

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOEL S. ARIO, ACTING
INSURANCE COMMISSIONER OF THE
COMMONWEALTH OF PENNSYLVANIA

v.

RELIANCE INSURANCE COMPANY
IN RE: PROOF OF CLAIM NO. 1010161-
FARM BUREAU INSURANCE CO.

No. 269 M.D. 2001

IN RE: *Farm Bureau Insurance; POC No. 1010161*

2008 JUN 11 PM 3:30
COURT OF COMMONWEALTH COURT

**STATUTORY LIQUIDATOR'S JURISDICTIONAL
STATEMENT IN SUPPORT OF NOTICE OF APPEAL**

Joel S. Ario, Acting Insurance Commissioner of the Commonwealth of Pennsylvania, in his official capacity as Statutory Liquidator of Reliance Insurance Company, respectfully submits this Jurisdictional Statement in Support of Notice of Appeal.

I. INTRODUCTION

This appeal arising from the December 14, 2007 Opinion and Order of the Honorable James Gardner Colins on the exceptions filed by the Liquidator to the Report and Recommendation of Referee Luther Milspaw issued in connection with the Liquidator's Notice of Determination of the claim of Farm Bureau Insurance Company, assigned Proof of Claim No. 1010161. The Liquidator also appeals the December 31, 2007 Order denying the Liquidator's Motion for Reconsideration of the Court's December 14, 2007 Order Upholding The Report and Recommendation of Referee Milspaw Relative to Proof of Claim Number 1010161. The December 14, 2007 Opinion and Order can be found at 2007 Pa. Commw. LEXIS 729 (Dec. 14, 2007). (See Orders attached as Exhibits A & B). The Liquidator files this Jurisdictional

Statement in Support of Notice of Appeal seeking review and reversal of the December 14, 2007 and the December 31, 2007 Orders.

II. REFERENCE TO OPINIONS OF THE COURT BELOW

The Liquidator appeals the December 14, 2007 Opinion and Order overruling the objections of the Liquidator to the decision of Referee Milspaw, affirming the decision of Referee Milspaw and assigning the claim of Farm Bureau Insurance Company Proof of Claim No. 1010161 priority level (b), and the Court's December 31, 2007, Order denying reconsideration of its December 14, 2007 Opinion and Order, copies of which are attached as Exhibits A and B.

II. BASIS FOR SUPREME COURT'S JURISDICTION

The Supreme Court of Pennsylvania has jurisdiction to review this Court's December 14, 2007 and December 31, 2007 Orders pursuant to Rule 1101(a)(1), Rules 341(b)(1) &(2), Rule 311(a)(2) and Rule 313 of the Pennsylvania Rules of Appellate Procedure.

III. CONCISE STATEMENT OF PROCEDURAL HISTORY

On April 11, 2003, Farm Bureau Insurance Company ("Farm Bureau") submitted its Proof of Claim in this liquidation proceeding, which was assigned Proof of Claim ("POC") No. 1010161. The Liquidator issued a Notice of Determination ("NOD") with respect to Farm Bureau's POC on August 8, 2003, designating the claim as one having a priority of (g) under Section 544 of the Act of May 17, 1921, P.L. 789, commonly known as the Insurance Department Act ("the Act"), *as amended*, 40 P.S. § 221.44, the statute which sets forth the order of distribution of the assets of the insolvent insurer's estate.

On October 6, 2003, Farm Bureau filed a timely objection to the NOD to which the Liquidator responded on October 30, 2003. Judge Colins referred Farm Bureau's objections to Referee Luther Milspaw on March 22, 2004. The parties agreed that the question was one of law and no discovery was taken.

On May 3, 2006, Referee Milspaw submitted his Report and Recommendation to the Commonwealth Court. The Referee concluded that the claim of Farm Bureau was a (b) priority claim under 40 P.S. § 221.44 rather than a (g) priority claim, as the Liquidator had determined.

On May 18, 2006, the Liquidator filed exceptions to Referee Milspaw's Report and Recommendation to which Farm Bureau responded on May 30, 2006. By the Opinion and Order dated December 14, 2007, Judge Colins affirmed the decision of Referee Milspaw. On December 28, 2007, the Liquidator filed a Motion for Reconsideration. By Order dated December 31, 2007, the Commonwealth Court denied the Motion for Reconsideration. This appeal follows.

V. QUESTIONS PRESENTED FOR REVIEW

The December 14, 2007 Opinion and Order should be reversed and the Order dated December 31, 2007, should be vacated because they are wrong as a matter of law. The questions presented before the Supreme Court of Pennsylvania are:

1. Whether the Court erred when it affirmed the Report and Recommendation of Referee Milspaw who found that Farm Bureau, having paid its insured a settlement payment for wrongs allegedly committed by Reliance's insured, as it was required to do under its policy with its insured, was entitled to (b) priority under 40 P.S. § 221.44(b) for its subrogation claim against Reliance, where (1) Farm Bureau's claim is entirely derivative of the rights of its fully-compensated, subrogee insured; (2) the statute explicitly carves out from priority (b) "[t]hat portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant. . .;" and (3) where (b) priority is and should be reserved for claims under policies of insurance for loss.

2. Whether the Court improperly failed to adhere to (1) the doctrine of *stare decisis*; (2) the rule of coordinate jurisdiction; (3) the law of the case doctrine; or (4) applicable principles of equity and fairness of administration and asset distribution among creditors of an insolvent insurer's estate, when, having issued Orders affirming two prior Referee decisions assigning priority (g) to indistinguishable subrogation claims, it issued the Farm Bureau decision assigning priority (b) as to the Farm Bureau POC, stating "[t]he Court finds no merit to the Liquidator's argument that this Court must defer to the decisions issued by Reliance Referees. Decisions issued by those appointed to act as Referees in the Reliance Insurance liquidation do not constitute binding precedent." (See Exhibit A, fn.2).

3. Whether the Court erred when it assigned priority (b) to Farm Bureau's claim, thereby failing to distinguish between a subrogation claim by a solvent insurer standing in the shoes of a fully-paid third party claimant, and a claim for losses under a Reliance policy of insurance.

Respectfully submitted,



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January 11, 2008

EXHIBIT A

Source: [Legal](#) > [States Legal - U.S.](#) > [Pennsylvania](#) > [Find Cases](#) > [PA State Cases, Combined](#)

Terms: **name (ario) and date aft 2006 and Farm Bureau** ([Edit Search](#) | [Suggest Terms for My Search](#))

2007 Pa. Commw. LEXIS 729, *

Joel S. **Ario**, Insurance Commissioner of the Commonwealth of Pennsylvania, Plaintiff v. Reliance Insurance Company, Defendant; In re: **Farm Bureau** Insurance; POC No. 1010161

No. 269 M.D. 2001

COMMONWEALTH COURT OF PENNSYLVANIA

2007 Pa. Commw. LEXIS 729

December 14, 2007, Decided

December 14, 2007, Filed

PRIOR HISTORY: [*1]

Court of ORIGINAL JURISDICTION.

CORE TERMS: claimant, assigned, insured, recovered, indemnification, harness, insurer, subrogation claim, settlement, party claims, liquidation, classified, subrogated, wherever, subrogor's, settlement agreement, life insurance, rehabilitation, indemnified, designated, monetary, subrogee, gratuity, coverage, annuity, settle, ran

COUNSEL: Peter L Diesel, Grand Blanc, MI, for **Farm Bureau** Insurance Company.

Kean McDonald, Philadelphia, for defendant, Reliance Insurance Company.

JUDGES: [JAMES GARDNER COLINS](#) ▼, Judge.

OPINION BY: [JAMES GARDNER COLINS](#) ▼

OPINION

ORDER

AND NOW, this 21ST day of December, 2007, the opinion filed December 14, 2007, in the above-captioned matter shall be designated Opinion rather than Memorandum Opinion, and it shall be reported.

[JAMES GARDNER COLINS](#) ▼, Judge

OPINION and ORDER

Before the Court are the objections of the Statutory Liquidator (Liquidator) of [Reliance Insurance Company](#) ▼ (Reliance) to the Decision of Referee Luther Milspaw issued in connection with a notice of determination (NOD) filed by the Liquidator regarding a monetary claim against Reliance filed by **Farm Bureau** Insurance Company and assigned Proof of

Claim No. 1010161. The issue addressed is whether a subrogation claim held by an insurance company against Reliance, which is an insolvent insurance company, is a loss claim properly assigned to class (b) or a loss claim for which the loss has been indemnified and properly assigned to class (g). The Referee concluded that the claim is a class (b). The Liquidator has filed objections. The Court [*2] accepts the Referee's findings of fact and conclusions of law. ¹ The Liquidator's assignment of class (g) to this claim is overruled; the claim is assigned to class (b).

FOOTNOTES

¹ The Court finds no merit to the Liquidator's argument that this Court must defer to the decisions issued by Reliance Referees. Decisions issued by those appointed to act as Referees in the Reliance Insurance liquidation do not constitute binding precedent.

Members of the Harness, is a group of individuals that own the harness racing horse, Pocket Rocket. The group, located in Michigan, is comprised of John Stapleton, Mary Stapleton, and James D. Lavery. The group was insured by Reliance. On January 9, 1998, Pocket Rocket escaped from a collapsed sulky, ran from the premises of the Sports Creek Raceway, and ran into automobile traffic, causing a motor vehicle accident in which Sheila Follen-Davis (Davis) was injured. **Farm Bureau Insurance (Farm Bureau)** insured Davis. **Farm Bureau** settled with Davis and sought to recover from Reliance the \$ 7000 settlement paid to Davis. On May 30, 2001 Reliance and its insured, Members of the Harness, executed a settlement for the claim agreeing to pay **Farm Bureau** \$ 7000, in return for [*3] which **Farm Bureau** executed a release, but no funds were disbursed. On that same day, Reliance was placed into rehabilitation; thereafter, on October 3, 2001, Reliance was placed into liquidation. **Farm Bureau** filed a claim against Reliance for the settlement amount. The Liquidator issued an NOD acknowledging **Farm Bureau's** claim for \$ 7000, and assigning the claim to class (g), on the basis that the claim is that of a subrogee.

Farm Bureau objected to the classification of its claim as class (g), contending that its loss claim is not a claim "under policies for losses wherever incurred, including third party claims subject to other recovery," 40 P.S. §221.44(b), and as such the claim should have been assigned to class (b). The matter was assigned to Referee Luther Milspaw for consideration.

Based on the uncontested facts of record, Referee Milspaw concluded as a matter of law that the claim should be classified as a class (b). Referee Milspaw reasoned that the claim is a loss claim for which there is no proof of indemnification or other benefits or advantages recovered by the claimant. The Liquidator filed exceptions with this Court arguing that the status of **Farm Bureau** can be no greater [*4] than the status of Davis. If Davis were the claimant, contends the Liquidator, her claim would not be classified as class (b) as she would have a right to recover against **Farm Bureau**. Therefore, argues the Liquidator, **Farm Bureau's** claim can be no higher than that of Davis had she brought the claim directly. The Court disagrees with the Liquidator's characterization that Davis is the claimant.

There is no dispute that Reliance agreed to pay to **Farm Bureau** \$ 7000 to settle **Farm Bureau's** subrogation claim. With a settlement reached all that remained was the issuance of the check. That final step was halted when Reliance was placed into receivership and subsequently, was placed into liquidation. Because **Farm Bureau** was the subrogated insurer, Davis had no claim against the Reliance Estate and it was **Farm Bureau** that timely filed a claim with the Reliance Estate. The claimant in Reliance is not, as the Liquidator represents, subrogor Davis, rather, the claimant is the subrogee, **Farm Bureau**. The issue then is whether the claim is a loss claim for which no other benefits are available.

The issue of the proper class assignment to a subrogation claim is one of first impression.

The issue involves [*5] the interpretation of Section 544 of the Act of May 17, 1921, P.L. 789, commonly known as the Insurance Department Act (Act), *as amended*, 40 P.S. §221.44, which sets forth an order of distribution of claims from an insurer's liquidated estate. The cardinal rule of statutory construction is to ascertain and effectuate the intention of the Legislature as expressed in the statute. 1 Pa. C.S. §1921. Here, the Legislature has designated that the Act be liberally construed to effect the purpose of the Act. 40 P.S. §221.1 (b). The purpose of the Act is to protect the interests of the insureds, creditors, and the public generally. 40 P.S. §221.1(c). The Court must construe the Act to avoid absurd results, however, in construing the Act, the Court must give effect to the entire statute, and to favor the public interest as against any private interest. 1 Pa. C.S. §1922.

Section 544 of the Act, 40 P.S. §221.44, 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." Thus, every claim in class or priority level (a) shall be paid before those claims assigned to class (b), and so forth. The Court [*6] must interpret subsection (b), which directs the payment of loss claims. Loss claims are

[a]ll 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 in life insurance, or as gratuities. No payment made by an employer to his employee shall be treated as a gratuity.

Section 544(b) of the Act, 40 P.S. §422(b). **Farm Bureau's** claim is a loss claim,

The Liquidator asserts that the claim herein is for "[t]hat portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, [and [*7] as such] shall not be included in this class." 40 P.S. §221.44(b). The Liquidator asserts that if Davis were the claimant her claim would be assigned to class (g); therefore, **Farm Bureau's** claim must be assigned to class (g).

Contrary to the position advanced by the Liquidator, subrogor Davis is not the claimant. The claimant here is **Farm Bureau** and **Farm Bureau's** claim is not an indemnification claim. **Farm Bureau's** claim is based on subrogation; **Farm Bureau** paid its insured for the loss sustained, then sought to recover the money from the Members of the Harness, which is the group responsible for the loss. The entity responsible for the loss is a Reliance insured, resulting in **Farm Bureau** filing a claim against the Reliance Estate. Just as **Farm Bureau** would be the real party in interest if it sought to bring an action upon the subrogor's claim against the Members of the Harness, as the subrogated insurer, **Farm Bureau** is the claimant here, and its claim against the Reliance Estate is a loss claim. It is a loss claim properly assigned class (b) because here there is no evidence that the claim is subject to indemnification, or to "other benefits or advantages recovered by the claimant." [*8] See 40 P.S. §221.44(b).

Essentially, the Liquidator asks the Court to declare that where the claimant is a subrogated insurer and not the insured, the claim shall be treated as a class (g) claim under the theory that the claim is one of indemnification and, therefore, tantamount to "other benefits or advantages recovered by the claimant." I conclude it is not.

The language in the statute "other benefits or advantages recovered by the claimant" is not applicable herein as the language does not refer to loss coverage under a primary policy of insurance. ² Under a plain reading of the statute, the claim herein is a loss claim, that is, the claim is "under policies for losses wherever incurred, including third party claims." **Farm Bureau** settled its claim with its insured, that is, paid the claim. **Farm Bureau** and Reliance entered into a settlement agreement in which Reliance agreed to settle the action for \$ 7000.00. On the day following after the settlement agreement was executed, Reliance was placed into rehabilitation. **Farm Bureau's** claim against the Estate is a loss claim, that results from a subrogation claim, and **Farm Bureau** is not otherwise indemnified and will not recover funds from [*9] another source. Accordingly, Referee Milspaw correctly determined that claim should be classified a class (b) claim.

FOOTNOTES

² Excess coverage is the type of benefit or advantage contemplated by that language.


Accordingly, the Court enters the following

ORDER

AND NOW, this 14th day of December, 2007, the objections of the Liquidator to the decision of Referee Milspaw are OVERRULED; the decision of Referee Milspaw, attached hereto and marked as Exhibit A, is AFFIRMED; FURTHER, regarding the monetary claim against Reliance filed by **Farm Bureau**, and assigned Proof of Claim No. 1010161, the Liquidator is directed to assign the claim a priority level (b).

The Liquidator is directed to serve a copy of this memorandum opinion and order on those listed on the Master Service List. In addition, the Liquidator shall file with the Court an affidavit stating that service has been completed.

JAMES GARDNER COLINS, Judge

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Terms: [name \(ario\)](#) and [date aft 2006](#) and [Farm Bureau](#) ([Edit Search](#) | [Suggest Terms for My Search](#))

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EXHIBIT B

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joel S. Ario,
Insurance Commissioner of the
Commonwealth of Pennsylvania,
Plaintiff

v.

Reliance Insurance Company,
Defendant

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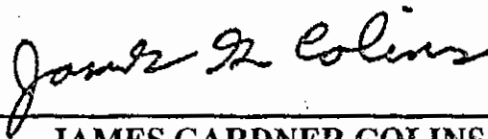
: No. 269 M.D. 2001

In Re: Motion for Reconsideration of this Court's Order of December 14,
2007 re Farm Bureau Ins.

ORDER

AND NOW, this 31st day of December, 2007, after given consideration to the Liquidator's motion for consideration of this Court's Order of December 14, 2007 relating to the Court's opinion and order in the matter of Farm Bureau Insurance, the motion is DENIED.

The Liquidator is directed to serve a copy of this Order upon those associated with this matter, and within 5 days of service to file an Affidavit of Service with this Court.



JAMES GARDNER COLINS, Judge

2007 DEC 31 A.D. 25

CERTIFICATE OF SERVICE

I, Sheila E. Branyan, hereby certify that on January 11, 2008, a copy of the foregoing Statutory Liquidator's Jurisdictional Statement In Support of Notice of Appeal was served upon the following:

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All Parties on the attached Master Service List

Dated: January 11, 2008


Sheila E. Branyan

Master Service List

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v.

Reliance Insurance Company

No. 269 M.D. 2001 (Commonwealth Court of Pennsylvania)

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