

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff,

v.

RELIANCE INSURANCE COMPANY,

Defendant.


DOCKET NO. 269 MD 2001

RECEIVED AND FILED
COMMONWEALTH COURT
OF PA (PHILA)
2005 DEC 14 P 12:55

AFFIDAVIT OF SERVICE

Pursuant to the Court's Order of December 8, 2005, the undersigned, on behalf of M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania in her capacity as the Statutory Liquidator of Reliance Insurance Company hereby deposes and says that service of the Court's December 8, 2005 Memorandum Opinion and Order dismissing the Objection of The Stop Loss Mutual Insurance Association Limited was made on Mr. Ivan Keane by first class mail and facsimile.

Dated: December 13, 2005



S. Emy Poulad
Vice President, Associate General Counsel
Reliance Insurance Company (In Liquidation)
3 Parkway
Philadelphia, PA 19102
Telephone: (215) 864-1005
Facsimile: (215) 864-4141
On behalf of the Statutory Liquidator of
Reliance Insurance Company

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

RECEIVED AND FILED
COMMONWEALTH COURT
OF PA (PHILA)
2005 DEC - 8 P 1:56

MEMORANDUM OPINION and ORDER

Before the Court are the objections of The Stop Loss Mutual Insurance Association Limited (Association), to notices of determination (NOD) filed by the Statutory Liquidator (Liquidator) of Reliance Insurance Company (Reliance) regarding monetary claims against Reliance filed by the Association and assigned Proof of Claim Nos. 2072470, 2072471, 2072473, and 2072474. We dismiss the objection of the Association to the Liquidator's assignment of priority level (e) to the claims, and affirm the decision of the Liquidator.

No factual dispute exists. Based on the uncontested evidence of record, the Court finds as facts that the Association provided stop loss reinsurance¹

¹ Stop loss reinsurance is an indemnity reinsurance arrangement, wherein the reinsurer assumes a portion of the risk underwritten by the ceding insurer, without assuming any of the obligations owed by the ceding insurer to the underlying insured. Indemnity reinsurance is available on a "pro rata" basis or an "excess of loss" basis. Under an excess of loss reinsurance arrangement, a cedent is indemnified by a reinsurer, up to a stated limit of liability, for all or a specified part of the loss in excess of a specified retention. Stop loss is one of the four types of "excess of loss" reinsurance. Stop loss indemnifies for losses over a specified loss ratio up to a (Footnote continued on next page...)

to members of Lloyd's of London. The Association reinsured that business by entering into contracts of reinsurance with Reliance. Pursuant to those reinsurance contracts, titled "Excess Personal Stop Loss Reinsurance Agreement," Reliance, as reinsurer, assumed liability from the Association under contracts of stop loss reinsurance for the years 1998 and 1999.

It is also found that the Association submitted to the Liquidator, acting on behalf of the Reliance Estate, four proofs of claim. Proof of Claim Nos. 2072471 and 2072474 seek unearned premiums under reinsurance contracts NGE1809424 and NGE1809408, respectively.² Proof of Claim Nos. 2072470 and 2072473 seek reimbursement under the same reinsurance contracts, for payments made by the Association under its policies. The Liquidator issued Notices of Determinations (NOD) acknowledging the Association's claim, and assigning Proof of Claim Nos. 2072470 and 2072473 (POCs) a priority level (e), determining that the claims arose under a contract of reinsurance and as such were the claims of a general creditor. The Court further finds that the Association has timely filed an objection to the Liquidator's assignment of a priority level (e) to POCs 2072470 and 2072473. The Liquidator has filed a timely response to the objections.

Before this Court, the Association argues that its claim should not be a priority level (e) general creditor claim, but rather should be a priority level (b) claim, pertaining to "claims under policies for losses wherever incurred, including

(continued...)

predetermined limit. Ostrager, Barry R. and Vyskocil, Mary Kay, *Modern Reinsurance Law and Practice*, 2nd Ed. (2000), Section 1.04(b) (2), pp. 1-18 – 1-19.

² The unearned premium claims disposition is not in dispute.

third party claims.” 40 P.S. §221.44(b). The Association contends that its losses/claims are claims under policies for losses wherever incurred. The Association’s objections do not set forth any citation to authority for its argument.

In response, the Liquidator asserts that the clear intent of the statute is to assign a priority level (b) to those claims which are for direct policies such as consumer insurance. The Liquidator directs attention to the Insurance Department Act (Act), the Act of May 17, 1921, P.L. 789, *as amended*, 40 P.S. §221.44 and to neighboring state case law. While this is a case of first impression in the Commonwealth of Pennsylvania, the issue raised by the Association has been previously addressed in this liquidation proceeding by Referee Robert Curran in a matter involving CPA Mutual Insurance Company, and by Referee James Schwartzman in a matter involving Muscat Insurance Company. In each case, this Court affirmed the Referee’s determination that claims submitted for reinsurance benefits shall be assigned a class (e) priority level. The Court reaffirms that position, relying on the specific language in the Act, 40 P.S. §221.44(b) and (e).

The statutory provisions in this case involve the order of distribution set forth in the Act. The Court must ascertain whether the language in §221.44 (b) encompasses claims under contracts of reinsurance or whether such claims are to be assigned priority level (e) status. When interpreting a statute, the Court is charged with giving effect to every word and provision in a statute. 1 Pa. C.S. 1921(a). The words are not to be interpreted in isolation, but must be read in the context in which they appear. 1 Pa. C.S. 1921(c). In ascertaining legislative intent, the Court must be guided by the primary purpose of the statute, and may consider, among other things the consequences of a particular interpretation. *Vitac*

Corporation v. Workers' Compensation Appeal Board Roznac, 578 Pa. 574, 854 A.2d 481 (2004). It is only when the words are not explicit that a court may resort to other considerations to ascertain legislative intent. *Absentee Ballots of November 4, 2003, General Election*, 577 Pa. 231, 843 A.2d 1223 (2004).

The claim level priority assignment is significant in light of Section 544 of the Act, 40 P.S. §221.44, as that Section sets forth the order of distribution of claims from an insurer's liquidated estate. In Section 221.44, the General Assembly clearly directs 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." Hence, every claim in class (a) shall be paid before those claims in class (b), and so forth. Class (b) is assigned to claims under policies for losses wherever incurred, including third party claims, and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies. 40 P.S. §221.44(b). Loss claims are defined as all claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values. 40 P.S. §221.44(b). Excluded from this class are portions of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. 40 P.S. §221(b).

The statute clearly limits section (b) priority claims to "claims under policies for losses. The statute defines the term "loss." The term is limited by definition to the type of loss borne by a policyholder of direct insurance. In so

doing, the General Assembly has elevated direct insurance policyholder claims over claims of reinsurers. Direct insurance policyholders are the general consumers and the policies they hold represent insurance in its purist form, which is a contract of indemnity against an unexpected loss as a result of an act by another, which act includes acts of nature.³ Insurance in this form, serves as a safety net to protect the consumer against the unknown, or a contingent event and its application is limited to events in the future. Black's Law Dictionary, 6th ed., West Publishing 1990. The General Assembly in defining the term "loss" in terms of policy type limited the application of the term to primary policies in which the party agreeing to issue the compensation underwrites the other party to the contract. The underwriter is then the insurer, and the other party to the contract is the insured. Noticeably absent from the definition is reinsurance. Reinsurance is an agreement between insurance companies, the purpose for which is to protect an insurer from a business risk; results in a transfer of risk. *Covington v. Ohio General Insurance Company*, 789 N.E.2d 213 (Ohio 2003).

A distinction between direct insurance and reinsurance is clearly evident from a plain reading of the statute. The distinction furthers the General Assembly's intent which has been the fair distribution of assets to policyholders, i.e., the consumers of insurance. *Grode v. Mutual Fire, Marine & Inland*, 572 A.2d 798 (Pa. Cmwlth. 1990). That concern presents the challenge of marshalling the assets of a failed insurance company, while simultaneously balancing the costs of administration of the defunct insurance company and drafting a schematic that allows for the orderly distribution of the assets to the creditors. Accordingly,

³ *Gordon v. Home Indemnity Company*, 183 A.3d 421 (Pa. Super. 1936).

consistent with the clear intent of the Act, this Court looks to the type of insurance written and the parties to the insurance agreement, when determining the priority of a claim.

This conclusion compliments the case law found in neighboring jurisdictions. In *Covington v. Ohio General Insurance Company*, 789 NE.2d 213 (Ohio 2003); *Swiss Re Life Company v. Gross*, 479 S.E.2d 857 (Va. 1997); *In re Sussex Mutual Insurance Company*, 694 A.2d 312 (N.J. Super. 1997); *In re Liquidation of Reserve Insurance Company*, 524 N.E. 2d 538 (Ill. 1988), each of the five state courts held that claims arising out of reinsurance contracts shall be given priority level (e) as a general creditor and shall not be given the same claim level status as that of a policyholder. In each case, the contract of insurance was the focus. Based on the cogent analysis set forth in the above-listed authority, this Court concludes as a matter of law that claims for losses under reinsurance contracts shall be assigned priority level (e). 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 direct insurance, not for losses arising from one insurer's contract with another insurer. Accordingly, the Association'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 and the Court enters the following

O R D E R

AND NOW, this ^{24th} day of December, 2005, the objections of the Stop Loss Mutual Insurance Association (Association) to the notice of

determination filed by the Statutory Liquidator of Reliance Insurance Company (Reliance) regarding a monetary claim against Reliance filed by the Association, and assigned Proof of Claim Nos. 2072470 and 2072473, is hereby DISMISSED.

James Gardner Colins
JAMES GARDNER COLINS, President Judge

Confirmation Report-Memory Send

Time : 12-13-05 03:59am
Tel line 1 : 2128589098
Name : RELIANCE

Job number : 679
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**RELIANCE INSURANCE
COMPANY (IN
LIQUIDATION)**

Legal
5 Hanover Square
New York, NY 10004

S. Emy Poulad
Vice President,
Associate General Counsel
Phone (212) 858-3614 Fax (212) 858-9118

To: Ivan Keane, Director	From: S. Emy Poulad
Fax: 2-011-44-20-7759-4951	Date: December 12, 2005
Phone:	Pages: 9
Re: December 8, 2005 Order regarding Proof of Claim Numbers 2072470, 2072471, 2072473 and 2072474	

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