

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN, INSURANCE  
COMMISSIONER OF THE  
COMMONWEALTH OF PENNSYLVANIA

NO. 269 M.D. 2001

v.

RELIANCE INSURANCE COMPANY

2005 JUL 13 P 12:51

RECEIVED AND FILED  
COMMONWEALTH COURT  
OF PENNSYLVANIA

ORDER

AND NOW, this <sup>13<sup>TH</sup></sup> day of *July*, 2005, upon consideration of the Referee's Report and Recommendations submitted to and hereby adopted by the Court in the above-captioned matter, it is hereby ORDERED that

1. With respect to each of the following Proofs of Claim, Objections to the Notices of Determination are dismissed and each Proof of Claim shall be marked withdrawn:

Proof of Claim No. 108373 - Sarah Jordan

Proof of Claim No. 13300 - Shaw's Welding and

Field Maintenance

Proof of Claim No. 1735005 - Gustella Vosburgh

Proof of Claim No. 119278 - Brenda & Willie

Washington

Proof of Claim No. 131613 - Philip Albanese

Proof of Claim No. 516585 - John Spendio

2. With respect to the following Proofs of Claim, Objections to the Notices of Determination are dismissed and each Proof of Claim is accorded Class (e) priority

status pursuant to 40 P.S. §221.44(e):

Proof of Claim No. 1600286 - Ellen Diamond

Proof of Claim No. 1525536 - Patricia Scott

Proof of Claim No. 420126 - Michael Brooks

Proof of Claim No. 1923268 - Nova West Builders, Inc.

Proof of Claim No. 540966 - Annie Reese

Proof of Claim No. 248536 - Bernice Boggs, Executrix of the Estate of Wendall

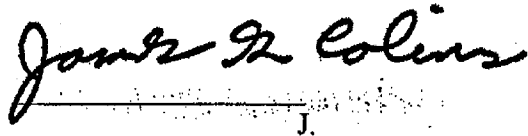
Reynolds, Dec'd

Proof of Claim No. 1918850 - Gregg Smith

Proof of Claim No. 22786 - Virgo Top & Body Shop

Proof of Claim No. 131795 - Theresa Smith

BY THE COURT:

  
James R. Collins  
J.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN, INSURANCE  
COMMISSIONER OF THE  
COMMONWEALTH OF PENNSYLVANIA

v.

RELIANCE INSURANCE COMPANY

NO. 269 M.D. 2001

**REFEREE'S REPORT AND RECOMMENDATIONS**

**Referral**

By Order dated February 20, 2004 the Commonwealth Court assigned to the undersigned as Referee the following Proofs of Claim for the purpose of hearing objections to Notices of Determination issued on behalf of M. Diane Koken in her capacity as Statutory Liquidator of Reliance Insurance Company in Liquidation ("Reliance"), submitting findings of fact where appropriate and necessary, and issuing recommendations to the Court as to disposition of the matter:

<u>Proof of Claim No.</u>	<u>Claimant/Objectant</u>
131795	Ryan Smith
1923268	Nova West Builders
1600286	Ellen Diamond
13300	Shaw's Welding & Field Maintenance
420126	Michael Brooks
227786	Virgo Top & Body Shop
248536	Estate of Wendell Reynolds

1735005	Gustella Vosburgh
516585	John Spendio
540966	Annie Reese
131613	Philip Albanese
911499	Cucina Holdings Inc.
1918850	Gregg Smith
108373	Sarah Jordan
119278	Brenda & Willie Washington
1525536	Patricia Scott
1931509	Bazzi Construction Company
1562972	Theresa Smith
1396936	Lugenbohl, Wheaton et. al.

**Matters Decided Elsewhere**

Proof of Claim No. 1931509 - Bazzi Construction Company had been previously assigned to another referee, Charles Cunningham, who filed his Findings of Fact, Conclusions of Law and Recommended Decision, which the Court Adopted in its Order of July 8, 2004.

Proof of Claim No. 1396936 - Lugenhohl, Wheaton et. al. involves a claim for attorneys' fees. That matter is pending and will be the subject of a separate and later report. All other matters before this Referee involve either refunds of unearned premiums on automobile insurance policies or other premium refunds based on premium audits of

workmen's compensation policies.

**Matters Withdrawn By Praecept Prior to Referee's Involvement**

Two additional matters, Proof of Claim No. 131795 - Ryan Smith and Proof of Claim No. 911499 - Cucina Holdings Inc., were resolved prior to hearing without the involvement of this Referee. These claimants' objections were withdrawn by Praecept.

**Hearing Procedures**

By letter dated July 16, 2004 sent by first class and certified mail, return receipt requested, the undersigned notified each of the remaining fifteen (15) claimants that a telephone hearing with respect to their objections was tentatively scheduled to take place at a specific time on August 10, 2004 or August 12, 2004. They were advised that they would have an opportunity to present evidence and argument in support of their objections at the telephone hearing. The claimants were also told that upon so advising my office they could arrange to appear in person if they preferred, and that if the time and date of the call were inconvenient, it could be rescheduled. They were also asked to advise my office if they wished to withdraw their objection because their claim was paid by their state guarantee association or for any other reason. Finally, they were cautioned that unless they made other prior arrangements, the hearing would go forward as scheduled without their participation and an order dismissing their objection may be entered.

**Matters Resolved Prior to Hearing**

Prior to the scheduled hearing dates, the undersigned received notification from the four claimants listed below that they had been paid in whole or in part by their state guarantee associations and wished to withdraw their claims:

Proof of Claim No. 108373 - Sarah Jordan

Proof of Claim No. 13300 - Shaw's Welding and Field Maintenance

Proof of Claim No. 1735005 - Gustella Vosburgh

Proof of Claim No. 119278 - Brenda & Willie Washington

Accordingly their scheduled hearings were cancelled. The undersigned will recommend to the Court that there claims be marked withdrawn.

**Hearings**

On August 10 and 12, 2004 telephone hearings were conducted with respect to the remaining matters. Nature of the proceedings and the position of Reliance with respect to each claim were explained and each claimant was given the opportunity to give evidence in support of their position. Larry H. Spector Esq. appeared on behalf of Reliance. At the conclusion of each of the telephone hearings, the parties were advised orally and by letter that they could submit additional material or proposed findings of fact and conclusions of law to undersigned for his consideration within 30 days.

After applications for extensions of time timely made and granted, counsel for Reliance submitted Proposed Findings of Fact and Conclusions of Law respecting each of the Claims on October 5, 2004. No claimant submitted additional materials or proposed findings of fact or law.

**Issues Presented**

Each of the Proofs of Claim involves either a claim for refund of premium based on a premium audit of a workmen's compensation insurance policy prior to Reliance's liquidation or a claim for unearned portion of an automobile insurance premium which was cancelled effective November 2, 2001 as a result of the Court's Order dated October 3, 2001. Accordingly, Reliance issued a Notice of Determination to each claimant assigning a class (e) level of priority to the claim pursuant to 40 P.S. §221.44 (e), to which each claimant timely objected.

The central issue presented in all the Proofs of Claim matters before me is what class of claim is to be assigned to each of these claims for the purpose of determining level of priority for distribution of the assets of Reliance. In that regard, the relevant parts of 40 P.S. § 221.44 provide:

“The order of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. . . .”

“(e) Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors. . . .”

No allowed amount was assigned to the claims in the Notices of Determination. In each Notice of Determination, Reliance reserved the right to evaluate and assign an allowed amount at a later date if it is determined there will be sufficient assets to make a

distribution to class (e) claimants. Hence the only issue to be decided here is the determination of the appropriate class of claim to be assigned under the statute given the facts adduced from the Proof of Claim information submitted to Reliance and any additional or different facts adduced at or after the hearings.

**Findings of Fact and Conclusions of Law**

**1. Proof of Claim No. 1600286 - Ellen Diamond**

a. Ms. Diamond's claim is for \$831 representing an unearned premium on an auto insurance policy. She originally paid \$1001 on the policy whose term ran from 10/02/01 to 4/2/02. The policy was cancelled 10/12/01 because of the liquidation.

b. Reliance agrees that \$831 is owed on account unearned premium. This claim has been submitted to the New York Liquidation Bureau.

c. Ms. Diamond testified and offered no facts or information tending to show her claim was for anything other than an unearned premium.

d. Ms. Diamond's claim is properly classified as a class (e) claim under 20 P. S. 221.44. Accordingly, her objections to the Notice of Determination of Reliance should be dismissed.

**2. Proof of Claim No. 1525536 - Patricia Scott**

a. Ms. Scott claim is for \$600.00 representing the alleged unearned premium on a Reliance auto insurance policy with effective dates of April 22, 2001 to April 22, 2002.

b. Reliance disputed that any unearned premium refund was due to Ms. Scott



because the policy had been cancelled at her request on June 15, 2001 before she had made any of the premium payments.

c. Ms. Scott testified that she had received two letters, each dated March 15, 2001, the first from Reliance advising that it had sold its auto insurance book of business to Kemper and the second from Kemper acknowledging that Ms. Scott would then be a Kemper customer and that her next bill would come from Kemper.

d. Ms. Scott testified that notwithstanding the letters of March 15, 2001, she continued to pay Reliance for coverage for the policy year ending April 22, 2002. After the hearing, Ms. Scott submitted a copy of an insurance card issued by Reliance for the policy period April 22, 2001 to April 22, 2002. She submitted no other evidence of payment.

e. With its Proposed Findings of Fact and Conclusions of Law Reliance submitted a copy of a handwritten note from Ms. Scott requesting cancellation because she now had insurance with Geico for \$100.00 less.

f. Notwithstanding the disputed nature of the claim, Ms. Scott testified and offered no facts or information tending to show her claim was for anything other than an unearned premium.

g. Mrs. Scott's claim is properly classified as a class (e) claim under 20 P.S.221.44. Accordingly, her objections to the Notice of Determination of Reliance should be dismissed.

### **3. Proof of Claim No. 420126 - Michael Brooks**

a. Mr. Brooks' claim is \$654 for an unearned premium for an auto insurance

policy for period October 26, 2001 to April 26, 2002 which policy was cancelled effective November 2, 2001.

b. Mr. Brooks also claimed an additional \$592 that he had been fined by the New York Department of Motor Vehicles for driving with license plates that were not properly registered because he was uninsured. However, he withdrew this claim because the fine had been waived by the New York Department of Motor Vehicles, and he did not have to pay it.

c. Reliance agrees that Mr. Brooks paid a total of \$654 and had earned premium of \$12.00 and unearned premium of \$642 due to him for the period November 2, 2001 to April 26, 2002. This claim for \$642 has been submitted to, and is pending before, the New York Liquidation Bureau.

d. Mr. Brooks paid the \$654 in premiums in two installments on October 20 and December 20, 2001. He testified that he was billed for the second installment in December 2001 by Reliance after the date when his insurance was cancelled due to the liquidation. Reliance has no record of a billing after the cancellation. After the hearing, Mr. Brooks was asked to submit a copy of the claimed invoice from Reliance upon which he based the testimony that he had received such a bill. He did not do so.

e. Mr. Brooks offered no facts or information tending to show his claim was for anything other than an unearned premium.

f. Mr. Brooks' claim is properly classified as a class (e) claim under 20 P. S. 221.44. Accordingly, his objections to the Notice of Determination of Reliance should be dismissed.

g. Under 40 P.S. §221.35 an insured is responsible for the payment of a

premium for the full policy term to the insurer at the time of the declaration of insolvency whether earned or unearned as shown on the records of the insurer. Accordingly, the issuance of a bill by Reliance after liquidation for a premium on an insurance policy which had already been cancelled due to liquidation, had it in fact occurred as claimed which Reliance disputes, would have been proper under the statute and does not affect the determination of the objection.

**4. Proof of Claim No. 1923268 - Nova West Builders, Inc.**

a. The claim of Nova West Builders, Inc is \$6,561.50 on account of the unearned portion of a premium for a workmen's compensation insurance policy in effect for the year February 23, 1999 to February 23, 2000. The unearned premium was calculated as a result of an audit done by Reliance in November, 2000.

b. Reliance stated that according to Reliance's records, the amount due to Nova West is \$6,561.78 and this amount was reported to the California Insurance Guaranty Association.

c. Mr. Gary Fairhead, President of Nova West, testified at the hearing and offered no facts or information tending to show Nova West's claim was for anything other than an unearned premium.

d. The claim of Nova West Builders, Inc is properly classified as a class (e) claim under 20 P. S. 221.44. Accordingly, the objections of Nova West Builders, Inc. to the Notice of Determination of Reliance should be dismissed.

**5. Proof of Claim No. 540966 - Annie Reese**

a. Ms. Reese 's claim is \$335 for the unearned portion of a premium on an automobile policy in effect for the period February 2,2001 to February 2, 2002.

b. Ms. Reese testified she was paid \$235 of the unearned premium from her state guarantee association in the State of Florida. As a result, her net claim is \$100.

c. Ms. Reese offered no facts or information tending to show her claim was for anything other than an unearned premium.

d. Ms. Reese's claim is properly classified as a class (e) claim under 20 P. S. 221.44. Accordingly, her objections to the Notice of Determination of Reliance should be dismissed.

**6. Proof of Claim No. 248536 - Bernice Boggs, Executrix of the Estate of Wendall Reynolds, Dec'd**

a. Ms. Boggs, on behalf of the estate, claims \$241 representing the unearned premium due on an auto insurance policy in effect for the period August 24, 2000 through August 24, 2001. The decedent, the insured under the policy, died on April 22, 2001. The policy was cancelled effective April 24, 2001.

b. Reliance agreed that the unearned premium due to the insured's estate is \$241.

c. Ms. Boggs testified and offered no facts or information tending to show her claim was for anything other than an unearned premium.

d. The claim Estate of Wendall Reynolds, Dec'd is properly classified as a class (e) claim under 20 P. S. 221.44. Accordingly, the estate's objections to the Notice

of Determination of Reliance should be dismissed.

**7. Proof of Claim No. 1918850 - Gregg Smith**

a. Mr. Smith's claim is \$2,688 representing the unearned portion of a premium for a workmen's compensation insurance policy due as a result of an audit by Reliance.

b. Reliance agreed that the amount due to Mr. Smith was \$2,686 and advised that this claim was forwarded by Reliance to the New Jersey Property-Liability Guaranty Association.

c. Mr. Smith testified and offered no facts or information tending to show his claim was for anything other than an unearned premium.

d. Mr. Smith's claim is properly classified as a class (e) claim under 20 P. S. 221.44. Accordingly, his objections to the Notice of Determination of Reliance should be dismissed.

**8. Proof of Claim No. 227786 - Virgo Top & Body Shop**

a. The claim of Virgo Top & Body Shop is \$579.89 representing a premium refund due as a on a workmen's compensation insurance policy as a result of a premium audit by Reliance on or about June 7, 2001.

b. Reliance agreed that \$579.89 is due to Virgo and that this claim was forwarded to the New Jersey Property-Liability Guaranty Association.

c. Alexis Zielinski, President of Virgo Top and Body Shop, testified and

offered no facts or information tending to show Virgo's claim was for anything other than an unearned premium.

d. The claim of Virgo Top and Body Shop is properly classified as a class (e) claim under 20 P. S. 221.44. Accordingly, the objections of Virgo Top and Body Shop to the Notice of Determination of Reliance should be dismissed.

**9. Proof of Claim No. 131613 - Philip Albanese**

a. Mr. Albanese claims \$596 for the unearned portion of a premium paid for an automobile insurance policy issued by Reliance for the period August 21, 2001 to August 21, 2002.

b. Mr. Albanese testified he filed a claim in the amount \$596 with the New York State Guarantee Association and that he had received a check in the full amount. He advised that he was therefore withdrawing his objection.

**10. Proof of Claim No. 516585 - John Spendio**

a. Mr. Spendio claims \$190 for the unearned portion of a premium paid for an automobile insurance policy issued by Reliance for the period June 27, 2001 to December 27, 2001.

b. Mr. Spendio testified that his unearned premium claim for \$190 had been paid in full by the New York Liquidation Bureau. He advised that he was therefore withdrawing his objection.

**11. Proof of Claim No. 131795 - Theresa Smith**

a. Ms Smith claims \$784.50 for the unearned portion of a premium paid for an automobile insurance policy issued by Reliance for the period September 17, 2001 to March 17, 2002.

b. Reliance agrees that \$784.50 was paid as a first installment on the policy which was cancelled 11/02/2001. Reliance avers the an unearned premium of \$383.50 is owed.

c. Notwithstanding the fact that a telephone conference respecting her objection was scheduled for August 10, 2004 at 9:30 A. M. and that return receipt was received indicating that Ms. Smith had received the notice of hearing, Ms. Smith did not answer the phone call placed to her or offer any reason for her failure to appear.

d. Ms. Smith offered no facts or information tending to show her claim was for anything other than an unearned premium.

e. Ms. Smith's claim is properly classified as a class (e) claim under 20 P. S. 221.44. Accordingly, her objections to the Notice of Determination of Reliance should be dismissed.

### **Recommendations**

After due consideration of the facts and circumstances in each case and the law applicable thereto the undersigned makes following recommendations to the Court with respect to the matters before him:

1. With respect to the following Proofs of Claim, the undersigned recommends that the Objection to the Notice of Determination in each case be dismissed and each claim be marked Withdrawn for the reason that each claimant, either prior to or at the hearing, indicated that his or her claim had been satisfied to the claimant's satisfaction by payment from the claimant's state guarantee association:

Proof of Claim No. 108373 - Sarah Jordan

Proof of Claim No. 13300 - Shaw's Welding and Field Maintenance

Proof of Claim No. 1735005 - Gustella Vosburgh

Proof of Claim No. 119278 - Brenda & Willie Washington

Proof of Claim No. 131613 - Philip Albanese

Proof of Claim No. 516585 - John Spendio

2. With respect to the following Proofs of Claim, the undersigned recommends that the Objection to the Notice of Determination in each case be dismissed and that each claim be accorded Class (e) priority status pursuant to 40 P.S. §221.44(e):

Proof of Claim No. 1600286 - Ellen Diamond

Proof of Claim No. 1525536 - Patricia Scott

Proof of Claim No. 420126 - Michael Brooks

Proof of Claim No. 1923268 - Nova West Builders, Inc.



Proof of Claim No. 540966 - Annie Reese

Proof of Claim No. 248536 - Bernice Boggs, Executrix of the Estate of

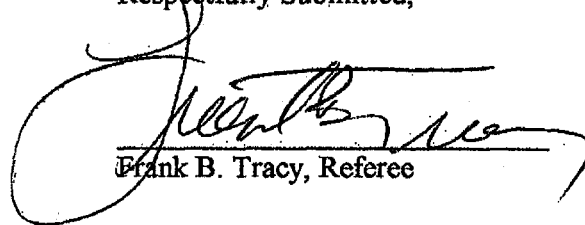
Wendall Reynolds, Dec'd

Proof of Claim No. 1918850 - Gregg Smith

Proof of Claim No. 227786 - Virgo Top & Body Shop

Proof of Claim No. 131795 - Theresa Smith

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Frank B. Tracy", is written over a horizontal line. The signature is fluid and cursive, with a large initial "F" and a long, sweeping tail that extends to the right and then loops back under the line.

Frank B. Tracy, Referee