

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

Re: *Objection of Arlene M. Flamer
To Liquidator's NOD in POC No. 1071895*

**IN THE MATTER OF OBJECTION TO NOTICE OF DETERMINATION
BY ARLENE M. FLAMER
CLAIM NO. 1071895**

Robert E. J. Curran, Esquire, duly appointed Referee in the Matter of Objection to Notice of Determination by Arlene M. Flamer on Proof of Claim Number 1071895, hereby recommends to the Honorable James Gardner Colins, President Judge Emeritus of the Commonwealth Court of Pennsylvania, that the Liquidator's Notice of Determination be approved and the Objection be denied, and in support thereof presents the following:

FINDINGS OF FACT

Procedural History

1. By Order of the Commonwealth Court of Pennsylvania (the "Court") dated October 3, 2001 (the "Liquidation Order"), Reliance Insurance Company ("Reliance") was found to be insolvent and placed into liquidation. M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania (the "Liquidator") was appointed Liquidator of Reliance.

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2. By Order of the Court dated September 9, 2002 (the "Claims Filing Order"), the Honorable James Gardner Colins, President Judge, established claim filing procedures, claim filing deadlines and dispute resolution procedures for claims.

3. On November 17, 1999 Claimant was involved in a work related accident in which she slipped and fell, sustaining injuries to her head, lower back and left knee, requiring treatments from various physicians and specialists. She submitted her claim to her employer, Pizza Hut, to whom Reliance Insurance Company issued a Workers' Compensation Insurance Policy No. NWA0148782, for the period September 30, 1999 to June 30, 2000. Pizza Hut placed Reliance on notice of the claim and on November 22, 1999 a claim was established for Arlene M. Flamer.

4. Reliance received medical treatment bills and wage loss statements from Claimant and paid Worker's Compensation benefits during the years 2000 and 2001 until Reliance was placed in liquidation on October 3, 2001. Claimant's file was then forwarded to the Delaware Insurance Guarantee Association (DEIGA).

5. The indemnity portion of the work related injury claim was settled in full and was approved by the State of Delaware, Office of Worker's Compensation, on or about December 26, 2003. The settlement consisted of a permanent partial disability award to the left knee, a permanent partial disability award to the lower back and a permanent partial disability award to the neck. The total amount of the settlement was in the amount of \$8,476.07. The agreement was signed by Claimant as well as her attorney, Andrea Green, Esquire, of the Dover, Delaware Law Firm of Doroshow, Pasquale, Krawitz, Siegel & Bhaya.

6. On or about December 30, 2003, a Proof of Claim ("POC") number 1071895 was filed with Reliance for the work related injury which occurred on November 17, 1999. At the

time of the filing of the POC the Worker's Comp claim was being handled by the Delaware Insurance Guarantee Association (DEIGA).

7. The POC seeks an amount of \$8,476.07, the settlement amount with DEIGA, less the amount of \$5,710.11, the amount received from the attorney for the Claimant, Doroshow, Pasquale, Krawitz, Siegel & Bhaya, after their contingent fee was deducted, for a total claim of \$2,765.96.

8. On July 13, 2006, the liquidator issued a Notice of Determination ("NOD") to Arlene M. Flamer, assigning a value of zero to the claim and a Priority Level (b), citing Section 544 of the Insurance Department Act (40 P.S. Section 221.44). The Notice of Determination further indicated that no value had been allowed for the claim because:

- A state guaranty association has assumed the responsibility for the handling of the claim.
- The guaranty association will continue to pay all benefits owed to Claimant under the applicable Workers' Compensation statute until the claim has been concluded.

9. On August 29, 2006 the liquidator received a handwritten objection to the Notice of Determination. The series of letters prior to and including the objection to the Notice of Determination raise an issue between the Claimant and her attorneys regarding the fee arrangement entered with counsel. The objection to the Notice of Determination does not specifically confront the Notice of Determination but in turn states a long history of disagreement with counsel over the fee arrangement.

10. On February 2, 2007, pursuant to this Court's prior Order of September 9, 2002, the undersigned was appointed as Referee to hear objections, to submit Findings of Fact, where appropriate and necessary, and to issue a recommended decision in this matter.

11. On February 23, 2007, a telephone conference was held between counsel for the liquidator, S. Emy Poulad, Esquire, the Claimant, Arlene M. Flamer, and the Referee. During the conference the Claimant could not articulate her grievance other than to say that she was poor and without sufficient funds to hire a new attorney and that she had a disagreement with her prior attorney over the counsel fees. As the Claimant was proceeding pro se and as no specific competent statutory objection was made by the Claimant to the Notice of Determination, there was no further necessity of any further briefing or supplementary memoranda.

Summary of the Parties' Positions

12. The liquidator contends that the claim has a value of zero and explained that the basis for Notice of Determination was that the guaranty association had assumed the responsibility for handling the claim and would continue to pay all benefits owed to Claimant under the applicable Workers' Compensation Statute until the claim has been concluded.

13. Further, the Claimant's handwritten objection to the Notice of Determination, and other letters in the case file written by Claimant, suggest that the Claimant's core complaint has to do with a fee arrangement that was entered into with her counsel. There is a fee agreement in the file with Claimant's signature, together with a distribution sheet of the proceeds from the State of Delaware, Office of Workers' Compensation, all suggesting that Claimant approved of the fee arrangement with her counsel and the subsequent distribution. The case file further indicates and has a copy of correspondence with the Office of Disciplinary Counsel of the State of Delaware which in substance was a complaint concerning her attorney and the performance by the attorney and the distribution of proceeds from the settlement. It appears the complaint was unfounded.

14. It will be noted that the amount of the Claimant's claim is in the amount of \$8,476.07, which is the amount paid to the Claimant by DEIGA.

15. A review of the several writings of the Claimant do not confront the terms of the liquidation statute (40 P.S. Section 221.44).

16. Claimant, in her several writings to the liquidator, complains about the performance of her counsel in the Workers' Compensation litigation and the distribution she received there from. No where does she confront the Notice of Determination in either this assignment of a Priority Level (b) or a value of zero.

DISCUSSION

A review of the handwritten objection to the Notice of Determination and other writings by the claimant together with her complaint to the Delaware Disciplinary Board gives the picture of a woman terribly confused and frustrated with the legal system. She has fired her Workers' Compensation attorney and is lost in the process of seeking additional income. Consequently, she strikes out in any direction including the Reliance liquidation.

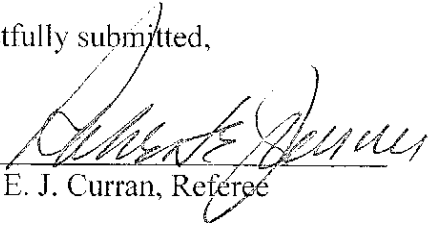
It is too much to expect a lay person of claimant's background to understand where her claim properly lies and the statutory scheme of rehabilitation. She is in need economically and is flying blind. The essence of all of her writings is that she is unhappy with her legal representation. It seems as if explanations by various entities, including the Referee in a telephone conference, have been unsatisfactory.

The liquidator is correct in its notice of determination that under the Insurance Department Act (40 P.S. Sec. 221.44) the claim has no value because a state guaranty association (DEIGA) has assumed responsibility for handling the claim and the association has continued to pay all benefits due in accord with the settlement and the Worker's Compensation statute.

CONCLUSION

WHEREFORE, for the reasons set forth above, it is recommended that the Liquidator's Notice of Determination should be approved and the Objection be denied.

Respectfully submitted,



Robert E. J. Curran, Referee

Date: March 9, 2007