[J-29-ABCD-2008]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, JJ.

JOEL S. ARIO, INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA, IN HIS OFFICIAL CAPACITY AS LIQUIDATOR OF RELIANCE INSURANCE COMPANY,	:	No. 19 MAP 2006
	:	Appeal from the Order of the Commonwealth Court entered January 26, 2006 at No. 664 M.D. 2003
Appellant	:	
	:	ARGUED: March 3, 2008
v.	:	
INGRAM MICRO, INC.,	:	
Appellee	:	

JOEL S. ARIO, INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA, IN HIS OFFICIAL CAPACITY AS LIQUIDATOR OF RELIANCE INSURANCE COMPANY,	:	No. 20 MAP 2006
	:	Appeal from the Order of the Commonwealth Court entered January 26, 2006 at No. 666 M.D. 2003
Appellant	:	
	:	ARGUED: March 3, 2008
v.	:	
MITSUI & CO. (U.S.A.), INC.,	:	
Appellee	:	

JOEL S. ARIO, INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA, IN HIS OFFICIAL CAPACITY AS LIQUIDATOR OF RELIANCE INSURANCE COMPANY, Appellant v. H.J. HEINZ COMPANY, H.J. HEINZ COMPANY, L.P., H.J. HEINZ FINANCE COMPANY, AND PORTION PAC, INC., Appellees	:	No. 21 MAP 2006 Appeal from the Order of the Commonwealth Court entered January 26, 2006 at No. 668 M.D. 2003 ARGUED: March 3, 2008
JOEL S. ARIO, INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA, IN HIS OFFICIAL CAPACITY AS LIQUIDATOR OF RELIANCE INSURANCE COMPANY, Appellant v. APPLE COMPUTER, INC., Appellee	:	No. 22 MAP 2006 Appeal from the Order of the Commonwealth Court entered January 26, 2006 at No. 671 M.D. 2003 ARGUED: March 3, 2008

OPINION

MADAME JUSTICE TODD **DECIDED: February 23, 2009**

In this direct appeal from a single-judge Commonwealth Court order, we consider whether an insurer's pre-liquidation payment for a covered loss to an insured constitutes a preference, and thus is recoverable by a liquidator of the insurer pursuant to 40 P.S. § 221.30(a). For the reasons stated below, we conclude a payment made by an insurer to an insured in the ordinary course of business does not constitute antecedent debt, and therefore, is not a preference under Section 221.30(a). Accordingly, we affirm the order of the Commonwealth Court, albeit upon different reasoning than employed by that tribunal.

By way of background, when an insurer becomes insolvent, it is subject to different statutory treatment under the laws of the various states. Our Commonwealth's law of insurance rehabilitation and insolvency is codified in Article V of the Pennsylvania Insurance Department Act of 1921 ("Insurance Act").[1] One concern when an insurer becomes insolvent is the issue of preferences. Generally speaking, preferences are monies or property transferred to creditors on the eve of an insolvency petition, which places those creditors in a better position than they would be in if the money or property had not been transferred. See McCoid, Bankruptcy, Preferences, and Efficiency: An Expression of Doubt, 67 Va. L. Rev. 249, 249, 259-60 (1981). The liquidator of an insolvent insurer may institute a preference action to void certain transfers of property. Of course, a transfer, however, may be non-preferential if it does not fit within the statutory definition of a preference.

The Insurance Act sets forth what constitutes a preference in Section 221.30:

> § 221.30 Voidable preferences and liens

[1] Act of Dec. 14, 1977, P.L. 280, No. 92, § 2; 40 P.S. §§ 221.1-221.63.

> (a) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this article the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then transfers otherwise qualifying shall be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

40 P.S. § 221.30(a). In other words, a preference consists of a transfer to a creditor for an antecedent debt made within a certain period of time prior to the filing of a liquidation or rehabilitation petition. Section 221.30 permits the liquidator to void such preferential transfers made within one year before the filing of a successful petition for liquidation, or, if the liquidation order is entered while the insurer is already subject to a rehabilitation order, then transfers are deemed preferential if made within one year of the successful filing of the petition for rehabilitation.[2] With these background principles in mind, we turn to the facts of the case.

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[2] The rehabilitation and liquidation process was summarized by our Commonwealth Court in Vickodil v. Commonwealth, Ins. Dept., 126 Pa. Cmwlth. 390, 396, 559 A.2d 1010, 1012-13 (1989):

> Rehabilitation of an insurer may be ordered on any number of grounds relating to the conduct of business by the insurer or its financial condition. . . . Once ordered, the Insurance Commissioner is appointed rehabilitator by the Court and has broad discretion to structure a plan of rehabilitation. The rehabilitator is required to take possession of the insurer's assets . . . and has all the powers of its directors and officers to direct, manage and deal with the property and business of the insurer. . . . The powers and duties of a liquidator are generally the same. In short, the rehabilitator or liquidator step into the

(continued…)

The facts underlying this appeal are straightforward. In 1999, Reliance Insurance Company ("Reliance") issued various insurance policies each known as a "Trade Credit Insurance Policy" (each a "Policy" and, collectively, the "Policies") to Apple Computer, Inc. ("Apple"); H.J. Heinz Company, H.J. Heinz Company L.P., H.J. Heinz Finance Company, and Portion Pac, Inc. (collectively, "H.J. Heinz"); Ingram Micro, Inc. ("Ingram Micro"); and Mitsui & Co. ("Mitsui") (Apple, H.J. Heinz, Ingram Micro, and Mitsui, are collectively referred to as the "Policyholders"). Pursuant to each Policy, Reliance insured the respective Policyholder and agreed to indemnify the Policyholder for losses arising from the Policyholder's customers' nonpayment for goods and services.

Subsequently, each Policyholder suffered a loss falling within the terms of the Policy and, pursuant to the terms and conditions of the Policies, each Policyholder made a claim, through the filing of a Claim and Proof of Loss, with Reliance in 2000.[3] Following Reliance's determination that the losses were covered by the Policies, and execution of a "Certifications and Release Agreement" as required by the Policies, Reliance paid the various Policyholders amounts due under the Policies in 2000 and early 2001.[4]

(…continued)

> shoes of the insurer's officers and directors in the conduct of that insurer's affairs.

[3] Specifically, Apple filed a Claim and Proof of Loss on April 14, 2000. H.J. Heinz filed its Claim and Proof of Loss on February 25, 2000; Ingram Micro filed claims at some unverified date on or about this same time; Mitsui filed its Claim and Proof of Loss on June 9, 2000.

[4] Pursuant to the Policies, Reliance paid Apple $1,639,327.56 on August 7, 2000; H.J. Heinz $1,248,837.98 on August 28, 2000; Ingram Micro $240,827.24 on or about April 10, 2001, and $888,085.52 on or about May 8, 2001; and Mitsui $927,576.04 on August 28, 2000.

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