

[J-64-2004]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JULES CIAMAICHELO AND ROB STEVENS, INC.,	:	No. 223 MAP 2003
	:	
Appellants	:	Appeal from the Order of the Commonwealth Court entered December 20, 2002 at No. 1969 CD 2002, reversing the Order of the Court of Common Pleas of Bucks County, Civil Division, entered July 19, 2002 at No. 2001-04985.
v.	:	
INDEPENDENCE BLUE CROSS,	:	
	:	
Appellee	:	814 A.2d 800 (Pa. Cmwlth. 2002)
	:	
	:	ARGUED: October 19, 2004

DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: November 21, 2006

The majority frames the issues raised by the Complaint in a broad fashion, see Majority Slip Op., at 9, but in the end, these issues are resolved by determining whether IBC's surplus is excessive. Although appellants allege IBC violated the non-profit corporation law, breached its fiduciary duties, and breached its contract, these claims necessarily involve resolution of proper setting of rates and reserves. The setting of rates and reserves is within the Insurance Department and its Commissioner's province and expertise. 40 Pa.C.S. § 6124(a).

The practical question before this Court is who should make that determination, for both trial court and Insurance Department have authority to do so¹. If both have the

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A person complaining of anything done or omitted to be done by a person subject to the jurisdiction of an agency, in violation of a statute or regulation administered or issued by the agency may file a complaint with the agency. If the complaint relates to a provision in a tariff, policy form or other similar contract document on file with the agency, the document (continued...)

authority, who has the expertise? If the doctrine of primary jurisdiction prevails, the trial court should refer the matter to the Insurance Department since the question of the appropriateness of IBC's reserve holdings is within its jurisdiction and is a complex matter within its expertise. If the Department found the holdings were not excessive, the trial court would have to dismiss the case, as no controversy would exist. On the other hand, if the Department found the holdings were excessive, the Department would have to determine the proper course of action for releasing the excess funds held. This would likewise leave nothing for the trial court to resolve, as appellants have asked for no compensatory damages, other than attorneys' fees and costs of litigation.

The appellants bypassed the Department's area of expertise by asking the courts to determine whether their insurance provider is holding excess reserves and surpluses². In my judgment, IBC's reserve holdings should be challenged there, for the

(...continued)

should be identified. A copy of the complaint will be forwarded by the agency and to the respondent who will be called upon to satisfy the complaint or to answer the same in writing If, in the judgment of the agency, a violation of a statute or regulation administered or issued by the agency has been alleged and has not been satisfied adequately the agency will either invite the parties to an informal conference, set the matter for a formal hearing, or take another action which in the judgment of the agency is appropriate. In the event that a hearing is held the complainant automatically shall be a party thereto and need not file a petition for leave to intervene.

1 Pa. Code § 35.9.

² Since the initiation of this suit, IBC and the other Pennsylvania Blue Insurance Plans sought approval of their reserves and surpluses by the Insurance Commissioner. The Commissioner issued a determination and order February 9, 2005, which laid out the range of acceptable surplus levels and ordered for the 2003 calendar year IBC's surplus level was "efficient." Insurance Department Order, Re: Applications of Capital Blue Cross, et al., Misc. Docket No. MS05-02-006, at 1.

(continued...)

Insurance Department can provide complete redress of all of appellants' issues; thus, it has exclusive jurisdiction over the claim. See generally Empire Sanitary Landfill, Inc. v. Commonwealth, Department of Environmental Resources, 684 A.2d 1047, 1053 (Pa. 1996) (quoting National Solid Wastes Management Association v. Casey, 580 A.2d 893, 897 (Pa. Cmwlth. 1990), aff'd, 619 A.2d 1063 (Pa. 1993)) ("A court is '[t]o defer judicial review where the question presented is one within an agency specialization and where the administrative remedy is likely to produce the desired result.'). Appellants can pursue their challenge to the alleged excessive reserves and surpluses IBC held through the Insurance Department. 1 Pa. Code § 35.9.

Therefore, I would affirm the Commonwealth Court's grant of preliminary objections.

(...continued)

Additionally, appellants filed a complaint in the Insurance Department requesting the Insurance Commissioner make a determination that IBC's surpluses and reserves are excessive and order appropriate relief. The Insurance Commissioner issued an order dismissing the complaint because appellants did not utilize the proper vehicle to raise their challenge; a class action complaint was not the proper vehicle. Order of Insurance Commissioner, Docket No. FC03-01-036, filed June 17, 2004.