

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Plaintiff,

v.

RELIANCE INSURANCE CO.,

Defendant.

No. 269 M.D. 2001

RECEIVED AND FILED
IN THE COMMONWEALTH COURT OF PENNSYLVANIA
JUL 16 2 57 PM '02

**ANSWER TO CARYLON CORPORATION'S
NEW MATTER WITH PRAYER FOR RELIEF**

Through its initial "Motion to Prevent Transfer of Policyholder Assets to Reliance in Liquidation by Insurance Broker" and now, through its New Matter, Carylton Corporation ("Carylton") improperly attempts to have its claims adjudicated outside of the statutorily mandated claims procedure set forth in 40 P.S. §221.37 et al. Carylton must pursue its relief, if any, under the statutory claims procedure. Without waiving the foregoing objection, M. Diane Koken, the Insurance Commissioner of the Commonwealth of Pennsylvania, as Liquidator for Reliance Insurance Company ("Liquidator"), through her undersigned counsel, answers Carylton Corporation's New Matter as follows:

1. Admitted in part, denied in part. It is admitted that the parties dispute the ownership and the amount of certain funds. The Liquidator denies Carylton's description of Carylton's motion, the Liquidator's answer to Carylton's motion and Carylton's new matter. These pleadings are written documents which speak for themselves. The Liquidator denies

Carylon's assertion that the amount of funds owed by Carylon is "not established" in the Liquidator's answer. To the contrary, in her Answer and New Matter, the Liquidator has set forth facts demonstrating Carylon's payment obligation and the amount Carylon owes the Liquidator.

2. Admitted.

3. Admitted. It is admitted that Exhibit "B" to Carylon's Appendix is a copy of the 1997-98 Claims Service Agreement and that Reliance is related to Sterling Administrative Services ("Sterling") in that Sterling was owned by Reliance.

4. Admitted in part, denied in part. The Liquidator admits that the Claims Service Agreement obligated Sterling to provide certain services with respect to claims asserted against Carylon under the policies issued by Reliance. The scope of the services and the specific services that were to be provided are set forth in the agreement, a written document which speaks for itself. Carylon's allegation that "[i]n practice," Reliance allowed Sterling to act as TPA on claims exceeding \$10,000 is denied. While Reliance permitted Sterling to act as TPA on some of those claims, Carylon's characterization that such was a practice is incorrect.

5. Admitted in part, denied in part. It is admitted that Sterling agreed to provide certain information to Carylon. The scope of such agreement is set forth, in part, in the exhibits Carylon refers to in this paragraph. The exhibits are written documents which speak for themselves.

6. Admitted in part, denied in part. It is admitted that Sterling/Reliance set forth the services it was to provide in various correspondence and that this paragraph quotes, in

part, some of the statements in such correspondence. The exhibits referred to in this paragraph are written documents with speak for themselves. Carylon's characterization of these documents as "amplifying" the services to be provided is denied as vague and ambiguous.

7. Admitted in part, denied in part. It is admitted that the policies included deductibles and that the workers compensation deductible was capped. Further, while the Liquidator admits that there was a \$250,000 deductible per claim for workers compensation claims, Carylon's characterization of such deductible as "substantial" is denied as vague and ambiguous.

8. Denied. The Liquidator is uncertain as to Carylon's allegation that there were "procedures set up under the 1997-2000 policies." As alleged above, under the parties' agreement, Reliance/Sterling were obligated to provide certain services with respect to certain claims asserted against Carylon. The policies and the parties' agreement are written documents which speak for themselves.

9. Admitted in part, denied in part. It is admitted that the Claims Service Agreement required a \$45,000 disbursement account and that Carylon deposited that amount for the purpose of claim payments. Carylon's allegation that the account was "controlled" by Sterling/Reliance is denied as a legal conclusion.

10. Admitted in part, denied in part. It is admitted that Reliance and Carylon entered into the Collateral Trust Agreement in order to secure Carylon's payment obligation to Reliance. The agreement is a written document which speaks for itself.

11. Denied. Carylton's allegations that Reliance and/or Sterling failed to provide services and benefits that Carylton contracted for are denied as legal conclusions. The remaining allegations contained in this paragraph are denied as the Liquidator is without knowledge or information sufficient to aver the truth of the allegations and, therefore, they are denied.

12. Denied. Carylton's allegations that Reliance mishandled Carylton's claim files and breached its contract are denied as legal conclusions. Carylton's allegation of "the most prevalent" and "most costly" breaches by Reliance is denied as argumentative and vague. The remainder of Carylton's allegations contained in this paragraph is denied as the Liquidator is without information or knowledge to aver the truth of the allegations.

13. Admitted in part, denied in part. It is admitted that Reliance paid \$4,500 to settle Eileen Selz's claim against National Plant Services, a Carylton subsidiary. Contrary to Carylton's allegation, Reliance paid \$17,735 in defense costs and negotiated the County's claim to recover its defense costs down to \$23,000 from the County's demand of \$31,000. It is denied that Reliance "denied responsibility." The LA County supervised the operation that allegedly led to plaintiff's injury. It would have been imprudent for Reliance to accept the County's tender without further investigation. The Liquidator denies that "Reliance only accepted responsibility after" the County accused Reliance of bad faith. Reliance made a coverage decision after completing its investigation of the circumstances of the plaintiff's accident. Carylton's suggestion that Reliance paid the claim only after being accused of bad faith is incorrect and misleading.

14. Admitted in part, denied in part. It is admitted that Reliance paid \$250,000 (having negotiated the Workers Compensation lien down from \$182,000 to \$60,666 and in response to a demand of \$450,000) on the claim brought by Tony Bruce against Specialized Maintenance Services, a Carylon subsidiary. However, it is denied that Reliance paid without consulting Carylon. Contrary to Carylon's allegation that Mr. Bruce bore all responsibility for the accident, there was no witness whose testimony contradicted Mr. Bruce's description of the events. The amount of the payment on the claim was not excessive in view of the lack of evidence contradicting plaintiff's description of the accident, the mediator's valuation of Mr. Bruce's claim at \$1.5 million and plaintiff's settlement demand of \$450,000. Under the circumstances, Reliance's payment and the amount of payment were reasonable.

15. Admitted in part, denied in part. It is admitted that Reliance made payments to the claimant before signing the release. After Reliance made payments, it attempted to obtain the claimant's agreement that Midwest Material may be considered as a dual employer and, as such, could have exposure for contribution for the payments Reliance made. Obtaining such a stipulation would lower Carylon's workers compensation exposure. The Indiana guaranty association assumed handling of the file. The Liquidator is without knowledge or information sufficient to aver the truth of the allegation that NIM incurred fees in connection with a thirty party action.

16. Denied. Carylon's allegation that claims adjusters did not handle claims in a responsible manner is denied. Contrary to Carylon's allegation that Cambridge "put an unreasonably high reserve on this claim . . . and did nothing to resolve this claim," Carylon itself requested that Reliance not offer permanent partial disability and requested Reliance to

close this file. The remaining allegations contained in this paragraph are denied as the Liquidator is without knowledge or information sufficient to aver the truth of the allegations and, therefore, they are denied.

17. Denied. Reliance moved to dismiss the Steve Webb claim. In view of the pendency of Reliance's motion to dismiss, Reliance did not engage in active settlement discussions with the claimant.

18. Denied. The Liquidator denies that Reliance failed to investigate or aggressively defend Carylton's subsidiaries. Additionally, the allegations are denied as legal conclusions. Reliance's decision to make payment on the Brian Holland claim was based on information available to Reliance. Carylton's allegation that Reliance "failed to investigate or aggressively defend" Carylton subsidiaries "[i]n a number of cases" is denied as the Liquidator is without knowledge or information sufficient to aver the truth of the allegations.

19. Denied. Carylton's allegation that Reliance "failed to administer the claim to mitigate or control the loss" "[i]n other cases" is denied as the Liquidator is without knowledge or information sufficient to aver the truth of the allegations. Contrary to Carylton's allegation, Reliance did conduct a review of Ms. Reed's claim, including Ms. Reed's medical examination. In addition, Ms. Reed received vocational rehabilitation to become a dental assistant and was employed as a dental assistant from March 27, 2001 to July 25, 2001.

20. Denied. Contrary to Carylton's allegation, Reliance did conduct a review of Mr. Bishop's claim, including Mr. Bishop's medical examination. In addition, Mr. Bishop received vocational rehabilitation.

21. Denied. The Liquidator denies that Reliance failed to protect Carylon's assets. Carylon agreed with Reliance's conclusion that the claim was compensable. The remaining allegations are denied as the Liquidator is without knowledge or information sufficient to aver the truth of the allegations and, therefore, they are denied.

22. Admitted in part, denied in part. It is admitted that Reliance was paying James Tigner due to work injury. Carylon's characterization of the claim as "unusual" is denied as vague and ambiguous. The Liquidator is without knowledge or information sufficient to aver the truth of Carylon's allegation that James Tigner's doctor changed his work restrictions because of his cancer.

23. Admitted in part, denied in part. It is admitted that Sterling had offices in several states and that some of the offices handled claims of Carylon and companies affiliated with it. The exhibits referred to in this paragraph are documents which speak for themselves. It is admitted that Reliance closed some of the offices and laid off claims adjusters. However, this was undertaken in the normal course of business operation. The Liquidator denies that claims adjusters who assumed responsibility for Carylon files knew little about them or that the quality and quantity of claims handling declined.

24. Denied. The Claims Service Agreement is a written document which speaks for itself. By way of a further answer, the copy of the agreement attached to Carylon's New Matter is not signed by Reliance or Sterling. Contrary to Carylon's allegations, Reliance entered into a contract with Cambridge Integrated Services Group ("Cambridge") in which Cambridge agreed to provide certain claims personnel and other claims services to Reliance. As part of this transaction, a majority of Reliance/Sterling's claims personnel were

transferred to Cambridge. A small number of claims oversight personnel remained with Reliance. The allegation that the change happened without notice to Carylton is denied as the Liquidator is without knowledge or information sufficient to aver the truth of the allegations. Carylton's allegation that "there is no contract between Carylton and AON" and that Cambridge failed to abide by the Claims Service Agreement are denied as legal conclusions. The remaining allegations are denied as the Liquidator is without knowledge or information sufficient to aver the truth of the allegations.

25. Admitted in part, denied in part. It is admitted that Reliance provided reviews to Carylton. Carylton's reference to the term "early on" is denied as vague and ambiguous. The Liquidator is uncertain about what "Agreement" Carylton is referring to in this paragraph. Carylton's allegation regarding the services "that the Agreement required" is denied as a legal conclusion. The Liquidator is without knowledge or information sufficient to aver the truth of Carylton's allegation that Reliance stopped providing claim reviews.

26. Admitted in part, denied in part. It is admitted that Reliance provided monthly reports showing all claim reserves. Carylton's allegation that the reports were provided "[I]n accordance with the Claims Services Agreement" is denied as a legal conclusion. Carylton's use of the term "initially" is denied as vague and ambiguous. Reliance stopped providing this information when Reliance was placed into liquidation.

27. Admitted in part, denied in part. It is admitted that there has not been a training session. The Claims Service Agreement and Exhibit "P" are written documents which speak for themselves. Carylton's allegation that Reliance/Sterling agreed to perform certain risk control services "[u]nder the Claims Service Agreement" is denied as a legal

conclusion. By way of further answer, Carylton has not been prejudiced by the lack of a training session.

28. Denied. The Liquidator denies that Reliance set unreasonable reserves or that Reliance engaged in bad claims handling practices or failed to handle claims. The reserves that were set were based on a number of factors. The allegations are additionally denied as legal conclusions. Carylton's remaining allegations are denied as the Liquidator is without knowledge or information sufficient to aver the truth of the allegations and, therefore, they are denied.

29. Admitted in part, denied in part. It is admitted that Reliance agreed to defend Midwest on the Drew Froman claim and that Reliance put a \$300,000 reserve on the file. It is also admitted that Carylton objected to Sterling's decision to defend the claim. Reliance's decision to defend was based on its investigation of the claim and the uncertainty under the applicable law regarding, inter alia, the issue of dual employment status of the claimant and the consequence such status may have on coverage. The remainder of Carylton's allegations is denied as legal conclusions.

30. Admitted in part, denied in part. It is admitted that Reliance set a reserve in excess of \$90,000 on the Anthony Tennison claim. That reserve was set based on information available to Reliance. Upon information and belief, the Liquidator is without knowledge or information sufficient to aver the truth of Carylton's allegation that no notice was provided to Carylton prior to Reliance establishing such a reserve. By way of further answer, even if Carylton had not received notice as it alleges, there was no prejudice to Carylton from the lack of notice.

31. Admitted in part, denied in part. It is admitted that Fabian Quinones brought a claim against National Water Main Cleaning Company and that Reliance has set a reserve of about \$250,000 on the claim. The reserve was set based on all of the information available to Reliance. Carylton's characterization of Mr. Quinones' claim as "suspect" is denied as a legal conclusion. The remaining allegations are denied as the Liquidator is without knowledge or information sufficient to aver the truth of the allegations.

32. Admitted in part, denied in part. It is admitted that Reliance set a reserve of \$100,000, the maximum coverage limit, for the Nicholas Grooms claim. The Liquidator denies that the \$100,000 reserve was unreasonable. This reserve was reasonable in view of all of the information available to Reliance, including but not limited to the potential finding of negligence on the part of the insured driver, the lack of fault of the deceased driver, and the sympathy engendering fact of the plaintiff being a 1 1/2 year old survivor of the deceased driver. Carylton's allegation that the driver of the vehicle owned by a Carylton subsidiary "was not at fault" is denied as a legal conclusion. Carylton's allegation that Sterling/Reliance "understood these facts" is denied as vague and ambiguous. Further, contrary to Carylton's allegation that Reliance "agreed to reserve [the] claim at the minimum amount," on April 18, 2000, Carylton had agreed to setting the reserves at \$100,000.

33. Denied. The liquidation order is a written document which speaks for itself. By way of further answer, it is denied that the liquidation order required the Liquidator to provide copies of the order to Reliance's policyholders. The Liquidator denies the remaining allegations contained in this paragraph as she is without knowledge or information sufficient to aver the truth of the allegations and, therefore, they are denied.

34. Denied. The Liquidator denies the allegations as she is without knowledge or information sufficient to aver the truth of the allegations and, therefore, they are denied.

35. Denied. The Liquidator is without knowledge or information sufficient to aver the truth of the allegations. By way of further answer, Cambridge would have no authority to withhold files at the insured's request.

36. Admitted in part, denied in part. It is admitted that the files were sent to the Illinois Insurance Guaranty Fund. Carylon's allegation regarding the requirement of "[e]very relevant state's" guaranty fund statutes is denied as a legal conclusion. The remaining allegations are denied as the Liquidator is without knowledge or information sufficient to aver the truth of the allegations.

37. Admitted in part, denied in part. It is admitted that Cambridge sent workers compensation files to state guaranty funds. Carylon's allegations regarding where the files should be sent and harm to its interest are denied as legal conclusions.

38. Denied. Carylon's allegations regarding the Illinois statute are denied as legal conclusions. The remaining allegations are denied as the Liquidator is without knowledge or information sufficient to aver the truth of the allegations and, therefore, they are denied.

39. Denied. Carylon's allegation that the claim files were sent to the wrong state's guaranty association is denied as a legal conclusion. The Liquidator is without knowledge or information sufficient to aver the truth of the remaining allegations.

40. Denied. Carylon's suggestion that the claim files should not have been sent to Illinois is denied as a legal conclusion. The Liquidator is without knowledge or information sufficient to aver the truth of the remaining allegations and, therefore, they are denied.

41. Admitted in part, denied in part. It is admitted that Exhibit Q is an e-mail from Anne Sharpe. Carylon's allegations regarding where the claim files should have been sent are denied as legal conclusions. The Liquidator is without knowledge or information sufficient to aver the truth of the remaining allegations contained in this paragraph and, therefore, they are denied.

42. Denied. The Liquidator is without knowledge or information sufficient to aver the truth of the allegations contained in this paragraph and, therefore, they are denied.

43. Denied. The Liquidator is without knowledge or information sufficient to aver the truth of the allegations and, therefore, they are denied. The December 28, 2001 letter is a written document which speaks for itself. The Liquidator denies Carylon's characterization of the letter that "[s]ome day," Reliance would send notice of how Carylon could submit a claim.

44. Denied. The Liquidator is without knowledge or information sufficient to aver the truth of the allegations regarding Carylon's requests to the Illinois Fund and the Illinois Fund's response to Carylon. Carylon's allegation that it "chased [the] files down at Reliance" is denied as the Liquidator is without knowledge or information sufficient to aver the truth of the allegations. The February 6, 2002 letter is a written document which speaks for itself.

45. Denied. Carylon's allegation that Reliance/Cambridge erroneously sent the files to the Illinois Fund is denied as a legal conclusion. The Liquidator is without knowledge or information sufficient to aver the truth of Carylon's remaining allegations and, therefore, they are denied.

46. Denied. Carylon's allegation that the claim files were sent to the wrong state fund is denied as a legal conclusion. The Liquidator is without knowledge or information sufficient to aver the truth of Carylon's remaining allegations and, therefore, they are denied.

47. Denied. Contrary to Carylon's allegation that Reliance and Cambridge "never" told Carylon's defense counsel of Reliance's liquidation, Reliance sent a letter to all defense counsel advising them of the liquidation. The Liquidator is without knowledge or information sufficient to aver the truth of the remaining allegations and, therefore, they are denied.

48. Admitted in part, denied in part. It is admitted that Reliance/Sterling agreed to pursue subrogation claims. Carylon's allegation that Reliance did not pursue subrogation claims is denied. The Liquidator is without knowledge or information sufficient to aver the truth of the allegations.

49. Admitted in part, denied in part. It is admitted that Reliance made payment to Mark Pauley. The payment was made with Carylon's consent. It is denied that Reliance failed to "further" pursue a subrogation claim. Upon information and belief, the subrogation claim is being pursued by Cambridge's Recovery Unit.

50. Denied. It is denied that Reliance/Cambridge failed to pursue subrogation with respect to the Drew Froman claim. Upon information and belief, the subrogation claim is being pursued. The remaining allegations regarding Reliance's alleged wrong transfer of the claim files are denied as legal conclusions.

51. Denied. It is denied that Reliance/Cambridge failed to pursue subrogation with respect to the Richard Carpenter claim. Upon information and belief, the subrogation

claim is being pursued. The remaining allegations are denied as legal conclusions. The letters referred to in this paragraph are written documents which speak for themselves.

52. Admitted in part, denied in part. It is admitted that Reliance pursued and received subrogation with respect to Fernando Solares claim as to the payment made on the property damage claim. It is denied that no subrogation claim is being pursued with respect to the payment made on the bodily injury claim. Upon information and belief, a subrogation claim is being pursued.

53. Admitted in part, denied in part. It is admitted that the claimant had a prior back injury. However, Carylon's suggestion that Reliance improperly failed to bring a contribution claim is denied. The contribution portion is not apportioned until the permanent disability stage which has not yet been reached.

54. Admitted in part, denied in part. It is admitted that Reliance sent the March 5, 2002 letter and March 6, 2002 invoice referred to. The documents speak for themselves.

55. Admitted in part, denied in part. It is admitted that Reliance did not advise Carylon what happened to the Disbursement Account funds. However, Carylon did not request this information prior to its filing of this action and Reliance had no duty to advise Carylon.

56. Admitted in part, denied in part. It is admitted that Reliance applied the cash collateral account to satisfy the amounts Carylon owed and closed the account without notice to Carylon. Carylon's suggestion that Reliance acted improperly in closing the account without prior notice is denied. The contract does not require Reliance to provide prior notice.

57. Admitted in part, denied in part. It is admitted that Exhibit Z is a copy of the April 22 invoice sent by the Reliance Deductible Recovery Group and that the invoice states that the deductible due for Regina Alford is \$479.26. It is also admitted that Carylton made no deductible payments between March 6, 2002 and April 22, 2002. Carylton's assertion that Reliance does not know the amount that Carylton owes is denied. The April 22 invoice represents the amount that Carylton owes in addition to the \$5,224.94 stated in the March invoice. Carylton's "presumption" that the state guaranty funds made payment on these claims is wrong. Contrary to Carylton's allegations, Reliance paid the expenses associated with the claims.

WHEREFORE, the Liquidator demands judgment in her favor and against Carylton in the amount in excess of \$ 556,564.65, plus interest, attorneys' fees and any and all other relief as the Court deems necessary.

NEW MATTER

58. Carylton is barred from seeking relief except through the statutory claims procedure pursuant to 40 P.S. §§221.37, 221.38.

59. Carylton is barred from seeking relief by the doctrine of consent.

60. Carylton is barred from seeking relief by the doctrine of waiver and/or estoppel.

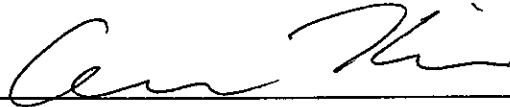
61. Carylton's claims fail to state a claim for which relief may be granted.

62. Carylton's claims may be barred by the statutes of limitation.

WHEREFORE, the Liquidator demands judgment in her favor and against Carylton in the amount in excess of \$ 556,564.65, plus interest, attorneys' fees and any and all other relief as the Court deems necessary.

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Company

Dated: August 2, 2002

VERIFICATION

I, Robert Bellusci, Vice-President of Reliance Insurance Company (in Liquidation), hereby verify that the facts set forth in the foregoing Answer to Carylton Corporation's New Matter with Prayer for Relief are true and correct to the best of my knowledge, information and belief. I understand that this Verification is made subject to the penalties of 18 P.S. § 4904 relating to unsworn falsification to authorities.



ROBERT BELLUSCI


Dated: July 30, 2002

CERTIFICATE OF SERVICE

I, Ann E. Kim, hereby certify that on August 2, 2002, a true and correct copy of the foregoing Answer was served on all persons listed on the attached Master Service List by U.S. Mail, postage prepaid and upon the following individuals via first class mail:

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ANN E. KIM

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v.

Reliance Insurance Company

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