

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff,

v.

Reliance Insurance Company,

Defendant.

In re Petition to Intervene filed on behalf
of the Estate of Leo Frances Tenczynski

No. 269 M.D. 2001

JAN 11 12 05 PM '02

RECEIVED
FILED
COMMONWEALTH COURT
OF PENNSYLVANIA

ORDER

AND NOW this _____ day of _____, 2002, upon consideration of Petition to Intervene by Indispensable Parties to Join the Emergency Petition for Expedited Hearing and Other Requests for Relief by Vitas Healthcare Corporation, and response in opposition thereto, it is ORDERED that the Petition is DENIED.

JAMES GARDNER COLINS, J.

2. The January 3, 2002 order of this Court denying Vitas' Petition renders the Estate's proposed intervention to Join Vitas' Petition unnecessary and futile.

3. This Court's January 3, 2002 order renders the Estate's proposed intervention moot.

ANSWER TO SPECIFIC PARAGRAPHS

1. Admitted that the Estate incorporates its proposed Petition for Review. It is denied that the Estate should be permitted to intervene in this proceeding. The Estate's interests are already well represented by Vitas. Further, intervention would be unnecessary and futile as this Court has already denied Vitas' Petition for Review and Petition for Expedited Discovery and Hearing which seeks relief identical to that sought by the Estate.

2. Admitted in part, denied in part. It is admitted that the Estate incorporates Vitas' Petition for Review. The Liquidator hereby incorporates herein her responses in opposition to Vitas' Petition and all of the arguments set forth therein. It is denied that the Estate is entitled to the relief it is seeking. This Court has already denied Vitas' Petition for Review and Petition for Expedited Discovery and Hearing, and the Court's ruling is binding on the Estate.

3. Admitted.

4. Denied. Only one of the two settlement checks was actually mailed to Vitas.

5. Admitted.

6. Denied. The Liquidator is without information or knowledge sufficient to aver the truth of the allegations.

7. Admitted in part, denied in part. It is admitted that the settlement was agreed upon and that the checks were issued. The remaining allegations are denied as conclusions of law. By way of further answer, this Court has already entered an order denying Vitas' Petition

and the order is binding on the Estate which seeks relief identical to that sought by Vitas on identical grounds.

8-10. Denied as conclusions of law. By way of a further answer, the Estate is not a proper intervenor as it is already well represented in this matter by Vitas. The January 3, 2002 order of this Court denying Vitas' Petition is binding on the Estate and requires denial of the Estate's Petition.

WHEREFORE, the Liquidator respectfully requests that this Court enter an order denying the Estate's Petition for Intervention to Join the Petition for Expedited Hearing and Other Requests for Relief by Vitas Healthcare Corporation.

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

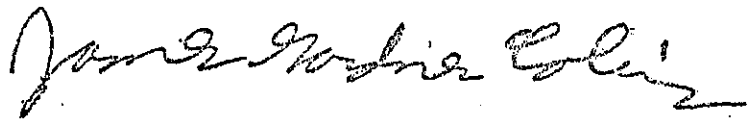
OF COUNSEL:
David F. Simon, Esquire
Chief Counsel
The Pennsylvania Insurance Department
Office of Chief Counsel
1341 Strawberry Square
Harrisburg, PA 17104

Dated: January 11, 2002

Exhibit A

claim subsequent to the Liquidator's filing a plan for liquidation on or before February 1, 2002.

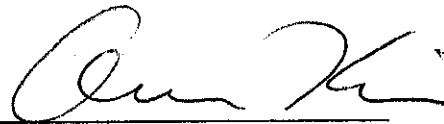
FURTHER, Vitas, through its counsel, is hereby directed to serve a copy of this order, forthwith, upon all parties listed on the master service list via U.S. mail and, where designated, fax and/or e-mail. Vitas, through its counsel, is directed to file with the court in the Office of the Prothonotary, 9th Floor the Widener Building, 1339 Chestnut Street, Philadelphia, PA 19107, by 3:00 p.m. January 8, 2002 an affidavit, that service, as outlined above, has been effectuated.

A handwritten signature in cursive script, reading "James Gardner Collins".

JAMES GARDNER COLINS, Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the preceding Response in Opposition to Petition to Intervene by Indispensable Parties to Join the Emergency Petition for Expedited Hearing and Other Requests for Relief by Vitas Healthcare Corporation was served this 11th day of January, 2002, 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)
Three Parkway
Philadelphia, PA 19102
(215) 864-4205
(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, 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)

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
38 North Waterloo Road
Devon, PA 19333
(610) 688-8400
(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
Chadbourn & Parke LLP
120 New Hampshire Avenue, NW
Washington, DC 20036
(202) 974-5600
(Attorneys for 1741 Ivar LLC)

Lise Luborsky
Britt, Hankins, Schaible & Moughan
Two Penn Center Plaza, Suite 515
1500 John F. Kennedy Blvd.
Philadelphia, PA 19102-1888
(215) 569-6918
(Attorneys for the Pennsylvania Property
and Casualty Insurance Guaranty
Association)

Frederick P. Santarelli
Elliott Reihner Siedzikowski & Egan, P.C.
925 Harvest Drive
P.O. Box 3010
Blue Bell, PA 19422
(215) 977-1050
(Attorneys for Estate of Leo Frances
Tenczynski)

Janice Marie Savinis
Goldberg, Persky, Jennings & White, P.C.
1030 Fifth Avenue
Pittsburgh, PA 15219
(412) 471-3980
(Attorneys for Harold W. Thomas)