

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken,
Insurance Commissioner of the
Commonwealth of Pennsylvania,
Plaintiff

v.

Reliance Insurance Company,
Defendant

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: No. 269 M.D. 2001

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COMMONWEALTH COURT
OF PENNSYLVANIA

Re: Objection of Yee Consulting Group, Inc. to Notice of Determination on
Proof of Claim Number 1924819

ORDER

AND NOW, this 13TH day of October, 2005,
upon consideration of the Objection of Yee Consulting Group, Inc. (Yee
Consulting Group) to the Notice of Determination on Proof of Claim Number
1924819, the Response of the Statutory Liquidator of Reliance Insurance Company
(Liquidator) thereto, and the supporting documentation attached to said Response,
the Court finds as follows:

1. Yee Consulting Group submitted a claim for benefits in the
Reliance Insurance Company Liquidation;
2. The claim was submitted pursuant to a Payment Bond (Bond)
issued by United Pacific Insurance Company to IDM Environmental of
Massachusetts, Inc. (IDM);
3. The Bond provides that any suit or action must be brought
within one year of the date that principal ceased work on the project;
4. IDM ceased work on the project on December 2, 1998;

5. Yee Consulting Group did not assert its claim until September 5, 2000;

6. Yee Consulting Group was responsible to submit the claim within the required time frame;


7. Yee Consulting Group's allegation that it did not know that the Bond contained a time bar date is not credible;

8. Yee Consulting Group's claim under the Bond is time-barred;

9. Yee Consulting Group has not submitted sufficient facts upon which the Court can conclude that United Pacific misrepresented the Bond herein, or that Yee Consulting Group, to its detriment, justifiably relied upon representations of United Pacific and that reliance caused the untimely filing of a claim under the Bond.

Moreover, *assuming arguendo* that a timely claim had been brought under the Bond, the Liquidator properly assigned the claim a priority level (e) under that which is commonly known as the Insurance Department Act (Act), *as amended*, 40 P.S. §221.44(e) the Insurance Act, Section 544 of the Act of May 17, 1921, P.L. 789, which sets forth an order of distribution of claims from an insurer's liquidated estate. Since such a claim results from surety contracts it is not a claim of insurance. As stated by the Liquidator, surety bonds are essentially commercial guarantee instruments and not policies of insurance; therefore, they must be placed in a lower class for distribution than claims by insurance policyholders. *Grode v. Mutual Fire, Marine and Inland Insurance Company*, 572 A.2d 798 (Pa. Cmwlth. 1990). Accordingly, it is **HEREBY ORDERED** that the Objection of Yee Consulting Group, Inc., to the Notice of Determination on Proof of Claim Number 1924819 is **DENIED**; the decision rendered by the Liquidator is **AFFIRMED**.

The Liquidator shall forthwith serve a copy of this Order on all interested parties and notify the Court that service has been completed within seven days of this order.



JAMES GARDNER COLINS, President Judge