

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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RECEIVED AND FILED  
COMMONWEALTH COURT  
OF PA (PHILA)

*In Re: Exceptions of Brian Stokes in POC No. 1408093 to  
The Amended Decision of Referee Emery*

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MEMORANDUM OPINION and ORDER

In the Reliance Insurance Liquidation matter the Court is presented with the exceptions of Brian D. Stokes, Esq., in the matter identified as POC No. 1408093, to the amended decision of Referee Mark Emery<sup>1</sup> which confirmed the Liquidator's priority classification of Stokes' claim, to priority level (e). The issue herein is whether unpaid severance pay is a priority level (e) claim as provided for in the Order of distribution set forth in Section 544 of Article V of the Act of May 17, 1921, P.L. 789, *as amended*, added by the Act of December 14, 1977, P.L. 280, 40 P.S. §221.44 (known as the Insurance Company Law of 1981 (Act)). Severance pay is not a cost and/or expense of the administration; rather, it is a general

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<sup>1</sup> Referee Emery issued his initial decision September 2, 2005. An amended decision was issued September 14, 2005.

expense. therefore, severance pay cannot be a priority level (a) claim, and it was properly assigned as a priority level (e) claim. I further agree that Mr. Stokes has abandoned any policy holder or third party claim.

The Referee found that Mr. Stokes presented a challenge to the assignment of his severance pay claim to a priority level (e) priority level. The Referee found that the claim amount of \$9,083.34 represented the total of the remaining two severance payments Mr. Stokes was scheduled to receive. The Referee found that the facts as presented by Mr. Stokes established that the monies received by Mr. Stokes were monies received pursuant to a severance package, the details of which are set forth in a Severance Agreement. The Referee further found that Mr. Stokes executed a general release of all and any claims he may have had against Reliance Insurance Company. Finally, the Referee found that Mr. Stokes's was not a third party claim. The Referee affirmed the Liquidator's designation of priority level (e) to the Stokes's claim; Mr. Stokes has filed with this Court exceptions/objections to the decision of the Referee.

It is Mr. Stokes's contention that the Liquidator untimely issued a Notice of Determination regarding his proof of claim and should be penalized for tardiness by compelling the Liquidator to accept the priority level designation assigned by Claimant Stokes. Such an argument is absurd.

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The authority to act, the manner in which action is taken, and the type of action taken are mandated by Section 544 of the Act, 40 P.S. §221.44. Section 544 of the Act sets forth the Order of Distribution and states 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.

(a) The costs and expenses of administration, including but not limited to the following; the actual and necessary cost of recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; reasonable attorney's fees; the expenses of a guarantee association and handling claims.

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(e) Claims under non-assessable policies for unearned premium or other premium refunds and claims of general creditors.

40 P.S. §221.44.

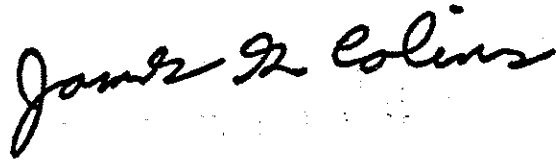
The Liquidator has and must follow the strict guidelines proscribed by the Act. Pursuant to the Act, priority level(a) claims are claims for expenses for the general administration of the insolvent estate. In this instance, the Liquidator has followed the Act, as she concluded that Stokes's claim was one of a general creditor and accordingly assigned the claim a priority level (e). The record is devoid of evidence establishing the monies Stokes received from Reliance were not severance payments but rather were priority level (a) payments, which payments are general costs of administration of the Reliance Estate.

Accordingly, the Court enters the following

**ORDER**

And now, this 1<sup>st</sup> day of August 2006, the Court does Approve the Findings and Conclusions of the Referee as set forth in his decision attached hereto. Brian Stokes's request for oral argument is DENIED.

The Liquidator is directed to serve a copy of this order upon those listed on the Master Service List.

A handwritten signature in cursive script that reads "James G. Colins".

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**JAMES GARDNER COLINS, President Judge**

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Plaintiff

vs.

RELIANCE INSURANCE COMPANY,

Defendant

NO. 269 M.D. 2001

**CLAIM OF BRIAN D. STOKES, ESQUIRE, NO. 1408093**

**RECOMMENDATION BY REFEREE**

On December 20, 2004, this matter was assigned to the Referee. On January 25, 2005, a telephone conference was held involving E. Parry Warner, Esquire, counsel for the Liquidator, and the claimant, Brian D. Stokes, Esquire, acting pro se. At such telephone conference the parties stipulated that there are no questions of fact, and therefore no factual record need be established. The parties further agreed upon a briefing schedule. The parties have fully complied with the scheduling requirements, the matter has been fully briefed, and is now ripe for consideration. For the reasons set forth herein, we have determined that Stokes' Objections to the Determination of the Liquidator must be DENIED.

Stokes' claim arises as a result of his past employment with Reliance Insurance Company (Reliance). Although no testimony was entered upon the record, there are certain facts that are undisputed. Stokes was a practicing attorney in Florida when he was recruited to join Reliance's staff counsel office. Stokes commenced his employment with Reliance in September of 1998. As Reliance began its decline, Stokes employment was terminated. At that time Stokes was offered a severance package, which included a continuation of salary for nine (9) months. These

" EXHIBIT A "

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payments, totaling Eighty-one Thousand Seven Hundred Fifty and 06/100 (\$81,750.06) Dollars, were to be made in 18 semi-monthly payments.

Stokes accepted the severance package, and executed an Agreement and General Release (Agreement). Thereafter Stokes received 16 semi-monthly payments in accordance with the Agreement. However, when Reliance went into rehabilitation, the final two payments, totaling \$9,083.34, were still due. These payments have not been made, and are the value of Stokes' claim.

Stokes Proof of Claim asserts that he is a Policy Holder or Third Party Claim. Stokes stated a claim in the amount of \$250,000.00. This figure was based upon Stokes claiming he was due not only the remaining severance payments, but also amounts due him for loss of income incurred due to Reliance fraudulently inducing him to join their operations. Stokes claims that he has lost income due to leaving a partner position, and having to return to his prior practice as an associate. The Liquidator issued a Notice of Determination, classifying the claim as priority status (e), a general creditor.

At the initial conference before the Referee, Stokes abandoned his claim for any monies above and beyond that due him under the Agreement. The parties further agreed that the matter before the Referee was an issue of law, not fact, and therefore no factual testimony would need to be entered upon the record. While Stokes was acting pro se, as a practicing, and clearly experienced, attorney, the Referee accepted such positions as fully informed and final.

Stokes first issue is that the Liquidator failed to timely provide a written notice of determination of his claim. Stokes argues that this failure necessitates a default finding against the Liquidator, therefore entitling him to a Priority Level (a) classification.

Stokes refers to the Commonwealth Court's Order of September 9, 2002, which established the procedural guidelines for claims. Paragraph 10(b) of that Order states, in part:

Within one hundred eighty (180) days from when all necessary documentation has been received and when all claim requirements have been satisfied, the Liquidator shall provide a written notice of determination of the Proof of Claim (notice of determination) to the claimant.

The Liquidator received the Proof of Claim on February 21, 2002. The notice of determination is dated July 14, 2004. Clearly the Liquidator did not even remotely comply with the 180 day time limit. The Liquidator has not raised any reasonable excuse for this delay. However, while it must be emphatically stressed that this conduct is not condoned, the determination of claims must be based upon the statutory guidelines, and not procedural defects.

The Court's order does not establish a penalty in the event the Liquidator does not issue a Notice of Determination within 180 days. As the Court did not establish a specific sanction for failure to comply with its order, we are not empowered to create such penalty. In addition, Stokes does not provide any evidence, let alone a claim, that the untimely notice injured him. Under the current administration of the liquidation, a timely determination would have put Stokes in no further position than he is now. Stokes has not lost any benefit, nor missed an opportunity to be part of a class to which payments have been made. As the delay of the Liquidator has not effected the substantive rights of Stokes, a classification by default is not warranted.

In regard to Stokes' other arguments, the classification of claims is controlled by Section 544 of the Insurance Department Act of 1921, 40 P.S. §221.44. Under the "Order of Distribution" established therein, the following statutory language controls:

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 members of the next class receive any payment. No subclasses shall be established within any class.

(a) The cost and expense of administration, including but not limited to the following; the actual and necessary cost of recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; reasonable attorney's fees; the expense of a guarantee association and handling claims.

(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.

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(e) Claims under non-accessible policies for unearned premium or other premium refunds and claims of general creditors.

Stokes argues that he is entitled to priority status (a), as he provided services to the Liquidator during the period of liquidation. Stokes claims that it is "undisputed" that after his termination he continued to provide assistance to Reliance. Stokes fails to provide any detailed description of these alleged services. More important, there are no facts of record establishing what services were provided. While such factual deficiency would make it difficult to find in favor of Stokes, the issue is otherwise moot.

Stokes alleges that he fielded numerous phone calls, and purposely did not make himself available to lawyers handling adverse shareholder claims. If Stokes provided such services, they do not constitute services rendered as part of the liquidation. Rather, they constitute services Stokes provided to, and on behalf of, Reliance. These actions may have benefited Reliance, but there is no reason to believe they benefited the process of the liquidation, or furthered the work of the Liquidator.



Stokes has abandoned this claim by asserting a claim solely for the amount due him under the Agreement. These services were provided as part of the terms of the Agreement. The fact that such services may have been performed during a period of liquidation can not transform the claim to priority (a).

Stokes himself states that these alleged services were provided “consistent with its terms and as required by the Agreement.” As the services were provided as part of the Agreement, Stokes priority status is controlled by the nature of the Agreement, and not by the services allegedly rendered during the liquidation.

In the alternative, Stokes argues that he is entitled to priority status (b). Stokes basis is that his claim is one for fraudulent misrepresentation. While both Florida and Pennsylvania law may recognize such claim in tort, its application to the statutory scheme under the Insurance Department Act is misplaced.

Stokes again abandoned any claim under this theory by pursuing a claim only for the remaining balance due under the Agreement. Under such a claim, the manner in which Stokes entered employment with Reliance is of no issue or importance to the determination of priority status.

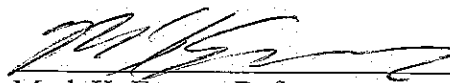
Even if Stokes would not have abandoned his claim for anything beyond the monies due him under the Agreement, the result would be the same. The Agreement entered in to between Stokes and Reliance contained a clear and unequivocal release of all claims Stokes may have had against Reliance. The particular language states:

[Stokes] hereby freely, knowingly and irrevocably releases and discharges [Reliance] ... from any and all rights, actions, causes of action, suits, debts, contracts, controversies agreements, promises, damages, judgements, claims, demands, or obligations whatsoever, of whatever kind and based upon on whatever legal theory, including, but not limited to, obligations in law or equity, whether

known or unknown, that [Stokes] or his heirs, executors, administrators, successors and assigns ever had, now have, or hereafter can, shall, or may have for all matters arising out of her employment with [Reliance] and the cessation of that employment and including, but not limited to, any violation of ... contract, tort, or common law.

Stokes' release of Reliance limits his ability to claim a priority level of (b) for damage to tangible property. Stokes apparently is arguing that Reliance has defaulted on payments under the Agreement, and therefore cannot enforce the release language contained therein. Stokes provides no support for this argument. However, Reliance no longer has control over the remaining two payments due under the Agreement. All such control is now with the Liquidator. The Liquidator is then controlled by the clear dictates of the Insurance Department Act. The Act requires that Stokes claim be given a class (e) status, and therefore the remaining payments to Stokes may only be made when, or if, such class is able to obtain payment through the order of distribution.

Respectfully submitted,

  
Mark K. Emery, Referee

Date: September 14, 2005