

**[J-29-2014][M.O. – Baer, J.]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

WARRANTECH CONSUMER : No. 82 MAP 2013  
PRODUCTS SERVICES, INC., :  
WARRANTECH HOME SERVICE : Appeal from the Order of the  
COMPANY, WARRANTECH HOME : Commonwealth Court at No. 11 REL  
ASSURANCE COMPANY, WCPS OF : 2011 dated 9/16/13  
FLORIDA, INC., WARRANTECH :  
AUTOMOTIVE, INC., WARRANTECH :  
AUTOMOTIVE OF FLORIDA, INC., : SUBMITTED: March 26, 2014  
BUTLER FINANCIAL SOLUTIONS, LLC, :  
A/K/A BUTLER FINANCIAL SOLUTIONS, :  
INC., OBJECTORS :

v.

RELIANCE INSURANCE COMPANY IN :  
LIQUIDATION, (ANCILLARY MATTER TO :  
IN RE: RELIANCE INSURANCE :  
COMPANY IN LIQUIDATION, NO. 1 REL :  
2001) :

APPEAL OF: WARRANTECH :  
CONSUMER PRODUCTS SERVICES, :  
INC., WARRANTECH HOME SERVICE :  
COMPANY, WARRANTECH HOME :  
ASSURANCE COMPANY, WCPS OF :  
FLORIDA, INC., WARRANTECH :  
AUTOMOTIVE, INC., WARRANTECH :  
AUTOMOTIVE OF FLORIDA, INC., :  
BUTLER FINANCIAL SOLUTIONS, LLC, :  
A/K/A BUTLER FINANCIAL SOLUTIONS, :  
INC., OBJECTORS :

**CONCURRING OPINION**

I agree with the majority insofar as it concludes that the phrases “[a]ll insurance in effect” and “risks in effect,” as they appear in Section 521 of the Insurance Department Act, see 40 P.S. §221.21, include risks arising under Reliance’s insurance policies cancelled prior to liquidation, where the terms of the coverage itself were still in effect as of October 3, 2001. I write separately because, in my view, it does not follow that claims falling outside the 30-day window must be valued at zero for distribution purposes, as indicated in the notices of determination, see, e.g., R.R. 32a, and affirmed by the referee, see id. at 143a-160a.

Section 521 only delays, for certain types of insurance claims, the date on which the assets and liabilities of the insurer are otherwise “fixed.” 40 P.S. §221.20(d). It does so by changing that date from the filing of the liquidation petition to thirty days after the liquidation order. Under my reading of the Act, this “fixing” of assets and liabilities pertains to the makeup of the estate to be liquidated and distributed to claimants. Prior thereto, the insurance policies continue in force as insurance. See 40 P.S. §221.21 (providing that “insurance in effect . . . shall continue in force” for the stated time period).

More to the point, I am unable to discern anything within the statutory liquidation and distribution scheme that would prevent proofs of claim (POCs) based on losses that fall outside Section 521’s time window from being resolved via the ordinary distribution process undertaken by the liquidator. Indeed, to hold that POCs for such losses must automatically be assigned a zero value would run directly counter to Article V’s stated purpose to equitably apportion any unavoidable loss and thereby protect insureds, creditors, and the public generally (for example, consumers who purchased service contracts issued by Warrantech). See 40 P.S. §221.1(c); Sheppard v. Old Heritage Mut. Ins. Co., 492 Pa. 581, 589, 425 A.2d 304, 307-08 (1980).

As applied here, the POCs have a priority level of (b) because they are “claims under policies for losses,” 40 P.S. §221.44(b) – that is, they request reimbursement of payments Warrantech has made under the service contracts covered by insurance policies issued by Reliance to Warrantech. See In re Objection of Warrantech Consumer Prod. Servs., Inc., No. 269 M.D. 2001, slip op. at 2, 11-12 (Pa. Cmwlth. Sept. 27, 2010) (single-judge opinion by Leadbetter, P.J.). It would make little sense to read the Act as mandating that claims against the estate falling into priority level (c) and below may be paid out from the estate’s assets, whereas claims (such as those at issue here) at priority level (b) have no value and cannot be paid out at all, simply because, under Section 521, they were no longer insurance claims as such. See 40 P.S. §221.44 (“Every claim in each class shall be paid in full . . . before the members of the next class receive any payment.”); see also id. §221.46 (“[T]he liquidator shall pay distributions in a manner that will assure the proper recognition of priorities.”).<sup>1</sup> In this regard, the parties have not suggested any basis to believe that the claims with priority level (a) will deplete the estate’s assets.

Notwithstanding the above, in the present appeal Warrantech has taken an all-or-nothing approach, opting to argue that its insurance coverage as such remained in effect after the thirty-day window because the policies under which that coverage came into being had been cancelled well before the date of the liquidation order. See Brief for Appellant at 9 (“The Commonwealth Court’s resolution of the Cancellation Issue is the

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<sup>1</sup> Indeed, I find the liquidator’s position in this litigation to lack substantial consistency. When the POCs were initially filed, the liquidator assigned them a priority level of (e), but refrained from immediately assigning a value in view of the possibility that the estate would have been depleted before reaching claims at that level. It follows that the liquidator believed there was some chance, however small, that the POCs might ultimately have a non-zero value. When, however, the Commonwealth Court ordered that the claims be elevated to level (b), the liquidator assigned them an automatic value of zero based on Section 521.

sole issue in this appeal.”). As noted, I agree with the majority that Warrantech’s argument in this regard cannot prevail. Since Warrantech has not forwarded any alternative basis to value the claims at a non-zero figure, and has not requested relief in the form of a remand to the liquidator to value the claims in the ordinary course of the liquidation, I ultimately agree with the majority that the order of the Commonwealth Court confirming a zero value must be affirmed.