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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE :

**Reliance Insurance Company
In Liquidation**

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No. 1 REL 2001

RE: Application for Approval of the Sale of a Note
and Equity Interest Belonging to Reliance Development
Figueroa, Inc.

ANSWER AND NEW MATTER OF PROPOSED INTERVENOR

Proposed Intervenor, The Milken Institute (“Institute”), files this Answer to the Application of the Liquidator to Expedite Consideration of Proposed Intervenor’s Application to Intervene Pursuant to PA. R. A. P. 3775 and the Liquidator’s Application of Approval for Approval of the sale of a Note and Equity Interest Belonging to Reliance Development Figueroa, Inc., and answers the Application and avers in New Matter as follows:

1. The averments of this paragraph refer to or paraphrase documents, and the documents therefore speak for themselves and no answer is required.

2. It is denied that “[i]n the usual course” any response would be filed by May 2, 2016. The only party that might have objected to the Liquidator’s

Application and the agreement with Bidder One, was the proposed Intervenor, which means that an application to intervene would have to be filed, responded to and decided before any response would be filed, all of which might well not occur before May 2. The remaining averments of the paragraph purport to paraphrase, summarize or otherwise describe the law of Pennsylvania, and therefore they are conclusions of law for which no response is required.

3. The averments of this paragraph assume that the existing agreement of sale would be approved by the Court. Proposed Intervenor has objected to the sale and requested that new bids be taken because the process was not fair and reasonable either under Pennsylvania law, 40 P.S. §221.23(9) (sale of assets must be “fair and reasonable”), and/or under the overarching policy underlying the law of competitive bidding in Pennsylvania. Shaeffer v. City of Lancaster, 754 A.2d 719, 723 (Pa. Commw. Ct. 2000) (“[F]airness lies at the heart of the bidding process, and all bidders must be confronted with the same requirements and be given a fair opportunity to bid in free competition with each other.”); Louchheim v. City of Philadelphia, 66 A. 1121, 1122 (Pa. 1907) (Fair and just competition between bidders is the intent behind the statutes regulating competitive bidding). Proposed Intervenor has objected to the sale on the basis that the Liquidator extended the deadline for bidding only for Bidder One, but did not do so for proposed Intervenor, which provided to Bidder One an unfair advantage in the

bidding process. *See* McCloskey v. Independence Cablevision Corp., 460 A.2d 1205, 1208 (Pa. Commw. Ct. 1983) (acceptance of late filing of parts of bid created “opportunity for competitive advantage”). If proposed Intervenor is correct that the bidding process was unfair and inappropriate, then the deadline of May 31, 2016 relating to the sale of assets will not be applicable because the contract will have been improperly obtained. To the extent the averments of this paragraph refer to or paraphrase documents such as the proposed agreements of sale, the documents therefore speak for themselves and no answer is required. It is further denied that closing must occur on or prior to May 3, 2016, because pursuant to paragraph 9.3 of the proposed agreements with Bidder One, the parties may amend in writing any part of the agreement, including the provisions containing the current May 31, 2016 deadline. Nowhere in any application does the Liquidator assert that the May 31, 2016 deadline was imposed by Bidder One.

4. Proposed Intervenor’s response to paragraph 3 above is incorporated by reference as if fully set forth herein. After reasonable investigation, Intervenor is without sufficient information to form an opinion as to the truth of the averments of this paragraph regarding the Court’s consideration, and therefore they are deemed denied.

5. Admitted. Proposed Intervenor’s response to paragraph 3 above is incorporated by reference as if fully set forth herein.

6. Proposed Intervenor's response to paragraph 3 above is incorporated by reference as if fully set forth herein. It is further admitted that proposed Intervenor seeks in its Cross-Application to Require an Additional Round of Bids, or in the Alternative, the Liquidator to Hold an Auction Similar to that Employed by Section 363 of the Bankruptcy Code, if permitted by the Court to be filed, an additional round of bids or an auction similar to that used by the bankruptcy court under section 363 of the Bankruptcy Code. Proposed Intervenor has already made an offer to the Liquidator to pay at least \$9.9 million for the assets. To the extent that the averments of the paragraph purport to paraphrase, summarize or otherwise describe the law of Pennsylvania, they are conclusions of law for which no response is required.

7. The averments of this paragraph assume that Bidder One will continue to be the winning bidder and that prejudice will result to the Reliance estate if Bidder One's agreement is not executed. Proposed Intervenor's response to paragraph 3 above is incorporated by reference as if fully set forth herein. If proposed Intervenor prevails, the May 16 deadline does not exist and a new deadline can be set. Further, proposed Intervenor has made an offer to the Liquidator to purchase the assets in question for at least \$9.9 million, which means that the Reliance estate will have improved its position rather than suffered a detriment if the agreement with Bidder One is not approved.

8. It is admitted that the Liquidator requests in this Application expedited consideration of both proposed Intervenor's Application to Intervene and the Liquidator's Application.

NEW MATTER

9. Proposed Intervenor recognizes that it is in the interest of all the parties to this dispute to reach resolution quickly. Proposed Intervenor therefore is agreeable to expedited consideration by the Court of the applications filed by it and the Liquidator and respectfully requests that in connection therewith, either a conference or oral argument be scheduled promptly by which the issues raised by these various applications be presented and discussed, including but not limited to:

- a. Whether the fairness of the sale of assets required by 40 P.S. §221.23(9) and the policy of fairness underlying the case law that has developed regarding competitive bidding in Pennsylvania cited above and in proposed Intervenor's applications require the conclusion that the extension of a mandatory deadline for submitting bids for only one of two bidders by the Liquidator was inherently unfair and improper;
- b. Whether the Liquidator's letter of February 26, allowed the Liquidator to "modify" the process for only Bidder One to its advantage, and to the detriment of proposed Intervenor, or whether

that letter, at best, only permitted the Liquidator to change the process equally for all bidders;


- c. Whether the “potential adverse ramifications” suggested by the Liquidator in her response to proposed Intervenor’s Application to Intervene are greater when the Liquidator is permitted to change the bidding process selectively as to only one bidder, rather than, as requested by proposed Intervenor, when the Liquidator is required to apply the same rules and any changes thereto to all bidders; and
- d. Whether it would be more “fair and reasonable” pursuant to 40 P.S. §221.23(9) to require the Liquidator to engage in additional bidding with a minimum purchase of \$9.9 million or such greater amount as the parties may offer.


WHEREFORE, the proposed Intervenor respectfully requests that it be allowed to intervene regarding the Liquidator’s Application, file the Answer and Cross-Application attached as Exhibit A to the Application to Intervene, and that

the Court schedule either a conference or oral argument at the Court's earliest convenience to address the issues listed above, as well as any other issues that the Court may direct.

Dated: April 27, 2016

Respectfully submitted,


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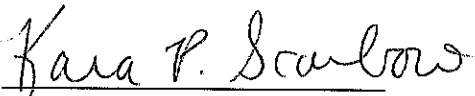
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the *Answer and New Matter of Proposed Intervenor* has been served upon the persons indicated below by electronic mail:

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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RE: Application for Approval of the Sale of a Note
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RECEIVED & FILED
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ORDER

AND NOW, in consideration of the Application of the Liquidator to Expedite Consideration of Proposed Intervenor's Application to Intervene Pursuant to PA. R. A. P. 3775 and the Liquidator's Application of Approval for Approval of the sale of a Note and Equity Interest Belonging to Reliance Development Figuroa, Inc., and the answer thereto, a conference is scheduled for am on May , 2016 in Room of the Pennsylvania Judicial Center, Harrisburg Pennsylvania.

Bonnie Brigance Leadbetter, Judge