

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

In Re: In the Matter of Jason Wells, Proof of Claim Number 1914219;
Insured: Builders Transport.

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RECEIVED AND FILED
COMMONWEALTH COURT
OF PA (PHIL.A)

We consider the exceptions and objections filed by Jason Wells (Wells) to the Proposed Findings of Fact and Recommendations made by Referee G. Alan Bailey, Esq. For the reasons set forth below we remand this matter to the Referee with specific instructions to resolve an apparent inconsistency in the record.

Wells was injured in an automobile accident on May 22, 1997 when his vehicle was struck by a tractor-trailer owned by Builders Transport (Builders). Wells sued Builders and, on April 11, 2000 the United States District Court for the Eastern district of Texas, Beaumont Division, entered judgment for Wells against Builders in the amount of \$417,771.00, plus interest and court costs. At the time of Wells' accident Builders was insured by Reliance under a multi-state commercial automobile policy that provided excess coverage only, with a self-insured retention (SIR) of \$1,000,000.00. Wells submitted a timely proof of claim in this matter on April 11, 2002 and the matter was referred to a referee who, after conference with the parties, issued a recommendation.

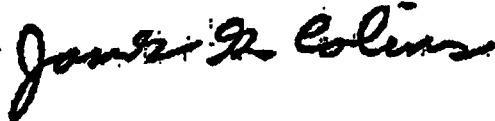
Wells has filed objections to that recommendation in which, among others, he raises the issue of an apparent inconsistency in that there is reference to more than one policy number in the record of this matter. Wells asserts that "the only policy relevant to our controversy." (Wells' Exceptions/Objections, p. 10) is Reliance policy number NKA115428 and that certain affidavits filed in the matter by Reliance are therefore irrelevant as they refer to policy number NKA115429. Wells supports this claim by reference to the record (R) he submitted with his exceptions and objections, urging us to examine "*inter alia*" pages 1, 6, 40, and 176 (*Id.*). We began our review by noting that the copy of the insurance policy Wells attaches to his exceptions and objections bears the number NKA115429 (R. 148 - R. 175), but that Wells' proof of claim (R. 21), the document that initiated this controversy refers to a policy number NKA 115248. Turning to the documents to which we are referred by Wells we find: 1) that R.1, a copy of the Liquidator's Notice of Determination bears the same number, NKA 115248; 2) that R. 6 is page two of Wells' Objection to the Notice of Determination where he says "Reliance issued a policy of automobile insurance to Builders Transport under policy number NKA 115248"; 3) that R. 40 is the Reliance's response to Wells' Objection where Reliance refers to NKA115248; and 4) that R. 176 is the first page of Reliance's Motion for Summary Judgment where reference is made to the same number. We also note that Referee Bailey, in his Findings of Fact, refers to policy "NKA115249." We also note the existence of a document titled "General Change Endorsement" (R. 34) purports to delete the self-insured provisions of a policy numbered NKA115248, and of two endorsements to policy

NKA15248 (R 36 and R 38). These last two documents are also appended to the Referee's Recommendation.

There are clear inconsistencies in the record of this matter in regard to the policy number at issue. These inconsistencies must be resolved before we are able to address the other issues raised by Wells. Therefore, we remand this matter to the Referee with instructions to issue findings of fact and conclusions of law which resolve the inconsistency in the policy numbers appearing in the record. No additional filings will be considered or accepted in this matter and the Referee shall restrict his inquiry to the record before him.

ORDER

AND NOW, this 13th day of July 2005, this matter is REMANDED to the Referee, with instructions to issue findings of fact and conclusions of law which resolve the inconsistency in the policy numbers appearing in the record. The Referee shall restrict his inquiry to the record before him. No additional filings will be considered or accepted in this matter and the Referee shall report his findings and conclusions to the Court no later than July 25, 2005.



JAMES GARDNER COLINS, President Judge