

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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

v.

No. 269 M.D. 2001

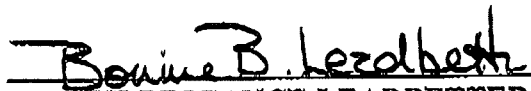
Reliance Insurance Company,  
Defendant

***RE: Proof of Claim No. 2131384- Walter Thompson***

**ORDER**

AND NOW, this 17th day of August, 2009, upon consideration of the Referee's Report and Recommendation to overrule the Objection by Walter Thompson challenging the Liquidator's Notice of Determination, assigning the claim a priority level (b) at a value of \$0.00 on the ground that the reported loss occurred after cancellation of the policy due to Reliance Insurance Company's placement in liquidation, and in the absence of any exceptions thereto, the Report and Recommendation attached hereto as Exhibit A is accepted and approved. Accordingly, the Objection of Walter Thompson to the Notice of Determination is hereby OVERRULED and the Notice of Determination is hereby APPROVED.

The Liquidator shall serve a copy of this Order on the Objector and his counsel and notify the Court that service has been effectuated.

  
BONNIE BRIGANCE LEADBETTER  
President Judge

**Certified from the Record**

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and Order Exit

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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

No. 269 M.D. 2001

v.

Reliance Insurance Company, Defendant

**RECOMMENDED DECISION ON PROOF OF  
CLAIM NO. 2131384 FILED BY  
WALTER THOMPSON**

J. Stephen Feinour, Esquire, duly appointed Referee in the matter of the Objection of Walter Thompson to the Notice of Determination issued by the Statutory Liquidator for Reliance Insurance Company (in liquidation) with regard to Proof of Claim No. 2131384, submits the following findings and Recommended Decision:

**FINDINGS OF FACT**

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

2. By Order of the Commonwealth Court dated September 9, 2002, per the Honorable James Gardner Colins, President Judge, Claim filing procedures and a Disputed Claims Resolution process was established.

**EXHIBIT A**

3. The Claimant, Walter Thompson (hereinafter "Claimant"), filed his Proof of Claim No. 2131384 ("POC") dated February 28, 2004.

4. Claimant purchased a 2000 Ford Excursion (the "Vehicle") on or about November 13, 1999, from Rizzo Ford, Inc., 1703 Mineral Spring Avenue, North Providence, Rhode Island.

5. The POC seeks a claim amount of \$11,244.78, representing the "Outstanding Deficiency" on Claimant's installment sales contract/loan for the Vehicle purchase.

6. Reliance Insurance Company issued policies of insurance known as "GAP" insurance to various auto dealers and financial institutions, which provided coverage for any deficiency that might exist between the actual cash value of a leased or financed vehicle and the outstanding balance on the customer's lease or loan in the event the vehicle is totally destroyed by collision or theft.

7. The GAP policies of insurance allowed the named insured auto dealer to issue GAP certificates to their customers.

8. Reliance issued to I.A.S., Inc. GAP insurance policy no. NZB 1551521 effective August 1, 1999 through August 30, 2000. I.A.S., Inc. delegated the right to issue GAP certificates to the dealer, Rizzo Ford, Inc.

9. The GAP Debt Relief Waiver Addendum issued to Claimant by Rizzo Ford and signed by both parties specifically provides that:

I understand that this Debt Relief Waiver Addendum is not an offer of insurance coverage. I understand by accepting the Waiver Addendum for my retail installment or lease that my responsibility for any "Outstanding Deficiency", (difference between the actual cash value settlement of my insurance automobile policy and the net installment sales contract/loan/lease payoff as of the date of loss, plus the primary automobile insurance deductible amount where applicable), in the event of the total destruction, unrecoverable theft,

or constructive total loss of the above described vehicle, any "balance due" is waived, not to exceed \$50,000.

10. Claimant purchased a Debtor Relief Waiver Addendum through the dealer, Rizzo Ford, Inc., which provided "GAP 1 Protection Plus" as part of the installment sales contract covering his purchase of the Vehicle.

11. Claimant's Vehicle was stolen from Green Airport, in Providence, Rhode Island, where it was parked while Claimant was on vacation. The Vehicle was ultimately determined a total loss and Claimant's automobile insurance carrier issued a check for the cash value of the Vehicle to the lender on or about December 20, 2002.

12. The Liquidator issued its Amended Notice of Determination ("NOD") on July 26, 2005, which provided that Priority Level (b) has been assigned to the claim in accordance with the provisions of Section 544 of the Insurance Department Act, 40 P.S. § 221.44, and that the claim against the estate of Reliance has been valued and allowed in the amount of \$0.00. The NOD further stated that "there is no coverage under the policy for your claim because: The policy was cancelled or nonrenewed prior to the date of loss."

13. Coverage under the GAP contract issued to Claimant by Rizzo Ford, Inc. on behalf of Reliance's named insured, I.A.S., Inc., was cancelled effective November 2, 2001, by operation of law when Reliance Insurance Company was placed in liquidation by the Commonwealth Court of Pennsylvania pursuant to the Order of Liquidation issued on that date.

14. Paragraph 17 of the Order of Liquidation provided:

All policies and contracts of insurance, whether issued within this Commonwealth or elsewhere, in effect on the date of this Order shall continue in force only with respect to risks in effect at that time, for the lesser of the following: (a) thirty days from the date of this Order;

(b) until the normal expiration of the policy or contract providing insurance coverage; (c) until the insured has replaced the insurance coverage with equivalent insurance with another insurer or otherwise terminated the policy; or (d) until the Liquidator has effected a transfer of the policy obligation pursuant to Section 221.23(8). All policies or contracts of insurance issued by Reliance are hereby cancelled and terminated for all purposes effective thirty days from the date of this Order.

15. Claimant filed his Objection to the Amended Notice of Determination issued by the Liquidator, which Objection was sent to and received by the Liquidator via e-mail on September 16, 2005.

16. The Liquidator issued its response to Claimant's Objection to the Notice of Determination on October 17, 2005.

17. The Proof of Claim filed by Claimant on February 28, 2004, was filed subsequent to the December 31, 2003, deadline for the filing of claims as set forth in the Commonwealth Court's September 9, 2002, Order.

18. Claimant has provided good cause for the late filing of the claim and the Liquidator has not objected to the POC on the basis of late filing.

19. A telephone conference was conducted by the Referee on March 10, 2008, in which the Claimant, Walter Thompson and Gail M. Burgess, Esquire, on behalf of Reliance Insurance Company (in liquidation) participated. During the conference call the parties agreed the determination of the Objection would be based on the record consisting of documents submitted by Claimant in support of his Proof of Claim and his Objection to the Amended Notice of Determination issued by the Liquidator and the Liquidator's responses thereto.

### CONCLUSIONS OF LAW

1. On November 2, 2001, the GAP policy issued to Reliance's named insured, I.A.S., Inc., and the GAP certificate issued by Rizzo Ford, Inc. to Claimant was cancelled by operation of law under the terms of the Commonwealth Court's Order of Liquidation dated October 3, 2001.

2. The loss which is the basis of the Claimant's Proof of Claim occurred on or about September 13, 2002, which date is subsequent to the cancellation of all GAP certificates issued by Rizzo Ford to its customers, including the certificate issued to Claimant, by operation of law under the Order of Liquidation dated October 3, 2001.

3. The claim of Walter Thompson for coverage under the Debt Relief Waiver Addendum provision of the GAP certificate issued by Rizzo Ford, Inc. on November 13, 1999, is assigned Class (b) priority under § 221.44 of the Insurance Department Act of 1921, as amended, 40 P.S. § 221.44(b).

4. The Liquidator properly determined that the claim of Walter Thompson is accorded Class (b) priority and allowed in the amount of zero dollars (\$0.00) based on the cancellation by operation of law of coverage under the GAP certificate issued to Claimant by Rizzo Ford, Inc. prior to the date of the loss which is the basis for the claim.

### DISCUSSION

The insolvency of Reliance Insurance Company has unfortunately resulted in numerous situations where persons having valid claims otherwise covered under policies of insurance issued by Reliance Insurance Company have lost the protection of that coverage. The Claimant, Walter Thompson, falls into the category of such claimants.

Reliance issued GAP insurance to various automobile dealers and financial institutions. This coverage, often referred to as "GAP" coverage provides benefit coverage for any deficiency that might arise between the actual cash value of a leased or financed vehicle and the outstanding balance on the customer's lease or loan in the event the vehicle is totally destroyed by collision or theft. The GAP insurance policies allow the named insured to issue GAP certificates which are effective during the stated term of the policy or the vehicle loan.

On November 13, 1999, the date Mr. Thompson purchased his vehicle, Rizzo Ford, Inc., under its GAP insurance policy, issued the Debt Relief Waiver Addendum to the installment sale contract, which afforded Mr. Thompson "GAP 1 Protection Plus" coverage. The Debt Relief Waiver Addendum specifically provided that:

I understand that this Debt Relief Waiver Addendum is not an offer of insurance coverage. I understand by accepting the Waiver Addendum for my retail installment or lease that my responsibility for any "Outstanding Deficiency", (difference between the actual cash value settlement of my insurance automobile policy and the net installment sales contract/loan/lease payoff as of the date of loss, plus the primary automobile insurance deductible amount where applicable), in the event of the total destruction, unrecoverable theft, or constructive total loss of the above described vehicle, any "balance due" is waived, not to exceed \$50,000.

On October 3, 2001, Reliance Insurance was placed into liquidation by Order of the Commonwealth Court. That Order further directed the cancellation of all policies and contracts of insurance that were in effect on October 3, 2001 and was made effective 30 days after the date of the Order, to wit, November 2, 2001. Consequently, the October 3, 2001 Order of Liquidation effectively cancelled, as of November 2, 2001, the GAP insurance policy issued by Reliance

Insurance Company to I.A.S., Inc. and consequently any obligation Reliance Insurance Company may have had under the GAP certificate issued by Rizzo Ford, Inc. to Mr. Thompson.

Mr. Thompson suffered the loss of his vehicle on September 4, 2002. The date of the loss was subsequent to the effective date of the cancellation of the Reliance GAP policy. Consequently, the protection of the GAP certificate issued to Mr. Thompson was no longer in effect on the date of his loss and his claim pursuant to the GAP policy.

The Commonwealth Court, per the Honorable James Gardner Colins, President Judge, has held that claims for coverage under a GAP certificate which arose subsequent to the October 3, 2001, Liquidation Order are assigned Class (b) priority under Section 221.44 of the Insurance Department Act of 1921, as amended, 40 P.S. § 221.44(b) (the "Act") and an allowed amount of zero dollars (\$0.00). See *M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania v. Reliance Insurance Company*, Objection of Cortessa Johnson to Notice of Determination on Proof of Claim No. 194876, Cmwth. Ct. No. 269 M.D. (2001) and *M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania v. Reliance Insurance Company*, Objection of Jakiva Merrell to Notice of Determination on Proof of Claim No. 2139091, Cmwth. Ct. No. 269 M.D. (2001)

Section 221.44 of the Act provides 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) . . .



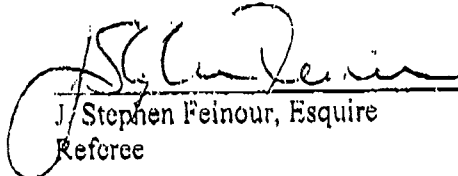
(b) All claims under policies for losses wherever incurred, including third party claims, and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, shall have the next priority. All claims under life insurance 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 of life insurance, or as gratuities. No payment made by an employer to his employe shall be treated as a gratuity.

The Proof of Claim filed by Claimant was filed on February 28, 2004, which date was subsequent to the December 31, 2003, deadline for the filing of claims as set forth in the Commonwealth Court's September 29, 2002, Order. Claimant, Thompson has provided good cause for the late filing of his claim and the Statutory Liquidator has not objected to the POC on the basis of late filing.

**RECOMMENDED DECISION**

The Statutory Liquidator for Reliance Insurance Company (in liquidation) properly assigned Class (b) priority to Proof of Claim No. 2131384 and an allowed amount of zero dollars (\$0.00) and therefore the Objection filed by Claimant, Walter Thompson to the Amended Notice of Determination filed by the Statutory Liquidator should be dismissed.

Respectfully submitted,

  
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J. Stephen Feinour, Esquire  
Referee

Date: *June 19, 2009*