11th 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)

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.)

Thomas J. Madigan
Christopher A. Coppola
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
McCarter & English, LLP
One Commerce Square
2005 Market Street, Suite 3600
Philadelphia, PA 19103
(215) 557-7700
(Attorneys for Brand Scaffold Services, Inc.
and Magellan Ins. Co. Ltd.)

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, 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
(Attorneys for Steamship Mutual
Underwriting Association (Bermuda) Ltd.)

Daniel J. DiGiacomo, Esquire
Law Offices of DiGiacomo & Baffa
1601 Market Street, 16th Floor
Philadelphia, PA 19103
(215) 568-3700
(Attorneys for Parthenia Ponder Vicks,
Adminstratrix of the Estate of Antwanette
Ponder and Murray Garson)

Thomas V. White, Esquire
Joseph P. Rusnak, Esquire
Tune, Entrekin & 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)

Charles Jay Schleifer, Esquire
Eisenberg, Rothweiler, Schleifer, Weinstein
& Winkler, P.C.
1634 Spruce Street
Philadelphia, PA 19103
(215) 546-6610
(Attorneys for Dean Goshert and Stephanie
Goshert)

Dolores Mary Troiani, Esquire
Bebe Holtzman Kivitz, Esquire
45 Darby Road, Suite E
Paoli, PA 19301
(610) 647-6204
(Attorneys for Dawn Popoca)

N. Christian Glenos
Walston Wells Anderson & Bains
Suite 500 505 20th Street North
Birmingham, AL 35203
(205) 251-9600
(Attorneys for Healthsouth Corporation)

Robert D. Brown
Donato Minx & Brown
Suite 2310, 3200 Southwest Freeway
Houston, TX 77027-7525
(713) 877-1112
(Attorneys for Andy's Marine, Inc.)

Mike Crane, Esquire
Law Office of McManus & Crane, LLP
209 West Juan Linn
P.O. Box 2206
Victoria, TX 77902-2206
(361) 575-6764
(Attorneys for Iris Kramer, Individually and
as Guardian of the Person and Estate of
Nicky Lee Kramer, an Incapacitated Person,
and as Next Friend of Joshua Kramer, Minor
Child of Nicky Lee Kramer, Jason Kramer
and Jason Tarver)

Michele Ann 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)