



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN, INSURANCE :  
COMMISSIONER OF THE :  
COMMONWEALTH OF PENNSYLVANIA :  
v. : NO 269 M.D.2001  
RELIANCE INSURANCE COMPANY :  
IN RE: PROOF OF CLAIM NO.1967429 - :  
MARY ANN MYNYK :

REFEREE'S REPORT AND RECOMMENDATION

Procedural Background

This case arises from a motor vehicle collision in Florida on January 5, 1999. A tractor-trailer owned by Rowland Transportation, Inc. (hereinafter, "Rowland"), and operated by Emery Turner (hereinafter, "Turner") struck the rear of a vehicle owned and operated by Thomas P. Emershaw (hereinafter, "Emershaw"). Mary Ann Mynyk (hereinafter, "Ms. Mynyk") was a passenger in Emershaw's vehicle. Ms. Mynyk sustained injuries in the collision. Rowland and Turner were insured under an insurance policy issued by Reliance Insurance Company (hereinafter, "Reliance") with liability limits of \$1,000,000.

On May 6, 2004, this Referee conducted a pre-hearing telephone conference with the parties. Ms. Mynyk participated *pro se*. Reliance participated through counsel, Howard Levinson, Esq. In the course of the conference, the parties agreed that Ms. Mynyk had settled her claims for approximately \$25,000 and signed a release, but Ms. Mynyk took the position that there should be a hearing to ascertain what additional compensation she is entitled to receive from Reliance for the injuries she sustained in the

collision. Reliance took the position that the release protects Reliance from further claims by Ms. Mynyk.

By letter of May 7, 2004, this Referee directed Mr. Levinson to file a Motion for Summary Judgment and a supporting brief so that the Referee could determine whether the settlement and release preclude any further liability by Reliance to Ms. Mynyk. By the same letter, Ms. Mynyk was given thirty (30) days after service to respond to the summary judgment motion and brief.

On June 10, 2004, Reliance served a Motion for Summary Judgment and a supporting Memorandum of Law, which this Referee received June 11, 2004. Betsy Schaeffer, assistant Vice President Liability of Claims for Reliance Insurance Company in Liquidation, verified material facts from the motion pursuant to 18 Pa.C.S. Section 4904. She also identified the documents attached to the motion as records kept in the normal course of Reliance's business.

Ms. Mynyk provided no response, but, under cover of a letter dated June 11, 2004, she provided additional documentation to Reliance (including a copy of the signed release), which Reliance apparently received July 14, 2004. Reliance forwarded the material to this Referee, who received it July 26, 2004. The material does not contain affidavits, or other evidence suitable for opposing a motion for summary judgment, but this Referee has considered the material to the extent that it appears to be relevant to the issue presented.

#### **Uncontested Material Facts**

Review of the material before this Referee reveals the following uncontested material facts:

This case arises from a motor vehicle collision in Florida on January 5, 1999. A tractor-trailer owned by Rowland Transportation, Inc. (hereinafter, "Rowland"), and operated by Emery Turner (hereinafter, "Turner") struck the rear of a vehicle owned and operated by Thomas P. Emershaw (hereinafter, "Emershaw"). Mary Ann Mynyk (hereinafter, "Ms. Mynyk") was a passenger in Emershaw's vehicle. Ms. Mynyk sustained injuries in the collision. Rowland and Turner were insured under an insurance policy issued by Reliance Insurance Company (hereinafter, "Reliance") with liability limits of \$1,000,000.

By March 26, 1999, Ms. Mynyk had retained R. Lee Racila, Esq., of the law firm of Goldstein, Buckley, Cheman, Rice & Purtz, P.C., to represent her in connection with the collision. On, or about August 11, 2000, Mr. Racila apparently left Goldstein, *et al.* and joined the law firm of Goldberg, Racila, Sico & Noone, LLC, but he continued to represent Ms. Mynyk. Between June 21, 2001 and September 21, 2001, Ms. Mynyk, through her lawyer, negotiated a settlement with Reliance, whereby Reliance would pay \$25,000 as full settlement of Ms. Mynyk's claims against Rowland and Turner.

Reliance, however, was placed into liquidation, before execution of the settlement documents and delivery of the settlement check, by Commonwealth Court's order of October 3, 2001.

After Reliance was placed into liquidation, Ms. Mynyk, through her lawyer, submitted a claim to the Florida Insurance Guarantee Association (hereinafter, "FIGA"). After Ms. Mynyk had submitted her claim to FIGA, she agreed to settle it for payment of \$25,000, less the statutory \$100 deductible. In connection with the settlement, Ms.

Mynyk signed a document entitled, "Complete Release and Assignment of All Claims" (hereinafter, "Release").

The Release states, in part,

The undersigned, MARYA. MYNYK, A SINGLE WOMAN, for and in consideration of the sum of \$24,900, the receipt of which is hereby acknowledged, does release and forever discharge Florida Insurance Guaranty Association, Inc., and the Department of Insurance, State of Florida, as ANCILLARY RECEIVER OF RELIANCE INSURANCE COMPANY and the insured ROWLAND TRANSPORTATION INC. & EMERY TURNER JR. of and from all manner of actions, suits, claims and demands whatever, whether known or unknown which against said parties the undersigned ever had, now has or may hereafter have, for or by reason of any cause, matter or thing whatsoever from the date of these presents, including any and all claims for personal injuries, pain and suffering, medical expenses, hospital expenses, loss of wages, property damage, or any other losses or expenses arising out of, connected with, or in anywise resulting from an accident which occurred on or about the 5<sup>TH</sup> day of JANUARY 1999 at or near JACKSONVILLE, FLORIDA.

The undersigned, pursuant to F.S.631.60, assigns all (his) (her) (their) rights to the Florida Insurance Guaranty Association, Inc. to any and all claims or causes of action arising out of the above and foregoing accident which the undersigned now has, or may hereafter have.

### **Discussion and Conclusions of Law**

In simplest terms, "Insurance is a device for shifting the risk of loss. An insurance policy is the contract that documents the risk being shifted, along with other essential terms of the transaction. A liability policy shifts the risk of third-party claims from an individual or business to an insurer . . ." Norton, L., INSURANCE COVERAGE IN PENNSYLVANIA (PBI Press 1997). Accordingly, an insurance policy is a contract between the insurer and the insured, which confers certain rights and obligations to the

contracting parties. *Cleland Simpson Co. v. Firemen's Ins. Co. of Newark, N.J.*, 140 A.2d 41 (1958). Among the duties a liability insurance policy places on the insurer is the duty to indemnify. The insurer, however, need only indemnify the insured for actual damages the insured must pay. *Hefferman & Co. v. Hartford Ins. Co.*, 624 A.2d 295 (1992).

Here, Rowland and Turner had an insurance policy with Reliance and, pursuant to that policy, Reliance had a duty to indemnify Rowland and Turner for damages that they became liable to pay as a result of their operation of Rowland's tractor-trailer.

The amount of money necessary to indemnify an insured is determined by judgment against the insured, or settlement on behalf of the insured. *See Terra Nova Ins. Co. v. 900 Bar, Inc.*, 887 F.2d 1213, 1227 (3<sup>rd</sup> Cir. 1989) (settlement or verdict is necessary to determine extent of duty to indemnify).

Here, Ms. Mynyk and Reliance agreed to a settlement of \$25,000, thereby establishing the extent of Reliance's duty to indemnify Rowland and Turner at \$25,000.

Unfortunately, before the settlement could be consummated, Reliance went into liquidation. At that point, Florida's statutory scheme shifted the duty to indemnify Rowland and Turner from Reliance to FIGA, at least regarding amounts up to \$300,000. *See Florida Statutes, Section 631.57.*

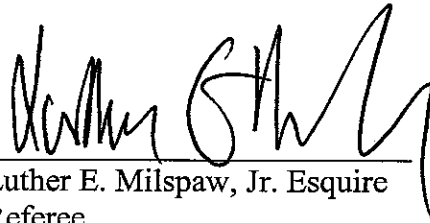
After Reliance went into liquidation, Ms. Mynyk, through her lawyer, filed a claim with FIGA, which she agreed to settle for \$25,000 less the statutory \$100 deductible. As a part of that settlement, Ms. Mynyk executed the Release.

The plain language of the Release discharges Rowland and Turner from any and all further claims by Ms. Mynyk. Because Reliance's duty to indemnify Rowland and

**Recommendation**

In light of the foregoing, this Referee recommends dismissing Ms. Mynyk's objection to the Liquidator's determination.

April 21, 2006



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M. DIANE KOKEN, INSURANCE  
COMMISSIONER OF THE  
COMMONWEALTH OF PENNSYLVANIA

v.

RELIANCE INSURANCE COMPANY  
IN RE: PROOF OF CLAIM NO.1927912  
SCHNEIDER ENGINEERING, PLLC

NO 269 M.D. 2001

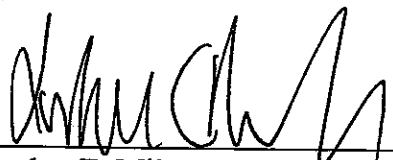
CERTIFICATE OF SERVICE

AND NOW, this 21<sup>st</sup> day of April, 2006, I hereby certify that on this day I served the foregoing Referee's Report and Recommendation, by depositing the same in the U.S. mail, First Class postage pre-paid, at Harrisburg, Pennsylvania addressed as follows:

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Luther E. Milspaw, Jr., Esquire  
Referee