

00-255-CD

KELLY MCGLYNN -vs- GENERAL ACCIDENT INSURANCE COMPANY a/k/a

①
JK

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

v KELLY McGLYNN

Petitioner,

vs.

GENERAL ACCIDENT INSURANCE
COMPANY, also known as CGU
INSURANCE

Respondent,

No. 00-255-CO

PETITION TO COMPEL ARBITRATION

Filed on behalf of:
Plaintiff

Counsel of Record for
this Party:

James B. Cole, Esquire
Pa. I.D. #15801

STOKES LURIE COLE &
HENS-GRECO, P.C.
Firm #012

2100 Law and Finance Building
Pittsburgh, PA 15219

(412) 391-0800

FILED

6/10/2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

KELLY McGLYNN,

No.

Petitioner,

vs.

GENERAL ACCIDENT INSURANCE
COMPANY, also known as CGU
INSURANCE

Respondent.

PETITION TO COMPEL ARBITRATION

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

1. Your petitioner is an adult who resides at R.R. 1, Box 617, Houtzdale, Clearfield County, Pennsylvania.
2. The respondent is an insurance company that conducts business in Clearfield County, Pennsylvania. The Respondent was originally named General Accident Insurance Company but is now known as CGU Insurance as a result of a merger between General Accident Insurance Company and Commercial Union Insurance Company that occurred in 1998.
3. On September 30, 1995, your petitioner, Kelly McGlynn, was injured as the result of a motor vehicle accident.
4. The automobile accident was proximately caused by the negligence of Casey Collins.

5. At the time of the automobile accident, Casey Collins was insured by Ohio Casualty Insurance Company under a policy of insurance which provided bodily injury liability limits in the amount of \$100,000.00 per person.

6. Fair and reasonable compensation for the injuries sustained by your petitioner as a result of the automobile accident of September 30, 1995 would exceed the bodily injury liability limits of the policy issued to Casey Collins by Ohio Casualty Insurance Company.

7. At the time of the automobile accident, your petitioner was insured under an automobile insurance policy No. G 0219782-04 issued by the respondent, General Accident Insurance Company, which provided underinsured motorist coverage and which provided for arbitration of disputes over underinsured motorist claims. A copy of the arbitration provision of that policy is attached hereto as exhibit "A".

8. With the consent of the respondent your petitioner's claim against Casey Collins was settled for \$100,000.00 by a release dated January 22, 1998.

9. Your petitioner presented a claim to the respondent, General Accident Insurance Company, requesting payment under the underinsured motorist coverage of respondent's policy.

10. Your petitioner and the respondent were unable to agree upon a settlement of the claim and therefore your petitioner, through counsel, made a written request for arbitration of the claim on September 24, 1999. A copy of the letter requesting arbitration is attached hereto as Exhibit "B".

11. Almost five months have passed since petitioner's request for arbitration and the respondent has failed to appoint an arbitrator and proceed to arbitration.

WHEREFORE, your petitioner asks this Court to enter a Rule pursuant to 42 Pa. C.S.A. 7304(a), compelling the respondent to show cause why it should not proceed with arbitration by selecting an arbitrator.

STOKES LURIE COLE & HENS-GRECO, P.C.

By: James B. Cole
James B. Cole
Attorneys for Petitioner

VERIFICATION

I verify that the averments of fact made in the foregoing Petition to Compel Arbitration are true and correct and based upon my personal knowledge, information and belief. I understand that averments of fact in said document are made subject to the penalties of 18 PA. C.S. Section 4904, relating to unsworn falsification to authorities.



James B. Cole

b. If two or more Coverage Forms or policies have equal priority:

- (1) The insurer against whom the claim is first made shall process and pay the claim as if wholly responsible for all insurers with equal priority;
- (2) The insurer thereafter is entitled to recover pro rata contribution from any other insurer on the same level of priority for the benefits paid and the costs of processing the claim; and
- (3) If we are the insurer against whom the claim is first made, we will pay, subject to the limit of insurance for Underinsured Motorists Coverage shown in the Declarations, after all contributing insurers agree as to:
 - (a) Whether the "insured" is legally entitled to recover damages from the owner or driver of an "underinsured motor vehicle"; and
 - (b) The amount of damages.

4. TWO OR MORE COVERAGE FORMS OR POLICIES ISSUED BY US does not apply.

5. The following Condition is added:

ARBITRATION

a. If we and an "insured" disagree whether the "insured" is legally entitled to recover damages from the owner or driver of an "underinsured motor vehicle" or do not agree as to the amount of damages, either party may make a written demand for arbitration. Each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.

b. Arbitration shall be conducted in accordance with the Pennsylvania Uniform Arbitration Act. Unless both parties agree otherwise, arbitration will take place in the county in which the "insured" lives. Local rules of law as to arbitration procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding.

F. ADDITIONAL DEFINITIONS

As used in this endorsement:

1. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child.
2. "Occupying" means in, upon, getting in, on, out or off.
3. "Underinsured motor vehicle" means a vehicle for which the sum of all liability bonds or policies that apply at the time of an "accident" do not provide at least the amount an "insured" is legally entitled to recover as damages.

However, an "underinsured motor vehicle" does not include any vehicle:

- a. Owned or operated by a self-insurer under any applicable motor vehicle law;
- b. Owned by a governmental unit or agency; or
- c. Designed for use mainly off public roads while not on public roads.

EXHIBIT

A

LAW OFFICES
STOKES LURIE COLE & HENS-GRECO, P.C.

JAMES B. COLE
SAM R HENS-GRECO
KATHRYN M. HENS-GRECO

2100 LAW AND FINANCE BUILDING
429 FOURTH AVENUE
PITTSBURGH, PA 15219-1593

Of Counsel

HERBERT M. LURIE

TELEPHONE: (412) 391-0800
FAX: (412) 391-2183

September 24, 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Allan C. Molotsky, Esquire
Post & Schell, P.C.
19th Floor
1800 John F. Kennedy Boulevard
Philadelphia, PA 19103-7480

Re: McGlynn v. General Accident Insurance Co.
Your File No. 83225
No. 96-269-CD

Dear Mr. Molotsky:

Kelly McGlynn demands arbitration of her underinsured motorist claim against General Accident Insurance Company. I have appointed John A. Caputo, Esquire as an arbitrator. Mr. Caputo's address is 3 Gateway Center, Fifth Floor East, Pittsburgh, PA 15222 and his telephone number is (412) 391-4990.

Kindly appoint an arbitrator so that the two arbitrators may select a third.

Very truly yours,



James B. Cole

JBC/ng

cc: John A. Caputo, Esquire

EXHIBIT

B

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

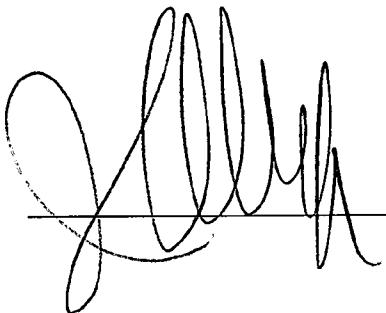
KELLY McGLYNN, :
Petitioner, : No.
vs. :
GENERAL ACCIDENT INSURANCE :
COMPANY, also known as CGU :
INSURANCE :
Respondent :
:

RULE TO SHOW CAUSE

AND NOW, this 7th day of March, 2000, upon petition of Kelly McGlynn, a Rule is hereby issued upon respondent, General Accident Insurance, also known as CGU Insurance to show cause why it should not appoint an arbitrator and proceed to arbitration on the underinsured motorist claim of Kelly McGlynn.

Rule returnable the 7th day of April, 2000, at 1:30 o'clock, P.M., in courtroom number 1 before the Honorable Judge Rilly.

BY THE COURT:


J.

FILED

MAR 07 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

b1 KELLY McGLYNN,

Petitioner,

vs.

113 GENERAL ACCIDENT INSURANCE
COMPANY, also known as CGU
INSURANCE,

Respondent.

No. 00-255-CD

**PRAECIPE TO SETTLE
AND DISCONTINUE**

Filed on behalf of:
Petitioner

Counsel of Record for this
Party:

James B. Cole, Esquire
Pa. I.D. #15801

STOKES LURIE COLE &
HENS-GRECO, P.C.
Firm #012

2100 Law & Finance Building
Pittsburgh, PA. 15219-1593
(412) 391-0800

FILED

APR 26 2000

William A. Shaw
Prothonotary

(2)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

KELLY McGLYNN,

No. 00-255-CD

Petitioner,

vs.

GENERAL ACCIDENT INSURANCE
COMPANY, also known as CGU
INSURANCE,

Respondent.

PRAECIPE TO SETTLE AND DISCONTINUE

TO: WILLIAM SHAW, PROTHONOTARY

Kindly settle and discontinue the above-captioned case and mark it off the
docket.

STOKES LURIE COLE & HENS-GRECO, P.C.

By: James B. Cole
James B. Cole
Attorneys for Petitioner

COMMONWEALTH OF PENNSYLVANIA

: SS:

COUNTY OF ALLEGHENY

SWORN and SUBSCRIBED before me this

____ day of _____, 2000.

Notary Public

FILED

APR 26 2000

William A. Shaw
Prothonotary
Court. Do. to
A. H. Cole

Copy to CA
Fees

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
CIVIL DIVISION

KELLY McGLYNN

Plaintiff(s)

vs.

No. 00-255-CD

GENERAL ACCIDENT INSURANCE CO.

a/k/a CGU INSURANCE

Defendant(s)

COPY

CERTIFICATE OF DISCONTINUANCE

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

I, WILLIAM A. SHAW, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was this day, the 26th of April A.D. 2000, marked:

SETTLED and DISCONTINUED.

Record costs in the sum of \$80.00 have been paid in full by

James B. Cole, Esquire

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 26th day of April A.D. 2000.

Prothonotary

GEORGE S. TEST (3)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
DOUGLAS DRILL SERVICES, INC. 00-252-CD
VS
DYNATECH CORPORATION

COMPLAINT
SHERIFF RETURNS

NOW MARCH 23, 2000, SHERIFF OF BERGEN COUNTY, NEW JERSEY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON DYNATECH CORPORATION DEFENDANT. THE COMPLAINT WAS SENT CERT. MAIL #Z296 062 153 TO BERGEN COUNTY SHERIFF. THE RETURN RECEIPT CARD WAS NEVER SENT BACK TO OUR OFFICE.

NOW APRIL 13, 2000 SERVED THE WITHIN COMPLAINT ON DYNATECH CORPORATION, DEFENDANT BY DEPUTIZING THE SHERIFF OF BERGEN COUNTY, NEW JERSEY. THE RETURN OF SHERIFF OF BERGEN COUNTY, NEW JERSEY IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED ISMAEL RODRIGUEZ, AGENT FOR DEFENDANT

33.18 SHFF. HAWKINS PAID BY: ATTY.
20.60 BERGEN COUNTY, N.J. PAID BY: ATTY.
10.00 SURCHARGE PAID BY: ATTY.

SWORN TO BEFORE ME THIS

3rd DAY OF March 2000
Gale

SO ANSWERS,

Chester A. Hawkins
by Marilyn Hays
CHESTER A. HAWKINS
SHERIFF

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co., Clearfield, PA.

FILED

MAY 03 2000
3:46
William A. Shaw
Prothonotary C
X18

***** AFFIDAVIT OF SERVICE ***** 4/10/00

SHERIFFS NUMBER..L 165844 DEFENDANT SEQUENCE 001 OF 001 OFFICER.....
TYPE OF SERVICE..... SUMMONS AND COMPLAINT
I, JOSEPH L. CICCONE, SHERIFF OF BERGEN COUNTY, DO HEREBY DEPUTIZE

Slo Koldich

(PRINT OFFICER'S NAME)

AND APPOINT TO BE MY DEPUTY TO EXECUTE AND RETURN THE WRIT ACCORDING TO LAW.
***** ATTORNEY

GEORGE S. TEST JR.

P.O. BOX 706

PHILIPSBURG

PA 16866

APR 26 2000
GEORGE S. TEST ATTORNEY AT LAW

CHECK # 4074

AMOUNT 20.60

CONTROL # 288014

COURT DATA KIM
COURT OF ISSUANCE..... COURT OF COMMON PLEAS OF PENNSYLVANIA

RETURN DATE 0/00/00 TIME : DAYS 00

DOCKET....002522000 STATE....PA COUNTY OF VENUE....CLEARFIELD

CORPORATION NAME..... DOUGLAS DRILL SERVICES INC.

VS... DYNATECH CORPORATION

DEFENDANT OR NAMED WITHIN TO BE SERVED
COPORATION NAME..... DYNATECH CORPORATION

ADDRESS 1..... 16 HORIZON RD

ADDRESS 2..... #2307

TOWN/STATE/ZIP..... FORT LEE

NJ 07024

PAPERS SERVED
NOTICE COMPLAINT

S E R V I C E D A T A R E C O R D E D
X...SERVED SUCCESSFULLY | |...UNABLE TO SERVE DATE.. 4-13-00
TIME.. 10:05:11

REMARKS: |

| | | OFFICER
| | | MANAGING AGENT
| | | REGISTERED AGENT
| | | PERSON IN CHARGE AT REGISTERED OFFICE OF
| | | AGENT AUTHORIZED TO ACCEPT SERVICE

ATTEMPTS | |

PERSON SERVED.....

Ismael Rodriguez

SEX : MALE | | FEMALE

SKIN : WHITE | | BLACK | | YELLOW | | BROWN | | RED

HEIGHT: | | UNDER 5 FEET | | 5.0-5.6FT | | 5.7-6.0 | | OVER 6FT

WEIGHT: | | UNDER 100LBS | | 100-150LBS | | 151-200LBS | | OVER 200LBS

HAIR : | | BLACK | | BROWN | | BLOND | | GRAY | | RED | | WHITE | | BALDING

AGE : | | 14-20 | | 21-35 | | 36-50 | | 51-65 | | OVER 65

SWORN TO AND SUBSCRIBED BEFORE ME
ON APR. 18, 2000

Slo Gene Koldich
SIGNATURE

DEPUTY SHERIFF OF BERGEN COUNTY
STATE OF NEW JERSEY

Susan McGovern
Notary Public of New Jersey
My Commission Expires June 29, 2003

Susan McGovern

STATE OF NEW JERSEY
COUNTY OF BERGEN} SS.:

I, Kathleen A. Donovan, Clerk of the County of Bergen
(the same being an office of Record of the aforesaid County,
having by law a seal)

DO HEREBY CERTIFY, That, SUSAN MCGOVERN,
whose name is subscribed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking said
acknowledgment, proof or affidavit, a NOTARY PUBLIC, duly commissioned and sworn and residing in said State, and
was, as such NOTARY PUBLIC, an officer of said State duly authorized by the laws thereof to take and certify the same,
as well as to take and certify the proof and acknowledgment of deeds for the conveyance of land, tenements or hereditaments,
and other instruments in writing to be recorded in said State, and that the said acknowledgment is duly executed and
taken according to the laws of said State, and that I am well acquainted with his handwriting and verily believe the
signature to the attached certificate is his/her genuine signature.

And I do Further certify that the impression of the seal of such NOTARY PUBLIC is not required by the laws of this
State to be filed in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this

20th day of APRIL A.D. 2000

Kathleen A. Donovan Clerk

Deputy

Z 296 062 153

US Postal Service
Receipt for Certified Mail

No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Sent to	JOHN S. TERTUNE
Street & Number	Sheriff of Bergen County
Post Office, State, & ZIP Code	Justice Center
Hackensack, NJ	07601
Postage	\$ 320
Certified Fee	140
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	125
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$ 585
Postmark or Date	

PS Form 3800, April 1995

Stick postage stamps to article to cover First-Class postage, certified mail fee, and charges for any selected optional services (See front).

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier (*no extra charge*).
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make an inquiry.

102595-99-M-0079