

SUMMARY AND FORMAL PROCEEDINGS AGAINST INSURERS

Rule 3771. Scope of Rules

Rules 3771-3784 apply to all actions in the Commonwealth Court arising under Article V 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. §§ 221.1-221.63 (concerning summary and formal proceedings against insurers) (Article V). The rules are intended to govern practice and procedures in Article V proceedings. In the event of any inconsistency, the provisions of Article V control.

Rule 3772. Definitions

(a) Unless otherwise stated, words and phrases used in these rules shall have the meanings given to them under Article V.

(b) Administrative case docket – A docket created upon the initiation of a formal proceeding by the filing of a petition to rehabilitate or liquidate an insurance company.

(c) Adversarial proceeding – Any action (1) initiated by the rehabilitator or liquidator against persons other than the insurer, (2) asserting a right or interest afforded by Article V and for which neither Article V nor prior orders of the Court provide an avenue for redress, and (3) that the Court determines shall be governed by Rule 3783 (adversarial proceedings) as an adversarial proceeding.

(d) Ancillary case docket - A docket created when an adversarial proceeding is initiated or when a creditor files an objection to the liquidator's claim determination under Rule 3781(c) (claim procedure).

(e) Court - The Commonwealth Court of Pennsylvania.

(f) Formal proceeding - An action to rehabilitate or liquidate an insurer pursuant to Sections 515 or 520 of Article V, 40 P.S. §§ 221.15, 221.20.

(g) Master service list - The list maintained by the Commissioner or receiver, as the case may be, as directed in Rule 3778 (master service list).

NOTE: Administrative Case Docket - The following illustrates the types of filings that may appear on an administrative case docket: any response to the petition to rehabilitate or liquidate; applications to intervene; a receiver's applications for approval of reports, partial distributions, administrative expenses, etc. and any responses thereto; applications seeking to compel the issuance of a notice of determination on a proof of claim or any other filings by the receiver related to the administration of the liquidation or rehabilitation. Other than the filing that initiated an ancillary case docket, the administrative case docket will not usually include filings related to matters assigned to an ancillary case docket.

Adversarial proceeding – This type of proceeding does not include objections filed by a claimant to the liquidator's notice of determination. Objections to a notice of determination on a claim are specially governed by Rule 3781 (claim procedure).

Rule 3773. Filings; Number of Copies

(a) **General rule.** Each paper filing 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).

(b) **Exception.** A copy on a labeled CD-ROM or USB flash drive is not required for a proof of service or report of the performance of a ministerial task.

(c) **No courtesy copies.** Courtesy copies of filings shall not be provided to the judge's chambers.

NOTE: Electronic Filing – The Court adopted these Rules before electronic filing became available. When electronic filing becomes available this Rule will be reviewed.

Rule 3774. Manner of Initiating Article V Proceedings

(a) **Judicial review of summary orders (Section 510 of Article V, 40 P.S. § 221.10).** A request for judicial review of a summary order issued by the Commissioner shall be presented by petition for review and shall conform to the provisions of Chapter 15 of the Pennsylvania Rules of Appellate Procedure applicable to matters in the Court's original jurisdiction.

(b) **Court's seizure order (Section 512 of Article V, 40 P.S. § 221.12).** A petition by the Commissioner for a seizure order shall state the material facts that

constitute the grounds for relief. The petition for seizure may be decided with or without an answer or a hearing. An insurer may petition the Court for hearing and review of an *ex parte* seizure order at any time and shall set forth the factual and legal basis in support of a contention that the Court should vacate or modify the seizure order. The Court may set a time for the Commissioner to file an answer, but in any event the Court shall decide the petition for hearing and review in accordance with Sections 512(d) and 513(a), (b), 40 P.S. §§ 221.12(d) and 221.13(a), (b).

(c) Formal proceedings to commence rehabilitation or liquidation (Sections 515 and 520 of Article V, 40 P.S. §§ 221.15 and 221.20).

(1) A petition by the Commissioner for rehabilitation or liquidation shall state the material facts that constitute the grounds for relief.

(2) Unless the Court otherwise orders, within thirty (30) days of the filing of a petition for rehabilitation or a petition for liquidation, the insurer shall file either an answer to the petition or consent to the entry of an order granting the relief the Commissioner seeks in the petition. An answer shall state the material facts that constitute a defense to the petition. No other response by the insurer is permitted.

(3) Following the entry of an order to rehabilitate or liquidate the business of an insurer, the Court may enter a case management order to supplement these Rules.

NOTE: Special forms of petition – A petition by the Commissioner for a seizure order or a petition by the Commissioner for an order of rehabilitation or liquidation is not a petition for review governed by Chapter 15 of the Appellate Rules because neither of these petitions present a challenge to government action. The term “petition” is used because it is used in Article V.

For determining a petition for a seizure order, Section 512 establishes a process that does not conform to the provisions of Chapter 15. Such a petition should be decided in accordance with the statutory process in conjunction with an order.

Rules 3771 – 3784 establish procedures for addressing petitions for rehabilitation or liquidation and matters associated with rehabilitation or liquidation of an insurer.

A petition by an insurer for hearing and review of a seizure order presents a matter properly addressed to the Court’s original jurisdiction. See 42 Pa. C.S. § 761 (establishing the Court’s original jurisdiction over all matters arising under Article V of the Insurance Department Act). However, the provisions of Chapter 15 applicable to original jurisdiction matters have little or no practical applicability to a

petition for a hearing and review of an ex parte seizure order for which Section 512 confers upon the petitioner a right to a hearing within ten days. Consequently, a petition for hearing and review of a seizure order should be decided in accordance with the statutory process in Section 512 or Court order.

The special forms of petition named in Rule 3774 (initiating Article V proceedings) are not subject to the Rules of Civil Procedure.

Rule 3775. Intervention in Formal Proceedings

(a) Intervention. A person not named as a respondent in a formal proceeding who has a direct and substantial interest in the administration of the insurer's business or estate may request leave of court to intervene.

(b) Application to intervene. A request for leave to intervene, generally or for a limited purpose, shall be by application and answer, if any, in accordance with Rule 123 (application for relief). The application shall contain a concise statement of the interest of the applicant and the purposes for which the applicant seeks to intervene. A copy of the document to be filed if the Court allows intervention shall be attached to the application.

(c) Action on application. Intervention in a formal proceeding shall be allowed if the proven or admitted allegations of the application establish a sufficient interest in the proceedings, unless the interest of the applicant is already adequately represented or intervention will unduly delay or prejudice the adjudication of the rights of the parties.

(1) General intervention. When the applicant demonstrates an ongoing interest in the administration of the insurer's business or estate, the Court may grant the applicant general intervention. The general intervenor shall remain on the master service list until the formal proceeding is completed.

(2) Limited intervention. When the applicant's interest involves a discrete controversy relating to the administration of the insurer's business or estate, the Court may grant the applicant limited intervention to participate as a party in the discrete controversy. The limited intervenor shall not be placed upon the master service list unless the Court orders otherwise.

(d) Upon grant of an application to intervene, the document attached to the application to intervene, that is, the application for relief under Rule 3776 or complaint under Rule 3783, shall be deemed filed, and the Court shall direct the time for filing a response.

NOTE: General or limited intervention – Intervention, whether general or limited in scope, may be granted for purposes such as, but not limited to:

- (1) Oppose a petition by the Commissioner for an order of liquidation or rehabilitation;
- (2) Oppose an application by the receiver for an order relating to the administration of the insurer's business or of estate;
- (3) Object to a report by the receiver;
- (4) Seek relief from any order;
- (5) Assert any rights or interest afforded to the person by Article V and for which neither Article V nor prior orders of the Court provide an avenue for redress; or
- (6) Compel the liquidator to issue a notice of determination if the liquidator has failed to do so in conformity with Rule 3781 (claim procedure).

Relief from stay – Intervention is a prerequisite to filing an application for relief from the stay of actions against the insurer that is imposed under Section 526, 40 P.S. § 221.26.

Rule 3776. Applications for Relief or Court Approval

Relief or approval from the Court shall be requested by application. An application for relief or an application by the receiver for the Court's approval shall comply with Rule 123 (application for relief), except that a response, if any, shall be filed within thirty (30) days of service of an application for relief or an application for Court approval. Upon application, the Court may alter the time for response. The application and any response may be supported by a memorandum of law.

NOTE: Alteration of the time for response – Requests based on an agreement of the parties are more likely to receive favorable consideration.

Court approval – From time to time, the receiver must obtain the Court's approval of an action proposed to be taken in the course of administering the estate, such as, but not limited to, making an interim distribution of assets.

Rule 3777. Docketing

(a) **Administrative case docket.** Upon the filing of a petition to rehabilitate or liquidate an insurance company under Article V, the chief clerk shall

(1) An adversarial proceeding under Rule 3783 (adversarial proceedings) shall be captioned:

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

_____	:	
Plaintiff/Applicant	:	
	:	
v.	:	
	:	No. _____
_____	:	
Defendant/Respondent	:	
	:	
(Ancillary to IN RE:	:	
XYZ Insurance Company	:	
In Liquidation	:	
No. 1 XYZ 20xx)	:	

[Title of Document]

(2) An objection to the liquidator’s determination on a proof of claim under Rule 3781 (claim procedure) shall be captioned:

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John Doe Company, Objector	:	
	:	Objection to Notice of Determination
	:	
	:	Re: Proof of Claim No. _____
	:	
v.	:	
	:	
XYZ Insurance Co., in Liquidation	:	
	:	No. _____
(Ancillary to IN RE: XYZ Insurance Company In Liquidation No. 1 XYZ 20xx)	:	

Objection to Liquidator’s Notice(s) of Determination

NOTE: Listing proof of claim number(s) - All claim numbers should be listed in the caption to the right of the dotted line and on the cover sheet. If the objection relates to proof of claim numbers too numerous to conveniently be listed in the caption, the first claim number followed by “et al” must be shown in the caption and additional proof of claim numbers shall be listed in a footnote on page one.

Rule 3778. Master Service List

(a) General rule. As soon as practicable after filing a petition to rehabilitate or liquidate an insurer, the Commissioner shall create and maintain a master service list. If the Court grants the petition to liquidate or rehabilitate, the receiver will assume the duty to maintain the master service list. The master service list shall include the name, address, telephone number, facsimile (fax) number and electronic mail (e-mail) address of counsel for each party and for each pro se party in the proceeding at the administrative case docket number.

The receiver is not required to include on the master service list any limited intervenor or his/her counsel.

Changes in contact information, including transfer of responsibilities to another attorney in the firm and requests to be removed from the master service list may be accomplished by notifying the Commissioner or receiver, as the case may be, by e-mail, fax or mail in accordance with the Commissioner's or receiver's instructions.

(b) Request of non-party for inclusion on master service list. Any interested person may be added to the master service list by sending a written request to the Commissioner or receiver, as the case may be, including name, address, telephone number, facsimile number and electronic mail address. A person included on the master service list pursuant to this subsection shall be designated thereon as a non-party.

(c) Availability of master service list. The Commissioner or receiver, as the case may be, shall post and maintain the master service list on any website established under Rule 3779 (website). If no website has been established, the master service list shall be available by e-mail upon request. A paper copy of the master service list shall be available for a standard fee.

NOTE: Court Maintains Its Own Service List - The master service list maintained by the Commissioner or receiver is not the Court's service list. The two lists are separately managed. Amendment or deletion of information on one list does not affect the other list. Notice of any change must be given to both the Commissioner or receiver and the Court.

Rule 3779. Website

Unless otherwise ordered by the Court, when the Commissioner files a petition to rehabilitate or liquidate an insurer, the Commissioner shall establish and maintain a website for the purpose of listing filings with and orders of the Court in accordance with these rules, and when required, posting access to the listed documents. If the Court grants the petition to liquidate or rehabilitate, the receiver will maintain the website.

On the website, the receiver shall post: all documents filed at the administrative case docket number; a proof of claim form; a statement describing the procedure for filing claims pursuant to Rule 3781 (claim procedure); and a statement regarding the requirements in Rule 3781(c)(4) (corporate representation) and (5) (*pro hac vice*), for corporate representation and admission *pro hac vice* for attorneys.

The receiver shall note any ancillary docket number on the website and state the nature of the dispute. The receiver may but is not required to post filings at an ancillary case docket number.

Rule 3780. Service and Notice

(a) Service of parties. All documents filed by any party shall be served on all other parties at the appropriate docket number assigned to the matter in accordance with Rule 121 (filing and service). Proof of service shall comply with Rule 122 (proof of service).

(b) Notice to non-parties listed on the master service list. The receiver shall promptly notify all non-parties named on the master service list of any filing at the administrative case docket number. The notice shall include:

- (1) A description and the date of the filing;
- (2) A statement that the filing is available for viewing, downloading, or printing at the website;

(3) Directions on how interested persons may view, download, or print a copy of the filing from the website;

(4) A name, address, telephone number, fax number, and e-mail address as a contact for those unable to view, download, or print the filing from the website.

(c) **Filings not posted on website.** Any non-party on the master service list desiring a copy of a filing listed, but not posted, on the website may obtain a copy from the receiver.

(d) **Alternative service.** A non-party listed on the master service list who is unable to receive electronic notice of filings, shall notify the receiver in writing of this inability. The receiver shall then provide notice of a filing by United States Postal Service.

Rule 3781. Claim Procedure in Liquidation Proceedings

(a) **Filing a proof of claim.**

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

(2) 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.

(3) The completed proof of claim form and supporting documentation shall be filed with the liquidator. A proof of claim form is filed when received by the liquidator except as described below. The liquidator is deemed to have received the proof of claim form on the date of mailing 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 or the date of transmission by facsimile (fax) or electronic mail (e-mail), as documented by the sender's fax or computer. If filing 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.

(b) Notice of determination.

(1) 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 requested, the liquidator shall issue a notice of determination within ninety (90) days of the date on which the additional information is received.

(2) The notice of determination shall include:

(i) the allowed amount of the claim;

(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) (time for filing); and

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

(3) 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.

(c) Objections.

(1) Time for filing. If a claimant disputes the allowed amount or priority class assigned to the claim, the claimant shall file an objection with the Court within sixty (60) days from the mailing date on the notice of determination. The objection must present the factual and legal basis for the objection and include a copy of the notice of determination. The objection may include relevant supporting documentation and be accompanied by a memorandum of law.

(2) Service. The claimant shall serve a copy of the objection on the liquidator in accordance with Rule 121 (service).

(3) Response. The liquidator shall promptly acknowledge receipt of an objection, 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 to the objection. The response may be accompanied by a memorandum of law. The claimant and the liquidator may agree in writing to extend these deadlines. Any such agreement must be filed with the Court.

(4) Corporate representation. If the claimant is an entity other than a natural person, an attorney admitted to practice in Pennsylvania must enter an appearance for the claimant within sixty (60) days of the filing of the objection, or the Court may dismiss the objection.

(5) Pro hac vice admission. If a claimant wishes to be represented by an attorney not admitted to practice in Pennsylvania, that attorney must be 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, within sixty (60) days of the filing of the objection, or the Court may dismiss the objection.

(d) Resolution of objections.

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

(2) Assignment of judge. Objections may be assigned to a single judge for disposition.

(3) Assignment of referee. 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.

(e) Referees.

(1) 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 and posted on the website created under Rule 3779 and on the Court's website. The hourly rate shall be clearly set forth in the appointment order, subject to any annual adjustment.

(2) Litigation costs. Each party shall bear its own costs associated with the hearing before the referee. Unless the Court orders otherwise, the parties shall share equally the costs for transcribing a hearing and any costs that may be incurred by a referee in complying with Rule 3781(e)(7) (maintaining a record) and (f)(4) (filing recommended decision).

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

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

(i) receive and consider evidence that is in addition to the information provided with the proof of claim;

(ii) establish discovery schedules where discovery is necessary;

(iii) establish procedures to expedite the presentation of evidence; and

(iv) establish hearing dates and briefing schedules.

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

(6) 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*.

(7) Maintain a record. The referee shall maintain a record consisting of everything submitted for consideration. The referee shall also keep a chronological list of the contents of the record. 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, nothing directly related to the merits of that objection shall be filed with the Court.

(8) Filing recommended decision. The referee shall file and serve a recommended decision, a proposed order, and a list of all documents submitted by the parties and compiled in accordance with Rule 3781(e)(7) (maintaining a record).

(9) 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 findings regarding party conduct in the recommended decision and recommend appropriate sanctions. Appropriate sanctions may include a recommendation that the objection be sustained or dismissed.

(f) Exceptions to the referee's recommended decision.

(1) Time for filing. Any party may file with the Court exceptions to the referee's recommended decision no later than thirty (30) days after the filing date of the recommended decision. The exceptions shall be served on any other party and the referee.

(2) Content and form of exceptions. 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.

(3) Response. Any response to the exceptions shall be filed and served on the other party and the referee within fourteen (14) days of the filing date 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.

(4) Filing referee's record. Within twenty-eight (28) days of the filing of the recommended decision, the referee shall file with the Court the record of the proceedings.

(5) Court action. When exceptions are filed, the Court may, on its own motion or upon application, direct an evidentiary hearing or oral argument. The Court may adopt the referee's recommended decision in whole or in part, adopt specific findings of fact, modify findings of fact or recommit the matter to the referee with instructions.

(6) Final order. Upon completion of its review of exceptions, the Court will enter a final order sustaining or overruling exceptions in whole or in part. An order of Court sustaining or dismissing an objection as a sanction pursuant to Rule 3781(e)(9) is the final disposition of a claim.

(7) When no exceptions filed. Any party 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.

(8) Issue preclusion. Findings of fact or conclusions of law in a referee's recommended decision are not controlling in any subsequent proceeding, unless the Court expressly adopted the findings of fact or conclusions of law.

(9) Waiver. 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.

Rule 3782. Claim Procedure in Rehabilitation Proceedings

When an approved plan of rehabilitation includes the filing of claims by creditors, the rehabilitation plan shall follow the claim procedures set forth in Rule 3781, unless modified by the Court.

Rule 3783. Adversarial Proceedings

(a) **Initiating adversarial proceedings.** Adversarial proceedings shall be initiated by the filing of a complaint.

(b) **Rules governing adversarial proceedings.** The Pennsylvania Rules of Civil Procedure shall apply to adversarial proceedings.

(c) **Appointment of referee.** The Court may appoint a referee to hear the complaint and make recommended findings of fact and conclusions of law and propose an order for review by the Court in the same manner and pursuant to the same procedure prescribed for the disposition of objections to a notice of determination. The Court shall determine who shall pay the referee's fee and costs.

NOTE: Adversarial proceedings may not be commenced by filing a writ of summons.

Rule 3784. Reporting

(a) **Claims report.** At least annually, the liquidator shall file a report of the claims against the insurer's estate that have been resolved, with his recommendations ("Claims Report"). The Claims Report shall include the following: each claimant's name, address, priority class, allowed amount, and whether the claim determination was finalized because no objection was filed, no exceptions were taken to a referee's recommended decision, a recommended decision was sustained by the court or the parties agreed to a settlement. The liquidator shall serve a copy of the Claims Report on those listed on the master service list in accordance with these rules. No claim shall be paid, in part or in whole, until the report is approved by the Court.

(b) **Status report.** The receiver shall file a comprehensive report on the status of the insurer's business or the administration of the insurer's estate as frequently as ordered by the Court. The liquidator shall serve a copy of the Status Report on those listed on the master service list in accordance with these rules.