

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

2006 JUL -6 A 10:00

RECEIVED AND FILED  
COMMONWEALTH COURT  
OF PA (PHILA)

AFFIDAVIT OF SERVICE

Pursuant to the Court's Order of June 29, 2006, the undersigned counsel for M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Liquidator of Reliance Insurance Company, hereby deposes and says that service of the Court's June 29, 2006, Memorandum Opinion in Support of the Court's Order in this Matter of April 27, 2006, was made on June 30, 2006, via facsimile, electronic mail and/or by U.S. Mail, postage prepaid, on or before June 30, 2006.

Dated: July 5, 2006

  
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rights to United National, a reinsurer of Reliance. United National then negotiated a settlement of the Luna claim and, on July 1, 2005, in a phone conversation, told counsel for the Liquidator of the settlement and said to counsel that the proof of claim should be considered withdrawn. United National says that counsel for the Liquidator then said that the claim had been "deactivated." Subsequently, on September 8, 2005, the Liquidator issued a Notice of Determination, in which she valued the case at \$7,000,000.00 and assigned it a priority level of (b) under Section 221.44 of the Insurance Department Act (Act)<sup>1</sup>, 40 P.S. §221.44<sup>2</sup>. United National filed an objection to the Liquidator's Notice of Determination on

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<sup>1</sup> Act of May 17, 1921, P.L. 789, art. I, §102. Amended Dec. 18, 1992, P.L. 1469, No. 177, §1.

<sup>2</sup> 40 P.S. § 221.44. Order of distribution, provides, in pertinent part,

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.

...

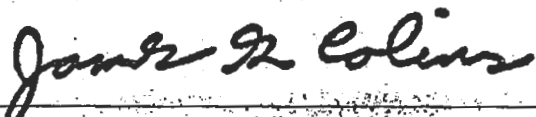
(b) All claims under policies for losses wherever incurred, including third party claims, and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, shall have the next priority. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, 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. No payment made by an employer to his employe shall be treated as a gratuity.

November 4, 2005, and, reciting the phone conversation detailed above, requested that Gottlieb's proof of claim be deemed withdrawn. On December 2, 2005, the Liquidator filed a response to United National's objection in which she opposed the withdrawal in reliance on our Supreme Court's opinion in *Koken v. Reliance Insurance Company, Vitas Healthcare Corporation, et al, Appeal of Mawson & Mawson*, \_\_\_ Pa. \_\_\_, 893 A.2d 70 (2006), in which the court held that a proof of claim filed in an insurance liquidation in the Commonwealth may not be withdrawn. The facts in the case before us and the case relied on by the Liquidator are similar.

In both cases a claimant attempted to withdraw a proof of claim before the Liquidator issued a notice of determination. In deciding *Mawson & Mawson* our Supreme Court relied on the plain language in the Act that states that Section 221.40(a) "plainly provides that the 'filing of the [POC] shall operate as a release of the insured's liability to the third party on that cause of action in the amount of the applicable policy limit[.]' 40 P.S. § 221.40(a)." *Id.*, 893 A.2d at 81. The proof of claim filed by Gottlieb in this matter may not be withdrawn. *Mawson & Mawson*.

Accordingly, we entered our Order of April 27, 2006.

Counsel for United National shall serve this opinion on all parties no later than Thursday, July 6, 2006 and file a certification with the Court, no later than 3:00 p.m. on Monday, July 10, 2006 that service has been effected.

  
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JAMES GARDNER COLINS, President Judge