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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESE

0405987/2001

PART 5

RELIANCE INSURANCE COMPANY

vs

X

RE: Claim of ENVIRO EXPRESS v SER 10

SEQ 24 Claim #98111223

CONFIRM/REJECT REFEREE REPORT

DATE 5/2/05

SEQ. NO. 024

CAL. NO. 97

The following papers, numbered 1 to _____ were read on this motion to/for DISAFFIRM REFEREE'S RPT.

	PAPERS NUMBERED
Notice of Motion/ ~~Order to Show Cause~~ — Affidavits — Exhibits ... (+ annexed)	1
X Motion Answering Affidavits — Exhibits (+ annexed)	2
Replying Affidavits	3+4

Cross-Motion: ☒ Yes (1) ☐ No

Upon the foregoing papers, it is ordered that this motion and cross-motion are decided in accordance with the annexed memorandum opinion (decision and order).

FILED

SEP - 1 2005

COUNTY CLERK'S OFFICE
NEW YORK

HON. MICHAEL D. STALLMAN

Dated: 8/25/05

J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☒ FINAL DISPOSITION (of the Claim) ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

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In the Matter of the Ancillary Receivership of

RELIANCE INSURANCE COMPANY,

----------X

CLAIMANT: ENVIRO EXPRESS, INC.

CLAIM NO.: 98111223

----------X

Index No. 405987/01

Decision and Order

HON. MICHAEL D. STALLMAN, J.:

Movant, the New York State Superintendent of Insurance as Ancillary Receiver of Reliance Insurance Company moves to Disaffirm the report of the Referee concerning the claim of Enviro Express, Inc., in the ancillary receivership of Reliance Insurance Company.

BACKGROUND

Reliance was placed into ancillary receivership in the State of New York pursuant to a court order entered on December 14, 2001 (Stallman, J.).

This Court appointed a referee to hear and report with respect to the disallowance of claims made to the Superintendent for payment or indemnification from state security funds. (Order entered 6/16/04.) The Superintendent administers such funds to pay as permitted by law, on demonstrated, statutorily-covered claims against various persons and entities who had been insured by insolvent insurers.

Movant Enviro made a claim as to which the Superintendent recommended disallowance. The Superintendent scheduled a hearing on Enviro's objection to the Superintendent's recommendation of disallowance, and served notice of the hearing. On November 12, 2004, the matter came on to be heard before the referee. The parties presented their positions and agreed to a schedule for the parties' submission of a stipulation of facts and memoranda of law.

Movant Enviro is a Connecticut corporation having its principal place of business in Connecticut. Enviro is a named insured on a policy of insurance issued by Reliance bearing Policy No. NKA-0140216. On or about June 25, 1998, an Enviro-owned truck, domiciled in Connecticut, and principally garaged there, was involved in an accident in Connecticut. The other vehicle's driver alleges that he was injured due to Enviro's driver's negligence and commenced an action in Connecticut.

Enviro filed a claim in the New York Reliance ancillary receivership and a claim with the Connecticut Insurance Guaranty Association ("CIGA"). By letter dated October 10, 2003, CIGA informed Enviro that it had maximized any coverage it could have recovered pursuant to Connecticut's Insurance Law, which effectively disallowed Enviro's claim for indemnification. By letter dated January 5, 2004, the Superintendent issued a written determination disallowing Enviro's claim in the Reliance receivership. Claimant objected and a hearing was held on November 12, 2004.

The Superintendent contends that Enviro's claim must be disallowed and the referee's determination allowing the claim must be rejected; the Superintendent asserts that Enviro is not entitled to coverage and indemnification under the New York Property/Casualty Insurance Security Fund (the P/C Fund) because Enviro's motor vehicle, which is garaged in Connecticut, was involved in an automobile accident in Connecticut and is therefore not subject to indemnification under the New York Security Fund.

The referee's decision held that Enviro was entitled to New York P/C Fund protection because it was allegedly denied coverage by CIGA.

The P/C Security Fund was established by the Legislature to protect New York residents from potentially devastating effects of insurance company failures. See Matter of Union Indemnity Company of New York (Snyder Tank Corp.), 140 Misc.2d 702, 531 NYS2d 936 (N.Y. Sup. 1988) aff'd., 150 AD2d 992, 544 NYS2d 262 (1st Dept. 1989). It has been described as an extraordinary benefit. See Royal Bank Trust Co. v Superintendent, 92 NY2d 107, 668 NYS2d 558 (1998). The P/C Security Fund is not the alter ego of an insolvent insurer. See Insurance Law § 7603; Matter of Allcity Ins. Co. (Kondak), 66 AD2d 531, 431 NYS2d 929 (1st Dept. 1979). It is authorized to pay only those claims that meet the requirements set forth by Article 76 of the Insurance Law. Any claim is subject to the statutory limitations. See Matter of Liquidation of Consolidated Mut. Ins. Co., (Arcade Cleaning), NY2d 1, 466 NYS2d 663; Insurance Law § 7603 (no payment on any claim shall exceed one million dollars).

Insurance Law Section 7603(a)(1)(A) provides:

> The property/casualty insurance security fund shall be used in the payment of allowed claims remaining unpaid, in whole or in part, by reason of the inability due to insolvency of an authorized insurer to meet its insurance obligations under policies:
>
> (A) on account of claims from motor vehicle accidents as defined in [Section 7602(f) of this article....

Insurance Law Section 7602(f) provides:

> (f) "Motor vehicle accident" means either an accident occurring within or without this state arising out of the ownership, operation or maintenance of a motor vehicle which is principally garaged in this state or an accident occurring within this state arising out of the ownership, operation or maintenance of a motor vehicle which his not principally garaged in this state.

As stated in the stipulated facts, the Claimant's motor vehicle was garaged in Connecticut and the accident occurred in Connecticut. Therefore, the Superintendent's disallowance was not only

rational, but is the only ruling permissible under the applicable provision of New York law. Insurance Law §§ 7602(f) and 7603(1)(A).

Irerespective of how one characterizes the CIGA letter of October 10, 2003[1] or the letter of January 5, 2004 of Frank Basso, Senior Claims Examiner for the New York Superintendent. (See Stipulation of Facts, Exhibit "C"), Enviro must still fulfill the requirement of what is considered an allowed claim in New York. Here, Enviro does not, because Enviro's vehicle is principally garaged and registered in Connecticut (see ¶ 9 for the Stipulation of Facts) and the accident occurred in Connecticut. Enviro did not fulfill the requirements provided by Section 760-3(a)(1)(A) and Section 7602(f) of the New York Insurance Law that would entitle Enviro to indemnification through New York's P/C Fund. Therefore, the Superintendent correctly concluded that the claimant could not look to the New York Security Fund to satisfy the damages suffered by the injured party.

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[1] The referee's decision states, and Enviro contends, that since CIGA has declined to indemnity it for this loss, the P/C Fund must now reimburse the injured party for the losses suffered. The referee's ruling is not supported by Connecticut law or what the referee interpreted as a denial of coverage by CIGA.

> Connecticut Insurance Law Section 38a-845 provides:
>
> 38a-845. Nonduplication of recovery
>
> (1) Any person having a claim against an insurer under a provision in an insurance policy, other than a policy of an insolvent insurer, which is also a covered claim under sections 38a-836 to 38a-853, inclusive, as amended by this act, shall exhaust first his rights under such policy. Any amount payable on a covered claim under said sections shall be reduced by the amount recoverable under the claimant's insurance policy or chapter 568.

Contrary to the referee's decision and Enviro's allegations, CIGA did not deny coverage to the Enviro; rather, it disallowed Enviro's claim because the amount already collected by the injured party offset the amount that could have been recovered under CIGA. The amounts received by the injured party ($600,000) offset the maximum possible recovery under the Connecticut Fund ($300,000). Therefore, under Connecticut law, Enviro could not look to CIGA since the injured party had received more than could have been recovered under the CIGA fund.

In interpreting the Insurance Law, a referee, like a judge, must give appropriate consideration to the Superintendent of Insurance's experience with, and interpretation of, the arcane law of insurance. In a different context, it has been held that a court should given due deference to the Superintendent's special competence and expertise with the insurance industry, and uphold his interpretation of a statute, unless it is unreasonable or irrational, or contrary to the clear statutory wording. See N.Y. Public Interest Group Inc. v N.Y. State Dept. of Ins., 66 NY2d 444.

A court reviewing a referee's report and recommendations should not substitute its own judgment for that of the referee as to matters of credibility and factfinding on a legally sufficient record. Here, factfinding and credibility are not at issue; the parties stipulated to the facts. However, the reviewing justice must analyze a referee's report and the stipulated facts according to the applicable law. It is the reviewing court's responsibility to determine what the applicable law is. This court respects the referee and the referee's role, judgment and legal acumen. However, this Court respectfully disagrees with the referee's recommendation and the referee's interpretation of the law. Based on the papers before the Court, and its own review of the law and the referee's report, the Court finds that the Superintendent's interpretation of the law, including its clear geographical limitation to New York motor vehicle accidents involving a New York garaged vehicle, was not only rational, but correct; his disallowance of Enviro's claim for indemnification was correct and must be upheld.

The referee extended coverage to a situation never contemplated by New York Insurance Law. Even assuming arguendo that CIGA refused to provide coverage to claimant, that does not afford New York P/C Security Fund coverage to a claim arising from a Connecticut accident with a Connecticut-garaged motor vehicle. Such a holding would extend New York P/C Security Fund

coverage to any and all out-of-state claimants involved in an out-of-state motor vehicle accident with a vehicle principally garaged outside New York, if they show they were denied guaranty fund coverage by the state where the accident occurred. Such a holding would amount to a judicial repeal of the unambiguous language of limitation of Insurance Law §§ 7202(f), 7603(a)(1)(A). The P/C Fund is not the alter ego of the insolvent insurance companies; it is not the successor to their obligations and liabilities. The P/C Fund is statutorily limited as to what claims it can indemnify, because its resources are limited. This Court may not reallocate limited funds to claims not statutorily qualified, nor may it by pass the carefully crafted legislative framework. Enviro's arguments based on equitable and policy considerations lack merit.

Accordingly, it is

ORDERED the motion of the Superintendent of Insurance as Ancillary Receiver of Reliance Insurance company, to disaffirm the report of the Referee is granted and the report is disaffirmed; the cross-motion of claimant Enviro to affirm the referee's report is denied; the Superintendent's disallowance of Enviro's claim is sustained as correct.

This opinion constitutes the decision order and judgment of the Court.

Dated: August 25, 2005
New York, New York

ENTER:

MICHAEL D. STALLMAN, J.S.C.

HON. MICHAEL D. STALLMAN