

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 for Final Approval of the Settlement between Moody International, Inc. and The Dow Chemical Company (the "Settlement").

IT IS on this ___ day of _____, 2002, hereby ORDERED that the Petition is GRANTED; and IT IS further ORDERED that the Settlement set forth in the proposed Settlement, Release and Compromise Agreement is APPROVED.

James Gardner Colins, Judge

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COMMONWEALTH COURT
OF PENNSYLVANIA

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

Plaintiff,

v.

RELIANCE INSURANCE COMPANY,

Defendant.

DOCKET NO. 269 MD 2001

**SUPPLEMENTAL PETITION FOR FINAL APPROVAL OF
SETTLEMENT BETWEEN MOODY INTERNATIONAL,
INC. AND THE DOW CHEMICAL COMPANY**

Petitioner M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, 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").
2. On November 21, 2001, the Liquidator petitioned this Court for approval of a settlement between Moody and its client, Dow. As of the date of the Liquidator's petition, the parties had reached an agreement in principle settling a dispute, in which Dow claimed damages of approximately \$1.8 million from Moody, for \$210,000.


3. By Order dated November 29, 2001 (the "Order"), this Court granted the Liquidator's November 21 petition and directed the Liquidator to submit a proposed settlement agreement to the Court for its final approval. A true and accurate copy of the Order is attached as Exhibit A.

4. The parties have agreed on a Settlement, Release and Compromise Agreement (the "Settlement Agreement"), a true and accurate copy of which is attached as Exhibit B.

5. The Liquidator believes that the terms of the Settlement Agreement are fair to Reliance and in the best interests of the insurer's estate, its policyholders, claimants and the general public.

WHEREFORE, the Liquidator respectfully requests that this Court grant this Petition and enter an Order approving the settlement set forth in the Settlement Agreement attached hereto.

BLANK ROME COMISKY & MCCAULEY LLP

By: 
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(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: January 3, 2002

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: January 3, 2002



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)

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Garson)

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Nicky Lee Kramer, an Incapacitated Person,
and as Next Friend of Joshua Kramer, Minor
Child of Nicky Lee Kramer, Jason Kramer
and Jason Tarver)

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Association)

EXHIBIT A

Philadelphia, PA 19107, by 3:00 p.m. December 4, 2001 an affidavit, that service, as outlined above, has been effectuated.

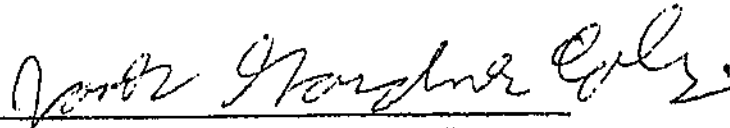

JAMES GARDNER COLINS, Judge

EXHIBIT B

SETTLEMENT, RELEASE AND COMPROMISE AGREEMENT

This Settlement, Release and Compromise Agreement (the "Agreement") is made and entered into as of the date(s) set forth hereinbelow, by and between:

THE DOW CHEMICAL COMPANY

("Dow"), a corporation authorized to do and doing business in the State of Louisiana, appearing herein through its duly authorized representative, and

MOODY INTERNATIONAL, INC.

("Moody"), a corporation authorized to do and doing business in the State of Louisiana, appearing herein through its duly authorized representative,

and provides as follows:

RECITALS

WHEREAS, by letter dated June 22, 1999, Dow made a written demand against Moody for \$1,831,000 in damages arising out of the failure of a caustic evaporator constructed by Beaird Industries, Inc. ("Beaird") for Dow;

WHEREAS, Moody performed inspection services for Dow with respect to the construction of the caustic evaporator;

WHEREAS, Dow contends that Moody failed to discover and report unacceptable workmanship and quality control by Beaird during the construction of the caustic evaporator;

WHEREAS, approximately six (6) months after the installation of the caustic evaporator at Dow's Plaquemine, Louisiana plant facilities, the caustic evaporator began leaking and was ultimately taken out of service by Dow;

WHEREAS, Moody denies all liability for the claims asserted against it by Dow;

WHEREAS, Dow and Moody have agreed to compromise and settle all claims which Dow has or may have against Moody in connection with the caustic evaporator.

WITNESSETH:

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency of which is hereby stipulated, Dow and Moody do hereby agree as follows:

1. The Recitals set forth hereinabove are incorporated herein.
2. Moody hereby delivers and pays \$210,000 to Dow, the receipt and sufficiency of which is hereby acknowledged by Dow.
3. Dow does hereby release, remise, acquit and forever discharge Moody; Moody's present and former agents, employees, representatives, stockholders, officers, directors, insurers and attorneys; Moody's predecessors, successors and assigns; and Moody's present and former parents, subsidiaries and related or affiliated corporations or entities (all of the foregoing sometimes collectively referred to herein as the "Released Parties") from any and all past and present claims, demands, causes of action, rights of action, suits, damages, expenses, attorney's fees, penalties, compensation, and liability of every kind, character and description whatsoever which Dow has or may or might have, known and unknown, foreseen and unforeseen, in law or in equity, regarding, relating to or arising out of the failure of the caustic evaporator and/or the inspection services performed by Moody for Dow with respect to the caustic evaporator.
4. Dow acknowledges and agrees that it is aware that it may hereafter discover facts in addition to or different from those which it now knows or believes to be true, but that it is its intention hereby to fully, finally and forever settle and release any and all proceedings, claims, matters, disputes, and differences, known or unknown, suspected or unsuspected, which do now exist or may exist, or heretofore have existed, between the Released Parties and Dow regarding,

relating to or arising out of the failure of the caustic evaporator and/or the inspection services performed by Moody for Dow with respect to the caustic evaporator, and that in furtherance of said contentions, the release and discharge herein given shall be and remain in effect as a full and complete general release, notwithstanding the discovery or existence of such additional or different facts.

5. Each party agrees to pay its own attorney's fees and other expenses incurred in connection with this matter.

6. Dow represents and warrants that it has no other claims, causes of action, rights, liabilities, demands, losses, suits or damages against any of the Released Parties regarding, relating to or arising out of the failure of the caustic evaporator and/or the inspection services performed by Moody for Dow with respect to the caustic evaporator, other than those which are released and discharged by the Agreement.

7. Dow agrees to defend, indemnify and hold harmless the Released Parties from, for and against any and all claims, causes of action, liabilities, damages and expenses (including but not limited to attorney's fees), regarding, relating to or arising out of the failure of the caustic evaporator and/or the inspection services performed by Moody for Dow with respect to the caustic evaporator, including but not limited to any claims which may be filed against the Released Parties by Beard.

8. Dow represents and warrants that no assignment, subrogation or transfer of any right, claim or cause of action which is released in the Agreement has been made.

9. Both parties acknowledge and agree that the Agreement shall be binding upon them and their successors and assigns and anyone else deriving or who might hereafter derive any rights from or through them.

10. Both parties acknowledge and agree that the undertakings of the parties which are set forth in the Agreement are made in settlement of disputed issues of liability and that such undertakings are not to be construed as an admission of liability for all or any part of the claim of any party against any other party. Both parties, in view of the disputed issues, prefer to accept this compromise and settlement rather than to hazard the chance of gaining as against the chance of losing, should the issues be litigated.

11. Both parties acknowledge and agree that the Agreement is made and executed by them of their own free will, and that they have not been improperly influenced or induced to enter into the Agreement as a result of any statement, act or omission on the part of any other party. Both parties acknowledge and agree that they have not relied on any representations, promises or agreements of any kind in connection with their decision to execute the Agreement except those set forth herein.

12. The Agreement has been approved and signed by each party after full review and consultation with their respective attorneys.

13. Dow agrees that if any part of the Agreement shall be held invalid or should not be given effect for any reason, this shall not affect the validity or finality of the remainder of the Agreement, and Dow agrees that should any part of the Agreement be held invalid, any additional documents which would validate the entirety of the Agreement will be executed by Dow upon request of any of the Released Parties.

14. The Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana.

15. No provision of the Agreement shall be interpreted for or against any party hereto on the basis that such party was the draftsman of such provision, each party having participated equally in the drafting hereof, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of the Agreement.

16. The Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and shall not be modified, altered or amended except by written agreement signed by each of the parties hereto.

17. The Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, Dow and Moody have each signed the Agreement in multiple originals on the date(s) set forth hereinbelow, and in the presence of the respective undersigned competent witnesses and notaries public.

WITNESSES:

THE DOW CHEMICAL COMPANY

By: _____

SWORN TO AND SUBSCRIBED by _____, before me, Notary Public, in and for the Parish of _____, State of Louisiana, this ____ day of _____, 2001.

Notary Public

WITNESSES:

MOODY INTERNATIONAL, INC.

By: _____

SWORN TO AND SUBSCRIBED by _____, before me, Notary Public, in and for the County of _____, State of Texas, this ____ day of _____, 2001.

Notary Public

#55690

SETTLEMENT, RELEASE AND COMPROMISE AGREEMENT

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MOODY INTERNATIONAL, INC.

("Moody"), a corporation authorized to do and doing business in the State of Louisiana, appearing herein through its duly authorized representative,

and provides as follows:

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WHEREAS, Moody performed inspection services for Dow with respect to the construction of the caustic evaporator;

WHEREAS, Dow contends that Moody failed to discover and report unacceptable workmanship and quality control by Beaird during the construction of the caustic evaporator;

WHEREAS, approximately six (6) months after the installation of the caustic evaporator at Dow's Plaquemine, Louisiana plant facilities, the caustic evaporator began leaking and was ultimately taken out of service by Dow;

WHEREAS, Moody denies all liability for the claims asserted against it by Dow;

WHEREAS, Dow and Moody have agreed to compromise and settle all claims which Dow has or may have against Moody in connection with the caustic evaporator.

WITNESSETH:

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency of which is hereby stipulated, Dow and Moody do hereby agree as follows:

1. The Recitals set forth hereinabove are incorporated herein.
2. Moody hereby delivers and pays \$210,000 to Dow, the receipt and sufficiency of which is hereby acknowledged by Dow.
3. Dow does hereby release, remise, acquit and forever discharge Moody; Moody's present and former agents, employees, representatives, stockholders, officers, directors, insurers and attorneys; Moody's predecessors, successors and assigns; and Moody's present and former parents, subsidiaries and related or affiliated corporations or entities (all of the foregoing sometimes collectively referred to herein as the "Released Parties") from any and all past and present claims, demands, causes of action, rights of action, suits, damages, expenses, attorney's fees, penalties, compensation, and liability of every kind, character and description whatsoever which Dow has or may or might have, known and unknown, foreseen and unforeseen, in law or in equity, regarding, relating to or arising out of the failure of the caustic evaporator and/or the inspection services performed by Moody for Dow with respect to the caustic evaporator.
4. Dow acknowledges and agrees that it is aware that it may hereafter discover facts in addition to or different from those which it now knows or believes to be true, but that it is its intention hereby to fully, finally and forever settle and release any and all proceedings, claims, matters, disputes, and differences, known or unknown, suspected or unsuspected, which do now exist or may exist, or heretofore have existed, between the Released Parties and Dow regarding,

relating to or arising out of the failure of the caustic evaporator and/or the inspection services performed by Moody for Dow with respect to the caustic evaporator, and that in furtherance of said contentions, the release and discharge herein given shall be and remain in effect as a full and complete general release, notwithstanding the discovery or existence of such additional or different facts.

5. Each party agrees to pay its own attorney's fees and other expenses incurred in connection with this matter.

6. Dow represents and warrants that it has no other claims, causes of action, rights, liabilities, demands, losses, suits or damages against any of the Released Parties regarding, relating to or arising out of the failure of the caustic evaporator and/or the inspection services performed by Moody for Dow with respect to the caustic evaporator, other than those which are released and discharged by the Agreement.

7. Dow agrees to defend, indemnify and hold harmless the Released Parties from, for and against any and all claims, causes of action, liabilities, damages and expenses (including but not limited to attorney's fees), regarding, relating to or arising out of the failure of the caustic evaporator and/or the inspection services performed by Moody for Dow with respect to the caustic evaporator, including but not limited to any claims which may be filed against the Released Parties by Beard.

8. Dow represents and warrants that no assignment, subrogation or transfer of any right, claim or cause of action which is released in the Agreement has been made.

9. Both parties acknowledge and agree that the Agreement shall be binding upon them and their successors and assigns and anyone else deriving or who might hereafter derive any rights from or through them.

10. Both parties acknowledge and agree that the undertakings of the parties which are set forth in the Agreement are made in settlement of disputed issues of liability and that such undertakings are not to be construed as an admission of liability for all or any part of the claim of any party against any other party. Both parties, in view of the disputed issues, prefer to accept this compromise and settlement rather than to hazard the chance of gaining as against the chance of losing, should the issues be litigated.

11. Both parties acknowledge and agree that the Agreement is made and executed by them of their own free will, and that they have not been improperly influenced or induced to enter into the Agreement as a result of any statement, act or omission on the part of any other party. Both parties acknowledge and agree that they have not relied on any representations, promises or agreements of any kind in connection with their decision to execute the Agreement except those set forth herein.

12. The Agreement has been approved and signed by each party after full review and consultation with their respective attorneys.

13. Dow agrees that if any part of the Agreement shall be held invalid or should not be given effect for any reason, this shall not affect the validity or finality of the remainder of the Agreement, and Dow agrees that should any part of the Agreement be held invalid, any additional documents which would validate the entirety of the Agreement will be executed by Dow upon request of any of the Released Parties.

14. The Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana.

15. No provision of the Agreement shall be interpreted for or against any party hereto on the basis that such party was the draftsman of such provision, each party having participated equally in the drafting hereof, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of the Agreement.

16. The Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and shall not be modified, altered or amended except by written agreement signed by each of the parties hereto.

17. The Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, Dow and Moody have each signed the Agreement in multiple originals on the date(s) set forth hereinbelow, and in the presence of the respective undersigned competent witnesses and notaries public.

WITNESSES:

THE DOW CHEMICAL COMPANY

By: _____

SWORN TO AND SUBSCRIBED by _____, before me, Notary Public, in and for the Parish of _____, State of Louisiana, this ____ day of _____, 2001.

Notary Public

WITNESSES:

MOODY INTERNATIONAL, INC.

By: _____

SWORN TO AND SUBSCRIBED by _____, before me, Notary Public, in and for the County of _____, State of Texas, this ____ day of _____, 2001.

Notary Public

#55690