

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joel S. Ario, Insurance Commissioner :
of the Commonwealth of Pennsylvania, :
Plaintiff :
v. : No. 183 M.D. 2002
Legion Insurance Company, :
Defendant :

Re: Proof of Claim - Psychiatrists' Purchasing Group, Inc.

MEMORANDUM OPINION AND ORDER

Before the Court is the objection of Psychiatrists' Purchasing Group, Inc. ("PPG") to the Notice of Determination for Proof of Claim No. 1367779. Relevant thereto, the background to PPG's objection follows:

1. On June 26, 2003, this Court granted PPG's request for direct access to the reinsurance agreements to which it had demonstrated third-party beneficiary status (the "Direct Access Ruling"). In that Opinion, this Court stated "the record is inadequate to determine whether funds established for the payment of PPG claims ... are general assets to Legion or are held in trust."

2. On July 25, 2003, in the Liquidation Order for Legion ("Liquidation Order") this Court ordered as follows:

Where policyholder intervenors establish a right to direct access to reinsurance proceeds, Legion's responsibility for the handling of the policyholder intervenor's claims, if any, terminates, and the policyholder intervenor is vested with exclusive control of claims handling, all claims files and claim-related records. Further, policyholder intervenors may not recover from the

estate of Legion for a claim to the extent it is covered by a reinsurance agreement to which the right of direct access has been established.... Upon good cause shown, such other relief as the Court deems appropriate may be granted the policyholder intervenor.

3. On June 22, 2005, PPG filed a timely proof of claim ("POC") on behalf of itself, as well as psychiatrists and other participants in the Professional Liability Insurance Programs made available to the members of the American Psychiatric Association to the extent they were insured by Legion Insurance Company at any time on or after May 1, 1988 (the "APA Program").

4. Although the majority of APA Program claims and losses were reinsured by Transatlantic Reinsurance Company ("TRC"), there were two APA Program Years (*i.e.*, 1994/95 and 1995/96) for which Legion retained liability for a percentage of various layers of APA Program claims (the "Legion Retention"). As of the date of the Liquidation Order, Legion had not fully exhausted its liability for claims and losses falling within some of the layers of the Legion Retention for the 1994/95 and 1995/96 APA Program Years. The comprehensive list of those layers is as follows:

<u>Layer</u>	<u>1994-95 Program Year</u> <u>Legion Retention</u>	<u>TRC Liability</u>
\$0 to 5 million	100%	0
\$5 million xs of \$5 million	0	100%
\$5 million xs of \$10 million	0	100%
\$5 million xs of \$15 million	50%	50%
\$5 million xs of \$20 million	50%	50%
\$3.3 million xs of 25 million	100%	0
\$1.7 million xs of \$28.3 million	0	100%

1995-96 Program Year

<u>Layer</u>	<u>Legion Retention</u>	<u>TRC Liability</u>
\$0 to 5 million	100%	0
\$5 million xs of \$5 million	0	100%
\$5 million xs of \$10 million	0	100%
\$7 million xs of \$15 million	50%	50%
\$3 million xs of \$22 million	0	100%
\$5 million xs of \$25 million	0	100%

5. The Liquidator of Legion Insurance Company designated the POC submitted by PPG as "POC No. 1367779."

6. By Notice of Determination dated March 28, 2007, the Statutory Liquidator assigned POC No. 1367779 to priority (b) under Section 544(b) of the Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, added by the Act of December 14, 1977, P.L. 280, *as amended*, 40 P.S. §221.44(b), and valued the claim at \$0.00.

7. PPG filed a timely objection to the Notice of Determination on behalf of all participants in the APA Program that were insured by Legion prior to its insolvency.

8. On November 1, 2007, in support of its objections to the Notice of Determination, PPG filed a Statement of Issues. PPG's Statement of Issues included the following issue of law: "Whether the amounts received by Legion in respect of the Legion Retention are an asset of the Legion estate or are held in trust for PPG."

AND NOW, this 29th day of September, 2008, upon consideration of the merits of PPG's objections, it is hereby **ORDERED** as follows:

1. Premiums or other amounts received by Legion for the Legion Retention shall be treated as general assets of the estate of Legion Insurance Company (in Liquidation).

2. PPG and the Statutory Liquidator shall mutually release each other from any past, present or future obligation to pay premiums, taxes, fees, collateral or any other amounts relating to the APA Program, except for Legion's ongoing obligations under the APA program within the Legion Retention as set forth in this Opinion and Order.

3. The Statutory Liquidator's valuation of POC No. 1367779 at \$0.00 in its Notice of Determination is amended as set forth herein. To the extent of the unexhausted Legion Retention, claims for policy benefits filed by PPG on behalf of itself or participants in the APA Program, portions of such claims, or shares of loss, including defense costs, that are under the APA Program shall be evaluated as Priority (b) claims and payable by Legion's estate in the normal course of the liquidation process and to the same extent as other Priority (b) claims and/or by applicable state insurance guaranty associations in accordance with the law applicable to guaranty associations. To the extent of the unexhausted TRC Liability, PPG retains all of its direct access rights under this Court's Direct Access Ruling, Liquidation Order and the applicable contracts.

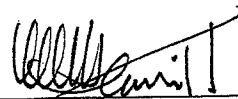
4. POC No. 1367779 is a timely-filed Priority (b) claim. All past and present claims filed with the Statutory Liquidator for policy benefits under the APA Program shall be treated as timely filed Priority (b) claims covered by POC No. 1367779. Such claims include but are not limited to the following outstanding claims:

<u>File No:</u>	<u>Case Caption:</u>	<u>Defendant Insured:</u>
94-0293	Skidmore v. Murphy	Debora Murphy, M.D.
94-0422	Culley v. Morrison	Mark Morrison, M.D.
94-0598	Nowak v. Luby	Elliott Luby, M.D.
94-0602	Nowak v. Comprehensive Psychiatric Services	Comp. Psych. Servs.

5. To the extent of the unexhausted Legion Retention, any claims for policy benefits under the APA Program that are not being administered as of the date of this Order (“Future Claims”) shall be treated as timely filed Priority (b) claims, shall be deemed supplements to POC No. 1367779 and shall be evaluated by the Statutory Liquidator under the applicable policy so long as any Future Claim is submitted to the Statutory Liquidator by or on behalf of the APA insured member within six months of notice of any Future Claim to the APA insured member; provided, however, a Future Claim not presented or administered as of the date of termination of the Legion liquidation need not be evaluated by the Statutory Liquidator. A Future Claim not submitted by or on behalf of an APA insured member within six months of notice of such claim to the APA insured member will not be deemed a supplement to POC No. 1367779.

6. All claims for policy benefits under the APA Program that fall within the Legion Retention shall be referred by the Statutory Liquidator and/or may be referred by PRMS, Inc. to the relevant guaranty associations for initial handling. All insureds under the APA Program and all claimants against such insureds shall retain their statutory rights as against any applicable insurance guaranty association, regardless of when such claims arise, and no provision of this Order shall limit such rights.

7. No provision of this Order shall modify any prior ruling, decision, or Order of this Court.



MARY HANNAH LEAVITT, Judge

Certified from the Record

SEP 29 2008

and Order Exit