IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, Plaintiff	:	
v.	:	
Reliance Insurance Company, Defendant	:	No. 269 M.D. 2001

MEMORANDUM OPINION

Before the Court are the objections of Loeb & Loeb LLP (Loeb), a California law firm, to a notice of determination (NOD) filed by the Statutory Liquidator (Liquidator) of Reliance Insurance Company (Reliance) regarding a monetary claim against Reliance filed by Loeb and assigned Proof of Claim No. 2137387. We dismiss Loeb's objection to the Liquidator's assignment of priority level to its claim, foregoing for the moment any resolution as to the monetary value of the claim.

Reliance insured Groman Mortuaries, Inc. (Groman) against certain claims and losses for the policy period August 31, 1997 to August 31, 1998. Between November 1999 and May 2001, Loeb performed legal services for Reliance in defense of a lawsuit brought against Groman by an individual named Victoria Rivera. Reliance accepted Groman's defense and indemnity under its policy, and made payments to Loeb for some of the legal services it provided. While the lawsuit was proceeding, Reliance went into liquidation. Loeb alleges that by the conclusion of the suit, Reliance had not paid it $159,711.65 in fees and costs.

Loeb filed a claim against Reliance for the unpaid attorneys' fees and costs. The Liquidator issued an NOD acknowledging Loeb's claim for an unspecified amount of attorneys' fees and costs, assigning the claim a priority level of (e), indicating the claim of a general creditor. Section 544 of the Act of May 17, 1921, P.L. 789, commonly known as the Insurance Department Act (Act), *as amended*, 40 P.S. §221.44, sets forth an order of distribution of claims from an insurer's liquidated estate. This Section provides that "[e]very claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive payment." Thus, every claim in class or priority level (a) shall be paid before those claims in class or priority level (b), and so forth. Class or priority level (e), assigned to Loeb's claim by the Liquidator, provides for claims "under nonassessable policies for unearned premium or other premium refunds and claims of general creditors." 40 P.S. §221.44(e).

Loeb objected to the classification of its claim as class or priority level (e), contending that its claim is not that of a general creditor. Rather, Loeb contends that its claim should be listed as priority level (b), regarding "claims under policies for losses wherever incurred, including third party claims." 40 P.S. §221.44(b). Loeb argues that because its performance of legal services arose in defense of an insured claim, its claim for unpaid legal fees and costs is, by extension, a claim under the insurance policy for "losses wherever incurred."[1] Loeb's objections do not set forth any citation to authority for its argument.

[1] Loeb characterizes its objections as filed both by itself and by Groman as the policyholder. It is quite apparent, however, that the objections concern only Loeb's desire to assert its claim for unpaid fees and costs, not for any losses incurred by Groman.

Although the issue raised by Loeb has not previously been disposed of in a published opinion in this Commonwealth, a similar issue had been addressed by the Texas Court of Appeals. In *Kelly, Walker & Liles v. McFarling*, 509 S.W.2nd 659 (Tex. Civ. App. 1974), a law firm provided defenses to certain insureds under a liability policy issued by Pioneer Casualty Company (Pioneer). The law firm incurred outstanding fees and costs of over $52,000 for legal services provided prior to the date that Pioneer was placed into permanent receivership. The law firm filed a claim with the Texas Receiver, who accepted the claim but placed it in the class of general unsecured creditors. The law firm objected on the same grounds raised by Loeb in the present matter: namely, that under the statutory priority scheme it should have been given a higher priority pertaining to those who suffered losses within the terms of coverage provided by a contract of insurance.

The Texas Court of Appeals rejected the law firm's argument. Noting that the relevant statute sets forth the purpose of the priority classifications to, among other things, prioritize the protection of insureds in the event of a insurer's insolvency, liquidation, or bankruptcy, the court observed that the law firm was directly employed by Pioneer and that no policyholder was called upon to bear the costs of legal representation. Thus, no policyholders would be protected by giving priority, equal to the claims of the insureds, to the unpaid legal fees incurred by law firms defending actions on behalf of the insurers. The court concluded that the Texas legislature did not intend to afford a priority higher than that of general creditor for attorneys employed by an insurer to defend claims under its policies.

The Pennsylvania Superior Court used the rationale of *Kelly, Walker & Liles*, together with the analysis of similar other-state court decisions, in

rejecting a law firm's argument that it was entitled to recover from the Pennsylvania Insurance Guaranty Association (P.I.G.A.) outstanding legal fees and costs incurred defending an insurance company that later became insolvent. In *Greenfield v. Pennsylvania Insurance Guaranty Association*, 389 A.2d 638 (Pa. Super. 1978), the Court noted that P.I.G.A. had been legislatively created to provide a means of payment of covered claims under certain property and casualty policies issued by insurers who became insolvent. Thus, P.I.G.A. was designed to make good on obligations to insureds in the event of the insolvency of their insurers. The Court determined that an insurer's obligation to pay for legal services in defending claims was not an obligation to the insureds. Therefore, the Court concluded that the law firm could not recover from P.I.G.A. claims for outstanding legal fees and costs, incurred while defending claims under policies issued by an insolvent insurer. The Court also opined that the law firm was entitled to seek a proportionate share of the insurer's assets from the statutory receiver as a *general creditor.*

Based on the cogent analysis of the above authority, we agree with the Liquidator that Loeb's claim for unpaid legal fees and costs is not a "claim under policies for losses wherever incurred," and therefore does not merit a priority classification of (b) under Section 544(b) of the Act. A plain reading of Section 544(b) indicates that the General Assembly intended to prioritize at that level, only claims for losses *under* a policy of insurance, not any separate loss arising from the insurer's contract with a law firm to provide services in defense of claims under such policy. Pursuant to the persuasive analysis of *Greenfield* and *Kelly, Walker & Liles*, Loeb's claims for unpaid services are not the obligations of the insured, Groman, and therefore they are not losses under the policy of insurance issued to

Groman. Accordingly, Loeb's objections to the Liquidator's NOD with respect to the classification of its claim as priority level (e), as the claim of a general creditor, are hereby dismissed.

The Liquidator's NOD made no determination as to the monetary value of Loeb's claim of $159,711.65 in unpaid services. The NOD did state, however, that it did not appear likely that there would be sufficient funds available to make payments on any claims falling in a classification below priority level (b). In her Answer to Loeb's objections, the Liquidator disputed the reasonableness, appropriateness, and accuracy of Loeb's monetary claim, characterizing Loeb's fees as "excessive." The Liquidator alleges in her Answer that Loeb billed $325,663.35 for fees and costs in defense of a claim against Groman eventually settled for $130,000. The Liquidator further alleges that Reliance had paid Loeb $160,527.27 of the fees and costs billed.

This Court has conducted no factual inquiry concerning the monetary value of Loeb's claim. The issue is for the moment left open, to be decided in a future proceeding if necessary. In the interim, it is the Court's desire and direction that the parties negotiate the value of Loeb's monetary claim and arrive at a settlement, if possible. The parties are directed to file a joint status report with the Court on or before 3:00 PM July 15, 2005.

James Gardner Colins

JAMES GARDNER COLINS, President Judge

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M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, Plaintiff	:	
v.	:	
Reliance Insurance Company, Defendant	:	No. 269 M.D. 2001

ORDER

AND NOW, this 21st day of April, 2005, the objections of Loeb & Loeb LLP (Loeb) to a notice of determination filed by the Statutory Liquidator of Reliance Insurance Company (Reliance) regarding a monetary claim against Reliance filed by Loeb, and assigned Proof of Claim No. 2137387, is hereby DISMISSED with respect to Loeb's objection to the Statutory Liquidator's assignment of priority level (e) to its claim. No ruling is made herein regarding the monetary value of Loeb's claim. The parties are directed to negotiate the value of the monetary claim and arrive at a settlement, if possible. The parties are further directed to file a status report with the Court on or before 3:00 PM July 25, 2005.

The Liquidator is directed to serve a copy of this Order upon opposing counsel. No further service is required.

JAMES GARDNER COLINS, President Judge