
By Mr. Bowker of Brookline, petition of Charles G. Lewis relative to appointment and compensation of the third referee in references under standard policies issued by fire insurance companies. Insurance.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Eight.

AN ACT RELATIVE TO THE APPOINTMENT AND PAYMENT OF THE THIRD REFEREE IN REFERENCES UNDER THE STANDARD FIRE INSURANCE POLICY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section one hundred of chapter one
2 hundred and seventy-five of the General Laws, as
3 appearing in the Tercentenary Edition, is hereby
4 amended by striking out the last paragraph, com-
5 mencing with the words "If, at the expiration", and
6 inserting in place thereof the following:—

7 If, at the expiration of ten days from the choice of
8 the second referee, the two referees chosen as herein-
9 before provided, shall not have agreed upon and
10 selected a person to act as the third referee, then
11 either of the said referees or parties may file a petition
12 under oath in the superior court for the appointment
13 of the third referee and any justice of the superior
14 court may, after such summary inquiry or hearing, if
15 any, as he may deem expedient, appoint a person to

16 serve as the third referee and, upon making any such
17 appointment, shall cause such person and the parties
18 to be notified in writing of such appointment.

1 SECTION 2. Said chapter one hundred and seventy-
2 five of the General Laws is hereby further amended
3 by striking out section one hundred A, as appearing in
4 the Tercentenary Edition, and inserting in place
5 thereof the following: —

6 *Section 100A.* If, before an award is determined
7 upon by the referees, any referee, including a referee
8 appointed under this section, dies, resigns, is inca-
9 pacitated, removes from the commonwealth or for any
10 other reason is unable or refuses to serve, the com-
11 pany, if such referee was chosen by the insured, or the
12 insured, if such referee was chosen by the company,
13 or the company, the insured or the two referees chosen
14 by the insured and the company if such referee is a
15 third referee chosen by the said two referees, or the
16 company, the insured or either of said two referees,
17 if such referee is the third referee appointed by the
18 superior court, shall forthwith file a petition under
19 oath in the superior court for the appointment of
20 another referee. The petition, unless it seeks the
21 appointment of a third referee to succeed a third
22 referee appointed by the superior court, shall specify
23 the full names and addresses of three persons. Any
24 justice of the superior court may, after such summary
25 inquiry or hearing, if any, as he may deem expedient,
26 appoint a referee to fill the vacancy, but if the petition
27 specifies names as aforesaid he shall appoint one of
28 the persons so specified. The justice of the superior
29 court making such appointment shall cause written
30 notice thereof to be given to the appointee, to the

31 parties and to the other referees. Nothing in this
32 section shall be construed to prohibit the insured and
33 the company from filling any vacancy by mutual
34 agreement.

1 SECTION 3. Section one hundred B of said chapter
2 one hundred and seventy-five, as so appearing, is
3 hereby amended by striking out, in the sixth line, the
4 words "the commissioner" and inserting in place
5 thereof:— a justice of the superior court,— by
6 striking out, in the seventh line, the word "applica-
7 tion" and inserting in place thereof the words:—
8 filing the petition,— by striking out, in the twelfth
9 line, the words "an application to the commissioner"
10 and inserting in place thereof the words:— a petition
11 filed in the superior court,— and by striking out, in
12 the last line, the word "application" and inserting in
13 place thereof the word:— petition,— so as to read
14 as follows:— *Section 100B.* Every person nomi-
15 nated, specified or appointed under either of the two
16 preceding sections shall be disinterested, a resident
17 of the commonwealth and willing to act as referee.
18 Service as referee for either party within four months
19 prior to the date of nomination or specification for
20 appointment, or, in case of a third referee chosen by
21 the two referees, the date of the choice of the second
22 referee, or, if appointed by a justice of the superior
23 court without specification, the date of filing the peti-
24 tion for appointment, shall be a disqualification for
25 nomination, specification or appointment as aforesaid,
26 unless with the written consent of the insured in case
27 of a referee nominated by the company, of the com-
28 pany in case of a referee nominated by the insured,
29 and of both in case of a third referee. No person shall

30 be specified in a petition filed in the superior court who
31 has been previously nominated by either party in
32 connection with the reference proceedings to which
33 the petition relates.

1 SECTION 4. Said chapter one hundred and seventy-
2 five is hereby further amended by striking out section
3 one hundred and one B, as so appearing, and inserting
4 in place thereof the following: —

5 *Section 101B.* The third referee shall receive com-
6 pensation at the same rate as is paid to auditors and
7 masters under appointment by the superior court.
8 The company and the insured shall, if an award is
9 rendered by the referees in favor of the insured, each
10 be liable to the third referee for one half of his charges
11 for compensation. The company shall, if an award is
12 rendered in its favor or if no award is rendered, be
13 liable to the third referee for the full amount of his
14 compensation, but in such case, if the company makes
15 any payment to the insured in settlement of his claim,
16 it may deduct therefrom one half of such compensa-
17 tion. The third referee shall forthwith, upon the
18 publication of an award in favor of the insured, fur-
19 nish the company and the insured with a written
20 statement specifying in detail his compensation at the
21 rate herein provided, and he shall forthwith upon the
22 publication of an award in favor of the company, or if
23 no award is rendered, furnish such a statement to the
24 company alone. The company or the insured, if
25 aggrieved by the amount of compensation so claimed
26 by the third referee, may within ten days from such
27 publication, or, if no award is rendered, from the rec-
28 ommendation of said statement, file with the superior

29 court a petition for a review thereof. A justice of the
30 superior court after due hearing, notice of which shall
31 be given by the court to all parties in interest, shall
32 review and approve or disapprove the amount of
33 compensation so claimed, in whole or in part, and his
34 findings and decision shall be forthwith communicated
35 in writing to the parties and shall, as well as all find-
36 ings of fact made by the court under section one hun-
37 dred, section one hundred A, or section one hundred B,
38 be final and conclusive.

1 SECTION 5. Section one hundred and one C of said
2 chapter one hundred and seventy-five, as so appearing,
3 is hereby amended by striking out, in the eleventh
4 line, the words "commissioner's decision" and insert-
5 ing in place thereof: — decision of the court, — so as
6 to read as follows: — *Section 101C.* Payment of the
7 third referee's charges, which shall be due and pay-
8 able, except as hereinafter provided, upon the expira-
9 tion of the ten day period provided by section one
10 hundred and one B for filing a petition for review, shall
11 in all cases be made by the company, deducting from
12 any award in favor of the insured his share of such
13 charges. Neither payment of such charges to the
14 referee or of an award to the insured, whether or not
15 the sixty day period prescribed in said standard form
16 of policy or in section one hundred and two has ex-
17 pired, shall be made prior to the expiration of said ten
18 day period unless the insured in writing waives his
19 right to petition for a review under section one hun-
20 dred and one B, nor until notice of the decision of the
21 court on such review if a petition therefor is filed as
22 aforesaid; but the company shall not be liable for

23 interest on an award during said period of ten days
24 or pending said decision.

25 The payment of the compensation or expenses, or
26 both, of any referee shall not in any case preclude the
27 insured or the company from contesting the validity of
28 the award.



