

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
PHILADELPHIA
COMMONWEALTH COURT
OF PENNSYLVANIA
JUN 18 3 37 PM '01

**PRELIMINARY OBJECTIONS OF THE REHABILITATOR OF THE
RELIANCE INSURANCE COMPANY TO PETITION FOR THE
APPOINTMENT OF A COMMITTEE OF POLICYHOLDERS, OR IN
THE ALTERNATIVE, MOTION TO STRIKE**

M. Diane Koken, Commissioner of Insurance of the Commonwealth of Pennsylvania, in her capacity as statutory Rehabilitator (hereinafter "Rehabilitator") of the Reliance Insurance Company (hereinafter "Reliance"), by her undersigned counsel, pursuant to Pa. R. Civ. P. 1028, hereby submits these Preliminary Objections to the unverified and undated Petition for the Appointment of a Committee of Policyholders ("Petition"), filed May 30, 2001. For the following reasons, the Rehabilitator respectfully urges this Court to dismiss the Petition or, in the alternative, to strike the Petition for failure to conform to the most rudimentary requirements of the Rules of Civil Procedure.

The Petition is procedurally defective pursuant to Rule 1028 of the Pennsylvania Rule of Civil Procedure, made applicable to this proceeding by Rule 106 of the

Pennsylvania Rules of Appellate Procedure. See Pa. R. Civ. P. 1028 (Preliminary Objections); see also Pa. R. App. P. 106. The Petition is wholly unverified, and contains insufficient facts even to permit the Court to determine whether it is filed on behalf of persons with standing to pursue the requested relief. In the event, however, that the Court determines to consider the merits of the Petition, the Rehabilitator respectfully requests the opportunity to take discovery of Petitioners with respect to the allegations contained in the Petition, as well as discovery designed to obtain information as to whether Petitioners have standing to bring this Petition and whether they will adequately represent the interests of those who they seek to represent in this matter. See Pa. R. Civ. P. 206.7(d).

FIRST PRELIMINARY OBJECTION UNDER RULE 1028(a)(2)

Under Rule 1028(a)(2) of the Pennsylvania Rules of Civil Procedure, the Petition for the Appointment of a Committee of Policyholders must be denied because the Petition “fail[s] . . . to conform to law or rule of court” See Pa. R. Civ. P. 1028(a)(2). Rule 206.3 of the Pennsylvania Rules of Civil Procedure provides that “[a] petition . . . containing an allegation of fact which does not appear of record shall be verified.” See Pa. R. Civ. P. 206.3; see also Pa. R. App. P. 106. The Petition contains many allegations of fact that do not appear of record in this proceeding. It is wholly unverified. Not one of the policyholders listed in Exhibit A to the Petition verifies any of the factual allegations made in the Petition. Nor did the law firm filing the Petition submit an attorney’s verification. Nor does the Petition contain any explanation, justification or excuse for Petitioners’ failure to verify the Petition as

required by Rule 206.3. Therefore, because the Petition fails to conform to the requirements of a rule of court, the Petition is procedurally defective as a matter of law and should accordingly be dismissed or stricken.

SECOND PRELIMINARY OBJECTION UNDER RULE 1028(a)(3) and (5)

The Petition also does not conform to Rule 1028(a)(3, 5), in that the unverified allegations of the Petition lack sufficient specificity for this Court to determine whether Petitioners have the legal capacity and standing to seek the requested relief. See Pa. R. Civ. P. 1028(a)(3, 5). First, other than an unverified allegation that the Petitioners are "holders of contracts of insurance issued by Reliance . . ." the Petition contains no allegations as to who the Policyholders are, the types of insurance policies they hold, the nature of their claims, or how these policyholders represent a cross-section of all Reliance policyholders. See Petition, ¶ 3. This itself represents a failure to comply with Rule 1019(i) which requires that contracts forming the basis for relief be attached to a filing. In addition, the Petition asserts no basis to support a finding that all of the affected policyholder will not be fairly and adequately represented by the Rehabilitator.

THIRD PRELIMINARY OBJECTION UNDER RULE 1028(a)(5)

Second, given that the Petition is unverified and lacks the required specificity as to the status and identities of Petitioners, some of whom are merely identified as "Unknown," Petitioners have failed to establish that they have standing to request relief from this Court. See Pa. R. Civ. P. 1028(a)(5) ("lack of capacity to sue"). "The concept of 'standing,' in its accurate legal sense, is concerned only with the question

of who is entitled to make a legal challenge to the matter involved.” Pennsylvania Game Commission v. Pennsylvania Department of Environmental Resources, 512 Pa. 121, 127; 555 A.2d 812, 815 (1989) (citations omitted) (emphasis in original). “[T]he core of the concept of standing is that a person who is not adversely affected in any way by the matter he seeks to challenge is not aggrieved thereby and has no right to obtain a judicial resolution of his challenge.” Id. (citations omitted). “With regard to actions or decisions of state administrative agencies, [Pennsylvania law] . . . mandates that a person’s right to obtain judicial review depends upon his having a direct interest in the agency’s action and being aggrieved thereby.” Id. (citations omitted).

In this matter, the allegations of the Petition fail, for several reasons, to establish that Petitioners have standing to seek the requested relief. Petitioners’ request for the appointment of a policyholder committee is premature. The Insurance Commissioner as Rehabilitator has not had an adequate opportunity to determine whether rehabilitation is feasible and has not formulated a plan of rehabilitation. There has been no action by the Rehabilitator that could reasonably serve as a basis for Petitioners to claim that they are “aggrieved,” as required by the doctrine of standing. Indeed, the Petition contains no allegation that the Petitioners have been aggrieved by any action the Rehabilitator has taken thus far. Furthermore, the unverified and unspecific allegations of the Petition make it impossible for this Court to determine whether the Petitioners have the right to obtain, at this time, the judicial

relief they seek. Accordingly, Petitioners request for relief must be denied. See Pa. R. Civ. P. 1028(a)(3, 5).

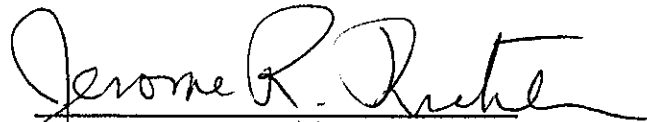
**FOURTH PRELIMINARY OBJECTION TO LEGAL
INSUFFICIENCY OF PETITION UNDER RULE 1029(a)(4)**

The Petition is also legally insufficient within the meaning of Rule 1028(a)(4). The Insurance Department Act, 40 Pa. Cons. Stat. §§221.1-221.63 (“the Act”), provides the exclusive statutory scheme for the rehabilitation of insurance companies domiciled in Pennsylvania. The Act does not contemplate, particularly at this early stage of the Rehabilitation proceeding participation by a policyholder committee. Because the appointment of a policyholder committee is not provided for in the Act, the Petition is legally insufficient, and therefore should be denied.

WHEREFORE, the Rehabilitator respectfully requests (1) that this Court dismiss the Petition based upon the above stated preliminary objections, made pursuant to Rule 1028 of the Pennsylvania Rules of Civil Procedure, or in the alternative, strike the Petition from the record as procedurally defective; or (2) in the event that the Court determines to consider the merits of the Petition, the Rehabilitator respectfully requests the opportunity to take discovery of Petitioners with respect to the allegations contained in the Petition, as well as discovery designed to obtain information as to whether Petitioners have standing to bring this Petition

and whether they will adequately represent the interests of those who they seek to represent in this matter. See Pa. R. Civ. P. 206.7(d).

Respectfully submitted,



JEROME R. RICHTER
ATTORNEY I.D. NO. 03649
ANN B. LAUPHEIMER
ATTORNEY ID NO. 41886
BLANK ROME COMISKY & McCAULEY
LLP
One Logan Square
Philadelphia, PA 19103
(215) 569-5500

Counsel for Petitioner,
M. DIANE KOKEN, Insurance Commissioner
of the Commonwealth of Pennsylvania and
Rehabilitator of RELIANCE INSURANCE
COMPANY

PRESTON M. BUCKMAN, ESQUIRE
Special Funds Counsel
INSURANCE DEPARTMENT OF
THE COMMONWEALTH OF PENNSYLVANIA
1321 Strawberry Square
Harrisburg, PA 17120
(717) 787-6009

Dated: June 18, 2001

CERTIFICATE OF SERVICE

I, Ann B. Laupheimer, Esquire, hereby certify that on June 18, 2001, I served a true and correct copy of the foregoing Preliminary Objections Of The Rehabilitator Of The Reliance Insurance Company To Petition For The Appointment Of A Committee Of Policyholders, Or In The Alternative, Motion To Strike upon the following, via hand-delivery:

Robert H. Levin, Esquire
Adelman Lavine Gold and Levin
1900 Two Penn Center
Philadelphia, PA 19102-1799


ANN B. LAUPHEIMER