

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael F. Consedine, Insurance	:	
Commissioner of the Commonwealth	:	
of Pennsylvania,	:	
Plaintiff	:	
<hr/>		
v.	:	No. 1 FSS 2012
	:	
First Sealord Surety, Inc.,	:	
Defendant	:	

CASE MANAGEMENT ORDER

AND NOW, this 8th day of February, 2012, it is hereby ORDERED as follows:

Docketing

Inasmuch as the Commonwealth Court of Pennsylvania has implemented a new docketing system for insurance insolvency cases in order to more effectively manage such cases, the following shall apply to the matter filed February 6, 2012, by Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania seeking an Order of Liquidation of First Sealord Surety, Inc.:

1. The matter filed as *Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania, Plaintiff v. First Sealord Surety, Inc., Defendant* shall be re-entitled "*In Re: First Sealord Surety, Inc. in Liquidation*" and docketed at No. 1 FSS 2012. All filings relating to the administration of the First Sealord Surety, Inc. estate in liquidation shall be filed with this caption and docket number.

2. In addition, ancillary matters related to the First Sealord Surety, Inc. liquidation, including objections to notices of determination, applications by third parties seeking to file actions other than objections to notices of determination (heretofore often designated as petitions to intervene) and actions brought by the Liquidator against third parties, shall be assigned separate docket numbers in the "First Sealord Surety" (FSS) docket. Anytime an ancillary docket number is assigned, the Chief Clerk shall notify the parties of the new docket number.

3. Ancillary matters not relating directly to the administration of the First Sealord Surety, Inc. estate in liquidation and not docketed to No. 1 FSS 2012 must contain a caption substantially in compliance with the appropriate example attached hereto as Exhibit 1.

4. At the commencement of any ancillary matter not relating to the administration of the First Sealord Surety, Inc. estate in liquidation and not docketed to No. 1 FSS 2012, the party initiating the ancillary matter shall complete the cover sheet set forth in Exhibit 2 and file it with the Chief Clerk.

Website

5. The Commissioner shall establish and maintain a link on the Department of Insurance website for the purpose of either posting or listing filings with and orders of the Court filed at the administrative case docket number.

Court Filings

6. Each filing with the court shall consist of the original document, two (2) copies, and a labeled CD-ROM or USB flash drive containing a copy of the filing in portable document format (PDF).

7. Proof of service or report of the performance of a ministerial task does not need to be copied in electronic format.

8. Courtesy copies shall not be provided to the judge's chambers.

Master Service List

9. The Commissioner shall create and maintain a master service list, which shall include (a) the name, address, telephone number, facsimile (fax) number and electronic mail (e-mail) address of counsel for each party in the proceeding, and (b) the name, address, telephone number, fax number and e-mail address of each pro se party in the proceeding at the administrative case docket number.

10. The Master Service List shall be posted on the link at the Department's website established pursuant to this Order.

Applications for Relief and Intervention

11. An application for relief shall comply with Pa. R.A.P. 123, except that an answer shall be filed within thirty (30) days of service of the application for relief. Upon request, the Court may extend the time for response. The application may be

supported by a memorandum of law; any answer may likewise be accompanied by a memorandum of law.

12. A request for leave to intervene shall be by application and answer, if any, in accordance with Pa. R.A.P. 123 and paragraph 11 above. The application shall contain a concise statement of the interest of the applicant and the purpose(s) for which intervention is sought. A copy of the document requesting relief that the intervenor intends to file if the Court allows intervention shall be attached to the application.

13. If the applicant demonstrates an ongoing interest in the administration of the insurer's business or estate, general intervention may be granted. The general intervenor shall remain on the master service list until the liquidation proceeding is completed.

14. If the applicant's interest involves a discrete controversy relating to the administration of the insurer's business or estate, the Court may grant limited intervention to participate as a party in the discrete controversy. The limited intervenor shall not be placed on the master service list unless otherwise directed by the Court.

Claim Procedures

15. Filing a Proof of Claim

(a) In the notice to potential creditors of the insurer's estate, the liquidator shall provide a proof of claim form that complies with Article V.

(b) A creditor asserting a monetary claim against the estate of the insurer shall file a proof of claim with the liquidator in accordance with Article V.

(c) The completed proof of claim form and documentation supporting the claim shall be filed with the liquidator. Filing may be accomplished by mail, facsimile (fax), or electronic mail (e-mail) to the addresses and numbers indicated on the proof of claim form. Filing is effective upon the date on which the proof of claim form is mailed, as established by a United Postal Service Form 3817 Certificate of Mailing or by any similar form from which the date of deposit in the mail can be verified. ~~If faxed or e-mailed to the liquidator, filing is effective upon~~ the date faxed or e-mailed, as documented by sender's fax or computer. If service is accomplished by fax, the claimant shall also comply with the requirements of Pa. R.C.P. No. 440(d)(2), relating to a fax cover sheet.

16. Notice of Determination

(a) Unless otherwise ordered, the liquidator shall issue a written notice of determination within one hundred and eighty (180) days of the filing of the proof of claim, unless the liquidator seeks additional information on a claim pursuant to Section 538(b), 40 P.S. § 221.38(b). If additional information is required, the liquidator shall issue a notice of determination within ninety (90) days of the date on which the requested supplementary information is mailed, faxed or e-mailed to the liquidator.

(b) The notice of determination shall include:

- (i) the amount of the claim allowed;
- (ii) the priority class assigned to the claim;

(iii) if the claim is disallowed, in whole or in part, a brief statement of the reason(s) for the liquidator's determination;

(iv) a statement advising the claimant of the requirements set forth in Rule 3781(c)(1) below; and

(v) notice that if a claimant fails to file an objection with the Commonwealth Court within sixty (60) days from the mailing date on the notice of determination, the claimant cannot later object to the liquidator's determination.

(c) If the liquidator determines that the claim has been submitted to a state guaranty association, the liquidator may defer further review of the proof of claim until the guaranty association has made its final determination and has returned the closed claim file to the liquidator. In such a case, the liquidator shall notify the claimant of the decision to defer review.

17. Objections.

(a) If a claimant disputes the amount or priority class assigned to the claim, the claimant shall file an objection in the Court within sixty (60) days from the mailing date shown on the notice of determination. The objection must present the factual and legal basis for the objection and include relevant supporting documentation and a copy of the notice of determination.

(b) The claimant shall serve a copy of the objection on the liquidator in accordance with Pa. R.A.P. 121.

(c) Upon receipt of an objection, the liquidator shall promptly acknowledge receipt, contact the claimant and attempt to resolve the objection. If the objection is not resolved within sixty (60) days, the liquidator shall file with the Court and serve on the claimant a written response. The claimant and the liquidator may agree in writing to extend these deadlines. Any such agreement must be filed with the Court.

(d) If the claimant is an entity other than a natural person, an attorney admitted to practice in Pennsylvania or admitted to practice *pro hac vice* in accordance with Pa. R.C.P. No. 1012.1, Pa. B.A.R. 301, and 204 Pa. Code § 81.505, must enter an appearance for the claimant within sixty (60) days of the filing of the objection, or the Court may dismiss the objection.

18. Resolution of Objections

(a) Upon receipt of the liquidator's response to the objection, the Court shall establish a time for a hearing.

(b) Objections may be assigned to a single judge for disposition.

(c) Upon the parties' request or on its own initiative, the Court may appoint a referee to hear the objection and submit to the Court a recommended decision, which shall include findings of fact, conclusions of law and a proposed order.

19. Referee Procedure

(a) **Compensation.** Referees serve at the pleasure of the Court and shall be compensated from the insurer's estate at an hourly rate to be set by the Court at

the beginning of each calendar year. The rate shall be clearly set forth in the appointment order, subject to any annual adjustment, which shall be posted on the website created under Rule 3776 and on the Court's website.

(b) **Parties' costs.** Each party shall bear its own costs associated with proceedings before the referee. The parties shall share equally any costs incurred by the referee in creating a record and any transcription costs.

(c) **Conflict of interest.** No referee may appear as counsel in connection with any matter connected to the liquidation proceeding.

(d) **Authority of the referee.** The referee shall have authority to:

- (i) set hearing dates;
- (ii) establish procedures to expedite the presentation of evidence;
- (iii) establish discovery schedules where discovery is necessary; and
- (iv) establish briefing schedules.

(e) **Rules of evidence.** The Pennsylvania Rules of Evidence shall apply to all evidentiary hearings conducted by a referee.

(f) **Additional evidence.** The referee shall review the objection and any response and may request and review additional documents or information.

(g) **Efficient and cost effective.** The referee shall resolve the objection in a cost-effective and efficient manner, using stipulations and depositions and

conducting hearings by teleconference or videoconference where appropriate. The referee may bifurcate a proceeding to address issues *seriatim*.

(h) **Maintain a record.** The referee shall maintain a record consisting of everything submitted for consideration. The referee shall also maintain a list of the contents of the record, numbered and maintained in the order in which the items were submitted. In the case of materials submitted as evidence, the referee shall mark each exhibit offered into evidence as admitted or excluded. While an objection is pending before a referee, no documents or other material related to that objection shall be filed with the Court.

(i) **Filing recommended decision.** The referee shall file with the Court and serve on the parties the recommended decision, a proposed order and a certified list of all documents submitted by the parties and compiled in accordance with Rule 3781(e)(8).

(j) **Failure to cooperate with referee.** If a claimant or the liquidator fails to cooperate with the referee or to participate in good faith in proceedings before the referee, the referee may include such findings in his recommended decision and recommend appropriate sanctions, which may include a recommendation that the objection be sustained or dismissed.

20. **Exceptions to the Referee's Recommended Decision**

(a) Either the liquidator or the claimant may file with the Court exceptions to the referee's recommended decision no later than thirty (30) days after service of the recommended decision. The exceptions shall be served on the other party and the referee.

(b) In separately numbered paragraphs, the exceptions shall specify the errors in the referee's recommended decision. There shall be attached as exhibits to the exceptions: the liquidator's notice of determination; the objection; the liquidator's response; and, the referee's recommended decision. Exceptions shall be accompanied by a memorandum of law.

(c) Any response to the exceptions shall be filed and served on the other party and the referee within fourteen (14) days of service of the exceptions. A response shall be accompanied by a memorandum of law. The time for response may be extended by agreement of the parties with the approval of the Court.

(d) Within fourteen (14) days of service of the exceptions, the referee shall forward to the Court the record of the proceedings.

(e) When exceptions are filed, the Court may, on its own motion or upon request, direct an evidentiary hearing or oral argument. The Court may adopt the referee's proposed factual findings, modify those findings or recommit the matter to the referee with instructions.

(f) Upon completion of its review of the exceptions, the Court will enter a final order sustaining or overruling the exceptions, in part or in whole. The Court may adopt the referee's recommended decision or may issue its own opinion and order. An order of Court dismissing an objection as a sanction pursuant to Rule 3781(e)(10) is the final disposition of the claim.

(g) When no exceptions to a referee's recommended decision are filed, the referee, within fourteen (14) days of the last day for filing exceptions, shall file with the Court the record of the proceedings. Thereafter, either the claimant or the

liquidator may apply to the Court for, or the Court on its own initiative may issue, an order either adopting the recommended decision or stating that in the absence of exceptions, the referee's proposed order is entered as the order of the Court.

(h) When no exceptions are filed, findings of fact or conclusions of law in a referee's report and the recommended decision are not considered controlling in any subsequent proceeding, unless the Court adopts the entire report or specific findings of fact or conclusions of law.

(i) Unless otherwise ordered by the Court, failure to file timely exceptions to a referee's recommended decision shall be deemed a waiver of further appeal if the Court approves the recommended decision without modification.

BY THE COURT:



BONNIE BRIGANCE LEADBETTER,
Judge

Certified from the Record

FEB 08 2012

And Order Exit

EXHIBIT 1 – Ancillary Matter Caption

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

_____,
Plaintiff/Petitioner : [Description of Ancillary Matter]
:
:
v. :
:
: No. _____

_____,
Defendant/Respondent :
:
:
(Ancillary matter to :
IN RE: First Sealord Surety, Inc. :
In Liquidation :
No. 1 FSS 2012) :

[Title of Document]

By way of illustration, an objection to a notice of determination on a proof of claim should be captioned:

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John Doe Company,		:	
	Objector	:	Objection to Notice of Determination
		:	re: Proof of Claim No. _____ ¹
		:	
v.		:	
		:	

First Sealord Surety, Inc.		:	
in Liquidation		:	
		:	No. _____
(Ancillary matter to		:	
IN RE: First Sealord Surety Inc.,		:	
In Liquidation		:	
No. 1 FSS 2012)		:	

Objection of John Doe, Claimant, to Liquidator’s Notices of Determination to Proofs of Claim No(s). _____

¹ If objection relates to more than one proof of claim, the first claim number followed by “et.al” should be shown in the caption, and all claim numbers should be listed in the title of the document and on the cover sheet.

