

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joel S. Ario,	:	
Acting Insurance Commissioner of the	:	No. 269 M.D. 2001
Commonwealth of Pennsylvania,	:	
Plaintiff	:	
	:	
V.	:	
	:	POC No. 2022995
Reliance Insurance Company,	:	
Defendant	:	

**IN THE MATTER OF OBJECTIONS TO NOTICE OF DETERMINATION BY
ECONOMY RESTAURANT AND BAR SUPPLY, INC.
FOR PROOF OF CLAIM NUMBER 2022995
REFEREE FINDINGS AND RECOMMENDATIONS**

G. Alan Bailey, Esquire, duly appointed Referee in the Matter of Objection by Economy Restaurant and Bar Supply, Inc. to Notice of Determination for Proof of Claim Number 2022995 hereby recommends to the Honorable Judges of the Commonwealth Court of Pennsylvania that the Objection of Economy Restaurant and Bar Supply, Inc. to Notice of Determination on Proof of Claim Number 2022995 be marked withdrawn with prejudice and that the Liquidator issue an Amended Notice of Determination to Claimant's Claim setting a claim priority level of (b) and a Claim value of \$0.00. and that this matter be dismissed. In support thereof the following is presented:

BACKGROUND

1. By Order of the Commonwealth Court of Pennsylvania ("Court") dated October 3, 2001 ("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 ("Liquidator") was appointed Liquidator of Reliance.¹
2. By Order of the Court dated September 9, 2002 ("Claims Filing Order") the Honorable James Gardner Colins, established claims filing procedures, claims' filing deadlines and dispute resolution procedures for claims against the Reliance.
3. Economy Restaurant and Bar Supply, Inc. (referred to herein as "Claimant" or "Economy") submitted its Proof of Claim Number 2022995 ("POC 2022995") dated October 29, 2003. Therein Claimant sought a claim amount of \$25,000.00 (Claimant's deductible amount) for, according to the proof of claim, losses resulting from a fire in a building owned by Reliance policyholder National Investors, LP (the "Policyholder"). Claimant's property was adjacent to the fire location at 124-126 North 2nd Street, Philadelphia. Claimant's claim is, in essence, a subrogation claim.

¹ Joel S. Ario has been appointed by the Governor to serve as Insurance Commissioner, and, as such, replaces Ms. Koken as the statutory Liquidator.

"Referee Decision EXHIBIT A"

4. In response to POC 2022995 the Liquidator issued a Notice of Determination ("NOD") to Claimant, dated March 13, 2008, setting a claim priority level of (g)². This NOD did not fix a claim valuation.

5. On May 2, 2008 Claimant filed an Objection to the Notice of Determination of the Liquidator to the Proof of Claim ("Objections"). In its Objections, Claimant argued that the Liquidator improperly set Economy's Claim at priority level (g), when in fact the Claim should be set at priority level (b).

6. By Order of the Court dated May 15, 2008 the undersigned was appointed Referee to provide findings of fact and a recommendation to the Court regarding issues raised by Claimant.

7. By agreement of counsel for the parties, a conference on this matter was set for June 4, 2008. However, on June 2, 2008, prior to the initial conference, the parties, through counsel for the Liquidator, Gail M Burgess, Esquire advised the Referee that a resolution had been reached in this matter and that Claimant intended to withdraw its Objection to the NOD.

8. On June 4, 2008 counsel for the parties jointly filed, with the Referee, a Stipulation for Withdrawal of Objection of Claimant to Notice of Determination on Proof of Claim Number 2022995 ("Stipulation" attached hereto). Pursuant to the Stipulation, the parties have agreed that:

a. The Liquidator will issue an Amended Notice of Determination to Claimant's Claim setting a claim priority level of (b) and a Claim value of \$0.00. Claimant will not object to this Amended POC.

b. Claimant will file a Praecipe to Withdraw With Prejudice its Objection as Moot.

9. In light of the Stipulation, and in consideration of the representations of counsel for the parties, it is recommended to this Honorable Court that the Claimant's Objections to the Liquidator's NODs be marked withdrawn with prejudice, and that this matter be dismissed. It is further recommended that the Liquidator issue an Amended Notice of Determination to Claimant's Claim setting a claim priority level of (b) and a Claim value of \$0.00.

WHEREFORE, in that the parties have filed a Stipulation it is hereby respectfully recommended that the Objection of Economy Restaurant and Bar Supply, Inc. to Notice of Determination on Proof of Claim Number 2022995 be marked withdrawn with prejudice, that the Liquidator issue an Amended Notice of Determination to Claimant's Claim setting a claim priority level of (b) and a Claim value of \$0.00, and that this matter be dismissed.

Respectfully Submitted


G. Alan Bailey, Referee

² The relevant language of 40 P.S. § 221.44(g) states:

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.

(g) The following claims:

- (1) Claims under section 539(b), to the extent that such claims were disallowed under that section.
- (2) Claims filed late.
- (3) Claims or portions of claims, payment of which is provided by other benefits or advantages recovered by the claimant.