

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rechnow Legal
NOV 09 2009

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. 1720184 – Jeffrey Fortenberry.

ORDER

AND NOW, this 9th day of November, 2009, upon consideration of the Referee’s Report and Recommendation to deny Jeffrey Fortenberry’s Objection to the Liquidator’s Notice of Determination, 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 Jeffrey Fortenberry to the Notice of Determination is hereby **OVERRULED**. Further, the Liquidator’s Notice of Determination, assigning the claim a priority level (e) and an allowed amount of zero, is hereby **APPROVED**.

Bonnie B. Leadbetter
BONNIE BRIGANCE LEADBETTER,
President Judge

Certified from the Record

NOV 09 2009

and Order Exit

IN THIS COMMONWEALTH COURT OF PENNSYLVANIA

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

Plaintiff

No. 269 M.D. 2001

v

Reliance Insurance Company,

Defendant

v.

Jeffrey Fortenberry

Objector.

Rec'd By Legal
NOV 09 2009

**IN THE MATTER OF OBJECTIONS TO NOTICE OF DETERMINATION
BY JEFFREY FORTENBERRY
CLAIM NO. 1720184**

James C. Schwartzman, Esquire, duly appointed Referee in the Matter of Objection to Notice of Determination by Jeffrey Fortenberry on Proof of Claim Number 1720184, hereby recommends to the Honorable Bonnie Brigance Leadbetter, President Judge 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. The Insurance Commissioner of the Commonwealth of Pennsylvania was appointed Liquidator of Reliance (the "Liquidator").

2. By Order of the Court dated December 12, 2008 (the "Claims Disposition Order"), the Honorable Bonnie Brigance Leadbetter, President Judge, established a Proof of Claim Disposition Procedures.

3. Jeffrey Fortenberry filed a timely Proof of Claim Number 1720184 (the "POC").

4. On July 3, 2006, the Liquidator issued a Notice of Determination ("NOD") to Mr. Fortenberry, assigning Priority Level (e) to the POC, citing Section 544 of the Insurance Department Act, 40 P.S. § 221.44, with zero allowed amount.

5. On September 25, 2006, Reliance received correspondence from Mr. Fortenberry in which he indicated that he disagreed with the NOD, which the Liquidator had accepted as an objection to the NOD (the "Objection").¹ The Objection was submitted late since it was not filed within the 60-days as required by the Claims Disposition Order.²

6. On October 17, 2006, the Liquidator filed with the Court a response to Mr. Fortenberry's Objection to the NOD (the "Liquidator's Response").

7. By Order dated February 20, 2007, the Court appointed the undersigned as Referee to hear the Objections, to submit findings of fact, where appropriate and necessary, and to issue a recommended decision in this matter.

8. After many attempts to schedule a telephone conference between counsel for the Liquidator, Mr. Fortenberry and the Referee, a telephone conference was scheduled on July 13, 2009, Mr. Fortenberry failed to call in to the telephone conference and thus did not participate.

¹ Since Mr. Fortenberry's Objection was not filed with the Court, the Liquidator filed the Objection by Praecepto to file the Objection on January 16, 2007.

² Since I am finding in favor of Liquidator, I have not addressed the issue of Mr. Fortenberry's failing to file his Objection within 60 days as required by the Claim Disposition Order.

9. Thereafter, at the Referee's instructions, counsel for the Liquidator left a voice message with Mr. Fortenberry and sent him an email in an effort to reschedule a telephone conference. At the Referee's instructions, counsel for the Liquidator advised Mr. Fortenberry that if he did not make himself available for a telephone conference, the Referee would have no choice but to make his determination based on the information before him.

10. By email dated July 16, 2009, Mr. Fortenberry advised counsel for the Liquidator that he had no additional information to provide and that the Referee should rule and close the case.

Summary of Parties' Positions

11. The POC dated July 11, 2002 filed by Mr. Fortenberry seeks \$1,440 for an accident related emergency room visit on October 14, 2000. The POC does not identify a policy number or provide a copy of the medical bill. [The POC is attached to Fortenberry's Objection and to the Liquidator's Response as Exhibit A.]

12. Since Reliance had no record of Mr. Fortenberry as an insured for health insurance, Reliance sent requests for information to Mr. Fortenberry on July 24, 2003, August 2, 2005, and December 15, 2005. The information sought was a copy of the Medical Bill, policy number, an insurance card, an Explanation of Benefits, or any other information that would show that Mr. Fortenberry was an insured under a Reliance health policy. [The July 24, 2003, August 2, 2005, and December 15, 2005 communications are attached to the Liquidator's Response as Exhibit B, C, and D.]

13. In Mr. Fortenberry's response to Reliance's inquiry dated August 2, 2005, he provides a policy number and the name of his agent, Holly Gardner's Insurance Agency, through which he purchased the policy. [The August 2, 2005 response is attached to the Fortenberry's Objection and to the Liquidator's Response as Exhibit E.]

14. Since the policy number provided by Mr. Fortenberry did not correspond with a Reliance policy number, Reliance sent a fax dated October 5, 2006, to Holly Gardner's Insurance Agency enclosing a copy of the POC filed by Mr. Fortenberry for health benefits and requesting that they research their records in order to ascertain which insurance company or program administrator they had placed coverage with in 2000 for Mr. Fortenberry. [A copy of the Fax is attached as Exhibit F to the Liquidator's Response.]

15. The Gardner Agency responded to Reliance by Fax of the same day advising that American National Life Insurance Company of Texas provided insurance to Mr. Fortenberry under policy number 700428118674 for the term October 4, 2000 to April 4, 2001, which was administered by US1 Administrators, Inc. [A copy of the Fax is attached as Exhibit F to the Liquidator's Response.]

16. It is the Liquidator's position that Mr. Fortenberry is not an insured under a Reliance policy for the period covering the accident date of October 14, 2000, since: (i) a diligent search by the Reliance claims staff of Reliance's records do not show that Mr. Fortenberry was an insured under a policy of insurance issued by Reliance, (ii) the policy number provided by Mr. Fortenberry to Reliance did not correspond with any policy number issued by Reliance, (iii) Mr. Fortenberry's agency identified American National Life Insurance Company of Texas as providing coverage for the period which covers the date of October 14, 2000, and (iv) Mr. Fortenberry did not provide Reliance with any documentation to show that Reliance was its insurer on the date of the accident.

17. The Liquidator contends that the NOD was appropriately assigned Priority Level (e) because Mr. Fortenberry did not show that he was an insured under a Reliance policy

and, therefore, Mr. Fortenberry's claim was not a class (b) policyholder claim but rather a general creditor under class (e) of 40 P.S. § 221.44.³

18. It is Mr. Fortenberry's position that he has no additional information to add; it has been nine years since the accident and Reliance's failure to pay, and he does not have any paper work from that long ago.

DISCUSSION

19. The only issue in dispute is whether Mr. Fortenberry is insured under a Reliance policy of insurance for health benefits for the period covering the accident on October 14, 2000.

20. In general it is the insureds burden to demonstrate coverage under the policy. See e.g., 2 Insurance Claims and Disputes: 5th , § 9:1 (Westlaw 2009).

21. Mr. Fortenberry did not provide any documentation to Reliance showing that a policy of health insurance was issued by Reliance to him covering the date of the accident. Mr. Fortenberry advised Reliance that he purchased insurance from the Holly Gardner's Insurance Agency.

22. Reliance sent a Fax to the Holly Gardners Insurance Agency on October 5, 2006, which states as follows:

"To confirm our telephone conversation. Here is Proof of Claim filed by Mr. Fortenberry for Health Insurance Benefits. Please research your records in order to ascertain which insurance company or program administrator you placed coverage with in 2000."

³ Section 544 of the insurance Department Act, 40 P.S. § 221.44, defines Priority Level (b) and (e) as follows:

- (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....
- (e) Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors....

23. The same Fax was returned to Reliance from Gardner Insurance on October 5, 2006, which provides as follows:

CO: American National Life Insurance Company of Texas
P.# 700428118674
Term: October 4, 2000 to April 4, 2001

Claims should be mailed to:
USI Administrators, Inc.
P.O. Box 3357
Ft. Worth, TX 76113

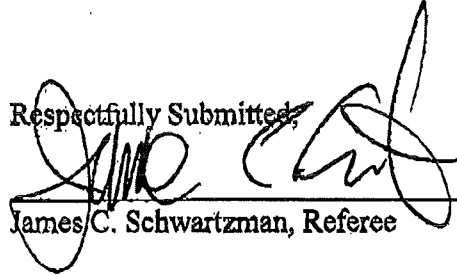
24. The only information and documentation provided in this matter show that on the date of the accident Mr. Fortenberry was insured by American National Life Insurance Company of Texas.

25. Therefore, Mr. Fortenberry's claim has been properly assigned Priority Level (e) pursuant to Section 544 of the Insurance Department Act, 40 P.S. § 221.44, since he was unable to show that he was an insured under a Reliance policy on the date of the accident.

CONCLUSION

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

Respectfully Submitted,


James C. Schwartzman, Referee

8/13/2009