

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

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JANET COX,	:	January Term, 2005
Plaintiff	:	No. 960
	:	
v.	:	Commerce Program
	:	
PENNSYLVANIA PROPERTY AND	:	
CASUALTY INSURANCE GUARANTY	:	Control Nos. 052697,
ASSOCIATION, ABINGTON MEMORIAL	:	: 062370
HOSPITAL, PARVIZ F. HANJANI, M.D.	:	
	:	
Defendants.	:	

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**ORDER and MEMORANDUM**

**AND NOW**, this 27<sup>TH</sup> day of October 2005, upon consideration the parties' Cross-Motions for Summary Judgment, the responses thereto, all other matters of record and in accordance with the Opinion being filed contemporaneously with this Order, it hereby is **ORDERED** and **DECREED** as follows:

1. The Motion of Defendant Pennsylvania Property and Casualty Insurance Guaranty Association ("PPCIGA") (Control No. 052697) is **DENIED**.
2. The Motion of Plaintiff Janet Cox and Defendants Abington Memorial Hospital ("Abington") and Parviz Hanjani, M.D. ("Dr. Hanjani") (Control No. 062370) is **GRANTED**. Specifically, it is the determination of this court that PPCIGA is obligated to make separate payments on behalf of each insured defendant, Abington and Dr. Hanjani, in the underlying medical malpractice action.

**BY THE COURT:**

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**HOWLAND W. ABRAMSON, J.**

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Defendants.	:	

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**MEMORANDUM OPINION**

***HOWLAND W. ABRAMSON, J***

Before the court are the Cross-Motions for Summary Judgment of Defendant Pennsylvania Property and Casualty Insurance Guaranty Association (“PPCIGA”) (Control No. 052697), and Plaintiff Janet Cox (“Plaintiff”), Defendant Abington Memorial Hospital (“Abington”) and Defendant Parviz Hanjani, M.D. (“Dr. Hanjani”) (Control No. 062370). For the reasons fully set forth below, this court enters summary judgment in favor of Plaintiff and Defendants Abington and Dr. Hanjani and against PPCIGA.

**BACKGROUND**

On or about June 5, 2002, Plaintiff Janet Cox commenced an action to recover damages from Abington and Dr. Hanjani for their alleged medical negligence. Compl. at ¶ 6. At the conclusion of trial, the jury returned a verdict in Plaintiff’s favor and awarded \$1,539,803.50 in compensatory damages. *Id.* at ¶ 7. The jury verdict was subsequently affirmed on appeal. *Id.* at

¶¶ 9-10. The jury found Dr. Hanjani to be 20% responsible and Abington 80% responsible for Plaintiff's damages. Def. New Matter at ¶ 22.

Both Abington and Dr. Hanjani were insured by PHICO Insurance Company ("PHICO") under a policy of insurance issued during the pertinent policy period (the "Policy"). In the Policy, Abington was a named insured under the Institutional Professional Liability Coverage Part for medical malpractice claims; Dr. Hanjani was covered under the Physician and Surgeon Professional Liability Coverage Part. Pl. Resp. Exh. "A" and "B." In an endorsement to the Policy, Dr. Hanjani also was specifically named as an insured and PHICO charged an additional premium of \$10,807.00 based on Dr. Hanjani's medical specialty. Id. at "C" and "D." At all times pertinent hereto, Dr. Hanjani was an employee of Abington.

PHICO was declared insolvent and placed in liquidation by order of the Commonwealth Court on February 1, 2002 (the "Liquidation Order"). The Liquidation Order triggered the obligations of PPCIGA to the extent provided under the Pennsylvania Property and Casualty Insurance Guaranty Association Act, 40 P.S. §§ 991.1801-991.1820 (the "Act"). In accordance with its obligations under the Act, on or about October 12, 2004, PPCIGA tendered a check to Plaintiff in the amount of \$274,812.00, alleging that this amount represented PPCIGA's limit of liability in the underlying medical malpractice claim, *i.e.*, a statutory limit of \$300,000.00 "per claimant", minus any statutory setoff to which it was entitled.

Plaintiff disagreed with this assessment, arguing that, at bar, PPCIGA's actual liability limit under was \$600,000.00, minus any statutory deductions. As a result, Plaintiff instituted the instant declaratory judgment action seeking a judicial determination that PPCIGA is obligated to pay on behalf of each of the defendants, Abington and Dr. Hanjani, in the underlying medical

malpractice action. PPCIGA argues that its obligation is to pay \$300,000.00 “per claimant” and that in a medical malpractice action, only the plaintiffs can be “claimants” under the Act. Based on this interpretation, PPCIGA claims that it was only obligated to make one \$300,000.00 payment in the underlying action because there was only one plaintiff, Janet Cox. The parties have filed cross-motions for summary judgment as to this issue.

### **DISCUSSION**

PPCIGA is a statutory unincorporated association vested with remedial obligations in circumstances where licensed property and casualty insurers are deemed insolvent. 40 P.S. § 991.1801; Bell v. Slezak, 571 Pa. 333, 812 A.2d 566 (2002). PPCIGA obtains funding to satisfy claims obligations of insolvent insurers by collecting monies from all insurance companies that write property and casualty insurance in the Commonwealth. 40 P.S. § 991.1808. Under the circumstances of PHICO’s insolvency, PPCIGA would ordinarily assume payment of the insolvent insurer's obligations arising from claims made under the insurance policies of its insureds, subject to the limitations embodied in the Act. 40 P.S. § 991.1803 (b)(1).

Under the Act, PPCIGA is "deemed the insurer to the extent of its obligation on the covered claims and, to such extent, shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent." 40 P.S. § 991.1803 (b)(2); *see e.g.*, Donegal Mut. Ins. Co. v. Long, 528 Pa. 295, 300-01, 597 A.2d 1124, 1127 (1991); Matusz v. Safeguard Mut. Ins. Co., 340 Pa. Super. 116, 118-19, 489 A.2d 868, 870 (1985). Thus, under the statutory scheme of the Act, PPCIGA “steps into the shoes” of the insolvent insurer and, as a result, accepts certain legal defense obligations in connection with “covered claims” against insureds of insolvent insurers which arise under the policy in question. 40 P.S. § 991.1803 (b)(3).

Specifically, PPCIGA is obligated to pay “covered claims”<sup>1</sup> in “an amount not exceeding three hundred thousand dollars (\$ 300,000.00) **per claimant.**” 40 P.S. § 991.1803 (b)(1)(i) (emphasis added).

The discreet issue before the court is whether, under the Act, PPCIGA is obligated to tender \$300,000.00 on behalf of Abington and additional \$300,000.00 on behalf of Dr. Hanjani. Clearly, such a determination turns on the definition of “claimant,” which is not specifically defined by the Act. This exact issue has not yet been addressed by the Pennsylvania Supreme Court, however, the Court has come to some specific conclusions which directly impact the case at bar and appear to guide the result of this inquiry. First, the Supreme Court has defined the term “claimant”, as used in § 991.1803(b)(1)(B) of the Act, as “one possessed with a ‘covered claim,’ subsuming, *inter alia*, losses occasioned to third parties caused by the insured, and for which the insured would be entitled to recompense from its insurer, but for the insurer insolvency.” Keystone Aerial Surveys, Inc. v. PPCIGA, 574 Pa. 147, 157; 829 A.2d 297, 304 (2003). The Supreme Court has concluded that both first party and third party claimants may possess “covered claims” for purposes of the Act. Bell, 571 Pa. at 344, 812 A.2d at 572. Accordingly, logic dictates that since both may possess “covered claims,” both may necessarily be deemed “claimants”, a conclusion supported by the language in Bell.

However, in rendering these decisions, the Supreme Court had not specifically addressed the issue at bar, *i.e.*, whether under the Act, PPCIGA is obligated to tender \$300,000.00 on behalf of each of the named insureds. This specific issue was addressed by the Commonwealth Court’s decision in Main Line Health, Inc. v. Pennsylvania Med. Professional Liab. Catastrophe

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<sup>1</sup> A “covered claim” is defined by the Act as an “unpaid claim...submitted by a claimant, which arises out of and is

Loss Fund, 738 A.2d 66, 1999 Pa. Commw. LEXIS 721 (1999), in which the court concluded that a “claimant” under the Act is limited only to the “patient-victim,” and not the “insured physician and the professional corporation for which the physician practices.” Id. However, in Bell, the Supreme Court took specific note of the Commonwealth Court’s determination that “insureds of the insolvent insurer are claimants under the Act” and in doing so, made it clear that, in affirming Main Line Health, it did not approve the Commonwealth Court’s reasoning, only the result in light of the specific facts of the case. Bell, 571 Pa. 334, n. 7.

In light of the foregoing, this court is not bound – nor persuaded by – the Commonwealth Court’s reasoning in Main Line Health. See Valley Medical Facilities, Inc. v. PPCIGA, 70 Pa. D.&C.4<sup>th</sup> 37 (Com. Pl. Beaver Co. 2004)(concluding that Main Line Health is not binding on Court of Common Pleas).<sup>2</sup> Rather, this court finds that insureds of the insolvent insurer may be claimants under the Act, a conclusion which seemingly is more consistent with the Supreme Court’s view of the issue. See e.g. Elliot-Reese v. Medical Professional Liability Catastrophe Fund, 574 Pa. 705, 706 n.1, 833 A.2d 138, 139 n.1 (2003).

Moreover, such a conclusion is consistent with the intent behind the Act. Pursuant to the Statutory Construction Act, the court’s purpose is to “ascertain and effectuate the intention of the General Assembly.” 1 Pa. C.S. § 1921 (a). In doing so, the court may consider, *inter alia*, the “object to be attained” by the statute and the “consequences of a particular interpretation.” 1 Pa. C.S. § 1921 (c)(4). Thus, in determining the issue at bar, one must not lose focus of the purpose behind the Act, which includes providing “...a means for the payment of covered claims under

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within the coverage and is subject to the applicable limits of an insurance policy to which this article applies...” 40 P.S. § 991.1802.

<sup>2</sup> Although not binding upon this court, this court is persuaded by the court’s conclusion in Valley Medical Facilities that Main Line Health is not binding upon it and finds that the same reasoning is also applicable to the case at bar.

certain property and casualty insurance policies, to avoid excessive delay in the payment of such claims and to avoid financial loss to claimants or policyholders as a result of the insolvency of an insurer.” 40 P.S. § 991.1801.<sup>3</sup> Such an interpretation is likewise consistent with the goal of the Act, which is to “protect claimants and policyholders, and not for the guiding purpose of limiting recovery.” Keystone, 574 Pa. at 153. As noted by the Supreme Court “a finding that only one claim may arise out of a single occurrence would largely defeat the remedial purpose of the [Act] – to protect claimants and policyholders from financial losses associated with the insolvency of an insurance company. “ Id. at 158.

Finally, under the Act, PPCIGA is "deemed the insurer to the extent of its obligation on the covered claims and, to such extent, shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.” 40 P.S. § 991.1803 (b)(2); *see e.g.*, Donegal Mut. Ins. Co. v. Long, 528 Pa. 295, 300-01, 597 A.2d 1124, 1127 (1991); Matusz v. Safeguard Mut. Ins. Co., 340 Pa. Super. 116, 118-19, 489 A.2d 868, 870 (1985). Had PHICO not become insolvent, there is no doubt that it would have had to pay on behalf of both its insureds, Dr. Hanjani and Abington, as each were found independently liable. This conclusion is further bolstered by the fact that Dr. Hanjani paid an additional \$10,807.00 in premiums above and beyond what Abington was required to pay in connection with the underlying medical malpractice action.

## CONCLUSION

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<sup>3</sup> While mindful of the fact that the Act refers separately to “policyholders” and “claimants” in certain sections, the court does not find this fact to be dispositive with respect to whether PPCIGA is obligated to make separate payments on behalf of each insured.

For the above-stated reasons, this court finds as follows:

1. PPCIGA's Motion for Summary Judgment is **denied**.
2. The Motion for Summary Judgment of Plaintiff Janet Cox and Defendants Abington Dr. Hanjani is **granted**.
3. It is the determination of this court that PPCIGA is obligated to make payment on behalf of each insured defendant, Abington and Dr. Hanjani, in the underlying medical malpractice action.

**BY THE COURT:**

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**HOWLAND W. ABRAMSON, J**