

02-1428-CD
Lexington Ins. Vs Kephart Trucking Co

02

02-1428-CD
LEXINGTON INSURANCE CO. et al. vs. KEPHART TRUCKING C

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.

CIVIL DIVISION

No. 02 - CD

LEXINGTON INSURANCE COMPANY,
a subsidiary of AMERICAN
INTERNATIONAL GROUP, INC.,
Plaintiff

vs.

KEPHART TRUCKING CO., Defendant

COMPLAINT

NOTICE TO DEFENDANT:

YOU are hereby notified
that you are required to file
an Answer to the within Complaint
within twenty (20) days after
service upon you or judgment
may be entered against you.

John Kephart
JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiff

COLAVECCHI
RYAN & COLAVECCHI

ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

ED 3/3
S/3/13/2002 JHG
MAY 24 2002
WILLIAM A. SAWYER
PROSECUTOR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LEXINGTON INSURANCE COMPANY,
a subsidiary of AMERICAN
INTERNATIONAL GROUP, INC.,
Plaintiff

CIVIL DIVISION

No. 02 - 1428 - CD

Vs.

COMPLAINT

KEPHART TRUCKING CO.,
Defendant

Filed on Behalf of:

Plaintiff, LEXINGTON INSURANCE
COMPANY

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

FILED
[Signature]

SEP 13 2002

William A. Shaw
Prothonotary

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

LEXINGTON INSURANCE COMPANY, :
a subsidiary of AMERICAN : No. 02 - - CD
INTERNATIONAL GROUP, INC., :
Plaintiff :
:
Vs. :
: :
KEPHART TRUCKING CO., :
Defendant :
:

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
Second and Market Streets
Clearfield, PA 16830
Phone 814/765-2641 Ex. 5982

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

LEXINGTON INSURANCE COMPANY, :
a subsidiary of AMERICAN : No. 02 - - CD
INTERNATIONAL GROUP, INC., :
Plaintiff :
:
Vs. :
:
KEPHART TRUCKING CO., :
Defendant :

COMPLAINT

Lexington Insurance Company, a subsidiary of American International Group, Inc., Plaintiff in the above-captioned action, through their attorney, Joseph Colavecchi, Esquire, files this Complaint and respectfully avers as follows:

1. Plaintiff is Lexington Insurance Company, a subsidiary of American International Group, Inc., a corporation authorized to do business under the laws of Pennsylvania, having its principal place of business at 2550 Northwinds Parkway, Alpharetta, Georgia 30004.

2. Defendant is Kephart Trucking Co., a Pennsylvania corporation, having a mailing address of P.O. Box 386, Bigler, Pennsylvania 16824.

3. Plaintiff issued an insurance policy to Defendant covering personal property which carried a deductible clause, said deductible being in the amount of Ten Thousand Dollars (\$10,000.00) per vehicle. A copy of Endorsement #D setting out this deductible

and being part of Policy #4016162 which is in the possession of the Defendant is attached hereto and marked Exhibit "A".

4. Defendant suffered a loss on April 10, 2001, at which time Plaintiff made payment of said claim in the total amount of the Nineteen Thousand One Hundred Four Dollars and Twelve Cents (\$19,104.12). The loss was at Fort Lee, New Jersey.

5. Plaintiff then made demand upon Defendant for the Ten Thousand Dollar (\$10,000.00) deductible.

6. Plaintiff has demanded reimbursement of the Ten Thousand Dollar Deductible from Defendant, but Defendant has refused and still refuses to pay the same or any part thereof.

WHEREFORE, Plaintiff demands judgment against the Defendant in the amount of Ten Thousand Dollars (\$10,000.00), plus interest and costs.



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiff

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

VERIFICATION

I, Joseph Colavecchi, Esquire, attorney and agent for Lexington Insurance Company, verify that the statements made in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



JOSEPH COLAVECCHI

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

ENDORSEMENT # D

This endorsement, effective 12:01 AM 11/01/2000

Forms a part of policy no.: 4016162

Issued to: KEPHART TRUCKING CO. (INC)

By: LEXINGTON INSURANCE COMPANY

DEDUCTIBLE

\$10,000 per vehicle deductible plus an additional \$200.00 annual aggregate deductible. Only Loss Amount greater than \$10,000 applies towards the additional annual aggregate amount. A \$10,000 per vehicle deductible applies thereafter if annual aggregate is exhausted.

LEXINGTON
Standard Property Conditions

This endorsement effective 11/01/00, forms a part of Policy Number 4016162

issued to KEPHART TRUCKING CO. (INC)

by

LEXINGTON INSURANCE COMPANY (hereinafter called "the Company").

In consideration of the premium charged, the following clauses are hereby made applicable under this policy.

MINIMUM EARNED PREMIUM CLAUSE

In the event of cancellation of this policy by the insured, a minimum premium of earned, any provision of the policy to the contrary notwithstanding.

\$27,557 shall become

Failure of the insured to make timely payment of premium shall be considered a request by the insured for the Company to cancel on the insured's behalf. In the event of such cancellation for non-payment of premium, the minimum earned premium shall be due and payable; provided, however, such cancellation shall be rescinded if the insured remits and the Company receives the full policy premium with 10 days after the date of issuance of the cancellation notice. Such remittance and acceptance by the Company shall not effect the minimum earned premium provision of this endorsement. In the event of any other cancellation by the Company, the earned premium shall be computed pro-rata, not subject to the minimum earned premium.

POLICY DEDUCTIBLE

Each claim for loss or damage separately occurring shall be adjusted separately and from each such adjusted claim, the amount of \$200,000 shall be deducted. Notwithstanding the foregoing, the deductible amount applying to certain peril(s) insured against by this policy shall be as follows:

SEE ENDT D

deductible applying to **PER ENDORSEMENT D**
 deductible applying to
 deductible applying to
 deductible applying to
 deductible applying to

In the event of any other insurance covering the property insured hereunder, whether or not concurrent, the deductible(s) specified herein shall apply in full against that portion of any claim for loss or damage which the Company is called upon to pay under the provisions of the Apportionment Clause irrespective of any provisions to the contrary of such other insurance.

CANCELLATION CLAUSE

Except and to the extent of the Minimum Earned Premium Clause which is part of this policy, this clause supersedes other cancellation clauses made a part of this policy.

CANCELLATION: This policy may be cancelled by the insured by surrender thereof to the Company or by mailing to the Company written notice stating when thereafter such cancellation shall be effective. This policy may be cancelled by the Company by mailing to the insured, at the mailing address shown in this policy or last known address, written notice, stating when, not less than 30 days thereafter (10 days for non-payment of premium) such cancellation shall be effective. The effectiveness of cancellation is not dependent on the return of unearned premium with the notice. Proof of mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the insured or the Company shall be equivalent to mailing. If the insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment shall be made as practicable after cancellation becomes effective.

SERVICE OF SUIT CLAUSE

Service of Suit: In the event of failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service or process in such suit may be made upon Counsel, Legal Department, Lexington Insurance Company, 200 State Street, Boston, Massachusetts, 02109, or his or her representative, and that in any suit instituted against the Company upon this policy, the Company will abide by the final decision

of such court or of any appellate court in the event of an appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner or Director of Insurance, other officer specified for that purpose in the statute, or his successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this policy of insurance and hereby designates the above named Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

WAR RISK EXCLUSION CLAUSE

The Company shall not be liable for any loss, caused directly or indirectly, by (1) hostile or warlike action in time of peace or war, whether or not declared, including action in hindering, combating or defending against an actual, impending or expected attack (a) by government or sovereign power (de jure or de facto) or by any authority maintaining or using military, naval or air forces; or (b) by military, naval or air forces; or (c) by an agent of any such government, power, authority or force (2) any weapon of war employing atomic fission or radioactive force whether in time of peace or war, whether or not its discharge was accidental; (3) insurrection, rebellion, revolution, civil war, usurped power, or action taken by government authority in hindering, combating, or defending against such an occurrence, seizure or destruction; (4) any consequence of any of the foregoing.

NUCLEAR EXCLUSION CLAUSE

The Company shall not be liable for loss by nuclear reaction or nuclear radiation or radioactive contamination all whether controlled or not, and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril(s) insured against in this policy. If the peril of fire is insured under this policy, then, subject to the foregoing and all provisions of this policy, direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this policy.

SALVAGE AND RECOVERY CLAUSE

All salvages, recoveries and payments recovered or received either prior or subsequent to a loss settlement under this policy shall be applied as if recovered or received prior to the said settlement and all necessary adjustments shall be made by the parties hereto, including deduction of the Company's cost of recovery or salvage.

REPORTING CLAUSE

Notwithstanding that the Insured may be obligated to report full values for premium purposes, the Company's maximum limit of liability shall not exceed that amount stated as the policy limit of liability.

PROOF OF LOSS AND PAYMENT

The Insured shall complete and sign a sworn proof of loss within ninety (90) days after the occurrence of a loss (unless such period be extended by the written agreement of the Company) stating the time, place and cause of loss, the interest of the Insured and of all others in the property, the sound value thereof and the amount of loss or damage thereto, and all other insurance thereon. All adjusted claims shall be due and payable thirty (30) days after the presentation and acceptance of satisfactory proof(s) of loss at the office of the Company at 200 State Street, Boston, Massachusetts 02109

GOVERNMENT ACTIVITY CLAUSE

The Company shall not be liable for loss or damage caused by or resulting from: (1) the seizure or destruction of property insured by this policy by any government body, including any customs or quarantine action, or (2) confiscation or destruction of any property by order of any government or public authority, except an order to destroy property to prevent the spread of fire or explosion.

IN WITNESS HEREOF, we have caused this policy to be executed and attested, but this policy shall not be valid unless countersigned in the Declarations by one of our duly authorized representative.

Elizabeth M. Tuck

Secretary

L. H. Hall

Chairman of the Board and CEO

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.

CIVIL DIVISION
No. 02 - 1428 - CD

LEXINGTON INSURANCE COMPANY,
a subsidiary of AMERICAN
INTERNATIONAL GROUP, INC.,
Plaintiff

vs.

KEPHART TRUCKING CO.,
Defendant

PRAECIPE TO DISCONTINUE

6/3/81 NO
Court of Disc. to Amy Colavecchi
Copy to CJA
EKA

COLAVECCHI
RYAN & COLAVECCHI

ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LEXINGTON INSURANCE COMPANY,
a subsidiary of AMERICAN
INTERNATIONAL GROUP, INC.,
Plaintiff

CIVIL DIVISION

No. 02 - 1428 - CD

Vs.

PRAECIPE TO DISCONTINUE

KEPHART TRUCKING CO.,
Defendant

Filed on Behalf of:

Plaintiff, LEXINGTON INSURANCE
COMPANY

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

10/13/2002
William A. Shaw
Prothonotary

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

LEXINGTON INSURANCE COMPANY, :
a subsidiary of AMERICAN : No. 02 - 1428 - CD
INTERNATIONAL GROUP, INC., :
Plaintiff :
:
Vs. :
:
KEPHART TRUCKING CO., :
Defendant :
:

PRAECIPE TO DISCONTINUE

TO: WILLIAM SHAW, PROTHONOTARY

Please mark the record in the above-captioned action settled,
discontinued, and ended.



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiff

November 12, 2002

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CCPY

CIVIL DIVISION

**Lexington Insurance Company a
subsidiary of American International
Group, Inc.**

Vs.
Kephart Trucking Co.

No. 2002-01428-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
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 on November 13, 2002 marked:

Settled, Discontinued and Ended

Record costs in the sum of \$113.57 have been paid in full by Joseph Colavecchi, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 13th day of November A.D. 2002.

William A. Shaw, Prothonotary

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

LEXINGTON INSURANCE COMPANY, *
a subsidiary of AMERICAN
INTERNATIONAL GROUP, INC., *
Plaintiff

-vs-

KEPHART TRUCKING CO., *
Defendant

* Docket No. 02-1428-CD

*

*

Type of Pleading:
PRAECIPE TO ENTER
APPEARANCE

Filed on Behalf of:
DEFENDANT:
Kephart Trucking Co.

Counsel of Record for
This Party:

Dwight L. Koerber, Jr.
Pa. I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED

SEP 26 2002

William A. Shaw
Prothonotary

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

LEXINGTON INSURANCE COMPANY, *
a subsidiary of AMERICAN
INTERNATIONAL GROUP, INC., *
Plaintiff *
* Docket No. 02-1428-CD
-VS-
*
KEPHART TRUCKING CO., *
Defendant *

PRAECIPE TO ENTER APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance on behalf of Kephart Trucking Co., Defendant
in the above captioned matter.

Respectfully Submitted,



Dwight L. Koerber, Jr.
Attorney for DEFENDANT:
Kephart Trucking Co.

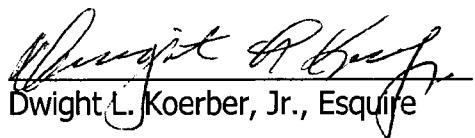
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

LEXINGTON INSURANCE COMPANY, *
a subsidiary of AMERICAN
INTERNATIONAL GROUP, INC., *
Plaintiff * Docket No. 02-1428-CD
-vs- *
KEPHART TRUCKING CO., *
Defendant *

CERTIFICATE OF SERVICE

This is to certify that on the 26th day of September, 2002, the undersigned served a certified copy of the foregoing Praeclipe to Enter Appearance in the above captioned matter upon counsel for Plaintiff. Such documents were served via United States First Class Mail upon the following:

Joseph Colavecchi, Esquire
COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P. O. Box 131
Clearfield, PA 16830


Dwight L. Koerber, Jr., Esquire

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

LEXINGTON INSURANCE COMPANY,
a subsidiary of AMERICAN
INTERNATIONAL GROUP, INC.,
Plaintiff

-vs-

KEPHART TRUCKING CO.,
Defendant

PRAECIPE TO ENTER APPEARANCE
Docket No. 02-1428-CD

File
9/12/02 5481
SLP 28 2002

3cc

Atty Koerber

William A. Shaw
Prothonotary

[Signature]

Law Office

DWIGHT L. KOERBER, JR.

ATTORNEY-AT-LAW

110 NORTH SECOND STREET

P. O. Box 1320

CLEARFIELD, PENNSYLVANIA 16830

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 13048

LEXINGTON INSURANCE COMPANY

02-1428-CD

VS.

KEPHART TRUCKING CO.

COMPLAINT

SHERIFF RETURNS

**NOW SEPTEMBER 17, 2002 AT 3:12 PM DST SERVED THE WITHIN COMPLAINT
ON KEPHART TRUCKING CO., DEFENDANT AT EMPLOYMENT, PO BOX 386,
BIGLER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO DAVE KEPHART,
VP A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN
TO HIM THE CONTENTS THEREOF.**

SERVED BY: McCLEARY/NEVLING

Return Costs

Cost	Description
23.57	SHFF. HAWKINS PAID BY; ATTY.
10.00	SURCHARGE PAID BY; ATTY.

Sworn to Before Me This

24th Day Of October 2002
William A. Shaw

Deputy Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

*Chester A. Hawkins
by Marilyn Hause*
Chester A. Hawkins
Sheriff

FILED
01/3:54
OCT 24 2002
WAS

William A. Shaw
Prothonotary