

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert L. Pratter, Acting :
Insurance Commissioner of the :
Commonwealth of Pennsylvania, :
Plaintiff :

v. :

No. 269 M.D. 2001

Reliance Insurance Company, :
Defendant :

In Re: Motion of Charles L. Martin, Jr., Claimant on POC No. 2160328

ORDER

AND NOW, this 8th day of April, 2011, upon consideration of the Motion by Charles L. Martin, Jr. seeking an Order compelling the Liquidator to issue a Notice of Determination (NOD) on his Claim at POC No. 2160328 and consideration of the Liquidator's Response thereto, the Motion is hereby GRANTED. The Liquidator shall issue an NOD within 90 days.¹

Certified from the Record

APR 11 2011

And Order Exit



BONNIE BRIGANCE LEADBETTER,
President Judge

¹ In his response, the Liquidator states that the Claimant suffered a personal injury while a passenger in an airplane insured by Reliance Insurance Company and that the information necessary to value the claim has been received from the guaranty association. However, the Liquidator asserts that an NOD cannot issue until Claimant, who will be eligible for Medicare in nine years, executes a "Set Aside Agreement" to protect Medicare's future interest or obtains a "Medicare waiver." The Liquidator asserts that one of these measures must be taken because "the Liquidator is required to protect Medicare for any future payment Medicare may be required to make with respect to Mr. Martin's injuries sustained as a result of the accident." The statutory provision cited in support of the premise that the Liquidator has an obligation to protect Medicare's possible future interest is 42 U.S.C. § 1395y(b)(2)(A)(ii). This provision makes Medicare a secondary payer where coverage under a liability insurance policy is available to pay for the item or service otherwise payable by Medicare. Nothing in this provision operates to inhibit the Liquidator's ability to value and prioritize the claim.