

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff,

v.

RELiance INSURANCE COMPANY,

Defendant

IN RE VITAS HEALTHCARE CORPORATION,
VITAS HOLDINGS CORPORATION AND
VITAS HEALTHCARE OF TEXAS, L.P.

DOCKET NO. 269 MD 2001

Dec 28 12 04 PM '01

RECEIVED AND FILED
PHILIP J. COHEN
COMMONWEALTH COURT
OF PENNSYLVANIA

ORDER

AND NOW, on this _____ day of _____, upon consideration of the Emergency Petition of Vitas Healthcare Corporation, Vitas Holdings Corporation and Vitas Healthcare of Texas, L.P. for Expedited Discovery and Hearing and the Liquidator's response in opposition thereto, it is hereby ORDERED that the Petition is DENIED.

James Gardner Colins, Judge.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff,

v.

RELIANCE INSURANCE COMPANY,

Defendant

IN RE VITAS HEALTHCARE CORPORATION,
VITAS HOLDINGS CORPORATION AND
VITAS HEALTHCARE OF TEXAS, L.P.

DOCKET NO. 269 MD 2001

**RESPONSE IN OPPOSITION TO EMERGENCY PETITION OF VITAS
HEALTHCARE CORPORATION, VITAS HOLDINGS CORPORATION AND
VITAS HEALTHCARE OF TEXAS, L.P., FOR EXPEDITED DISCOVERY AND
HEARING**

M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, as Liquidator for Reliance Insurance Company (“Liquidator”), opposes Vitas Healthcare Corporation, Vitas Holding Corporation and Vitas Healthcare of Texas, L.P.’s (“Vitas”) Emergency Petition for Expedited Discovery and Hearing. Neither discovery nor a hearing requested by Vitas is warranted because there is no dispute over the material facts relating to the underlying settlement. The Liquidator has conceded in her responsive pleading all material facts alleged by Vitas. The only unresolved issues are purely legal: 1) whether the Liquidator is required to immediately fund pre-liquidation settlements¹; 2) whether the

¹ Both statutory and case law clearly indicate that the Liquidator is authorized to refrain from making immediate payment on pre-liquidation as set forth in the Pennsylvania Insurance Department Act, 40 P.S. §221.1 et seq..

Liquidator's mailing of the \$1 million settlement check to Vitas' counsel, despite the subsequent return of the check for improper address, requires her to resend the check to Vitas and honor the check; and 3) whether the Liquidator's mere cutting of the \$2.6 million settlement check prior to the entry of the Liquidation Order requires her to send the check to Vitas and honor the check. As set forth in the Liquidator's Response to Vitas' Petition for Review and to Enforce a Binding Settlement, the Liquidator's payment on the settlement on the facts alleged by Vitas is contrary to the order of distribution priorities set forth in the Pennsylvania Insurance Department Act, 40 P.S. §221.1 et seq. The legal issues of whether the Liquidator would be required to pay the settlement under the circumstances here can be resolved by this Court on the pleadings submitted to date and without any discovery or a hearing. The Liquidator responds to Vitas' allegations as follows:

1. Admitted.
2. Admitted.
3. Admitted. The Liquidator incorporates herein her Response in Opposition to Vitas' Petition for Review and to Enforce a Binding Settlement.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted. As set forth in her Response in Opposition to Vitas' Petition for Review and to Enforce a Binding Settlement, the transfer of the settlement funds would constitute payment of monies from Reliance's estate outside the distribution procedure and priorities established by statute. See 40 P.S. § 221.44.

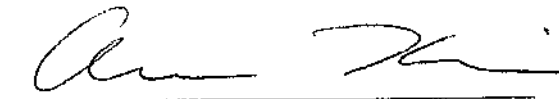
8-10. Denied. The Liquidator is without information or knowledge sufficient to aver the truth of the allegations set forth in these paragraphs.

11. Admitted in part, denied in part. It is admitted that the legal positions of the parties are clearly defined and that there are few, if any, fact issues. Vitas' suggestion that a hearing is required is denied. As averred above, there is no material fact dispute and thus, a hearing is not warranted.

WHEREFORE, the Liquidator requests that this Court deny Vitas' Emergency Petition for Expedited Discovery and Hearing.

BLANK ROME COMISKY & MCCAULEY LLP

By:



RICHARD P. McELROY
ANN E. KIM
One Logan Square
Philadelphia, PA 19103-6998
(215) 569-5500

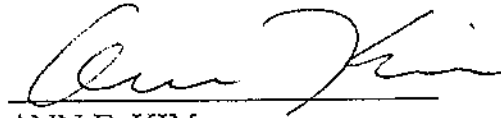
Attorneys for Plaintiff
M. Diane Koken, Insurance Commissioner
of the Commonwealth of Pennsylvania, as
Liquidator for Reliance Insurance Company

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

Dated: December 28, 2001

CERTIFICATE OF SERVICE

I, ANN E. KIM, hereby certify that this day a true and correct copy of the foregoing Response of M. Diane Koken to the Petition of Vitas Healthcare Corporation, Vitas Holdings Corporation and Vitas Healthcare of Texas, L.P., (collectively "Vitas") for Expedited Discovery and Hearing was served on all persons listed on the attached Master Service List by U.S. Mail, postage prepaid.


ANN E. KIM

Dated: December 28, 2001

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. Coppula
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 Aleksander Blonarowycz and
Parthenia Ponder Vicks, Administratrix of
the Estate of Antwanette Ponder and Murray
Garson)

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

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)

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

Joshua Brian Irwin, Esquire
11 Park Place, Suite 915
New York, NY 10007
(212) 267-1550
(Attorneys for Peter Korobov)

John Michael Sheridan
Sheridan, Bracken & White
P.O. Box 1940
101 West Baltimore Avenue
Media, PA 19063
(610) 565-7770
(Attorneys for Harry Moser)

Philip J. Goodman
Chadbourne & Parke LLP
120 New Hampshire Avenue, NW
Washington, DC 20036
(202) 974-5600
(Attorneys for 1741 Ivar LLC)