

07-1908-CD

Clarendon Nat'l Ins. vs Atlantic al

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William A. Shaw

Prothonotary/Clerk of Courts

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DEASEY, MAHONEY & VALENTINI, LTD.  
BY: Henri Marcel, Esquire  
ATTORNEY I.D. NO.: 62815  
1601 MARKET STREET, SUITE 3400  
PHILADELPHIA, PA 19103  
(215) 587-9400

Attorney for Defendant  
Atlantic Risk Management, Inc.

CLARENDON NATIONAL INSURANCE COMPANY, : COURT OF COMMON PLEAS  
: CLEARFIELD COUNTY

Plaintiff : :

-vs- : No.: 2007-1908-CV

ATLANTIC RISK MANAGEMENT, INC., : :

Defendant : :

**PETITION FOR THE ISSUANCE OF  
A SUBPOENA TO TAKE DEPOSITION**

Petitioner, Atlantic Risk Management, Inc., (hereinafter "Atlantic Risk") by and through its local counsel, Deasey, Mahoney & Valentini, Ltd., files the within Petition for the Issuance of a Subpoena to Take Deposition, pursuant to Rule 4018 of the Pennsylvania Rules of Civil Procedure and 42 Pa. C.S.A. §5326, and avers as follows:

1. Petitioner, Atlantic Risk is a Defendant in a lawsuit filed by Clarendon National Insurance Company, which is currently pending in the Supreme Court of the State of New York, County of New York, Index No.: 106324/06.

2. Petitioner, by its New York counsel, filed a Motion for an Order Issuing Open Commissions to Take the Deposition of Timothy L. Kephart, a principal of Kephart Trucking, the defendant in the underlying litigation that is the subject of this lawsuit, who is currently employed at 983 Woodland Bigler Highway, Bigler, PA 16825. The New York Supreme Court granted Atlantic Risk's Unopposed Motion on November 29, 2006. A true and correct copy of said Order is attached hereto as Exhibit "A".

3. Petitioner intends to take Timothy L. Kephart's deposition on December 12, 2007, in the offices of Kephart Trucking, 983 Woodland Bigler Highway, Bigler, PA, before a notary public/court reporter.

4. Petitioner requires the issuance of a subpoena by this Court to compel the attendance of the deponent.

**WHEREFORE**, Petitioner respectfully requests that the Court direct the issuance of a subpoena directed to Timothy Kephart to appear for deposition on December 12, 2007.

Respectfully submitted,

DEASEY, MAHONEY & VALENTINI, LTD.

BY: 

HENRI MARCEL, ESQUIRE  
Counsel for Petitioner

CLARENDON NATIONAL INSURANCE COMPANY, Plaintiff : COURT OF COMMON PLEAS  
COMPANY, : CLEARFIELD COUNTY  
-vs- :  
No.: 2007-1908-C0

ATLANTIC RISK MANAGEMENT, INC., Defendant :

ORDER

AND NOW, this 21<sup>st</sup> day of November, 2007, upon consideration of the annexed Petition for Issuance of a Subpoena to Take the Deposition of Timothy L. Kephart, it is hereby ORDERED that the Prothonotary of Clearfield County issue a subpoena directed to Timothy L. Kephart, directing his attendance at a deposition to be conducted under the Pennsylvania Rules of Civil Procedure and to be held at the offices of Kephart Trucking, 983 Woodland Bigler Highway, Bigler, PA, on December 12, 2007.

BY THE COURT:



J.

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William A. Shaw  
Prothonotary/Clerk of Courts

**DEASEY, MAHONEY & VALENTINI, LTD.**  
**BY: Henri Marcel, Esquire**  
**ATTORNEY I.D. NO.: 62815**  
**1601 MARKET STREET, SUITE 3400**  
**PHILADELPHIA, PA 19103**  
**(215) 587-9400**

**Attorney for Defendant  
Atlantic Risk Management, Inc.**

**CLARENDON NATIONAL INSURANCE COMPANY, : COURT OF COMMON PLEAS  
COMPANY, : CLEARFIELD COUNTY**

**Plaintiff,** : *[Redacted]*

**: COURT OF COMMON PLEAS**  
**: CLEARFIELD COUNTY**

-VS- : No.:

## ATLANTIC RISK MANAGEMENT, INC.,

**Defendant** :

**CERTIFICATE OF SERVICE**

I, Henri Marcel, Esquire, do hereby certify that I am local counsel for Petitioner in the within matter, and that on this \_\_\_\_\_ day of November, 2007, a true and correct copy of Petitioner's Petition For the Issuance of a Subpoena was served via first class mail, postage pre-paid, upon the following individuals:

**Timothy L. Kephart  
983 Woodland Bigler Highway  
Bigler, PA 16825**

**Babchik & Young, LLP  
200 East Post Road, 2<sup>nd</sup> Floor  
White Plains, New York 10601**

**David Fox, Esquire  
Herric, Feinstein, LLP  
2 Park Avenue  
New York, New York 10016**

DEASEY, MAHONEY & VALENTINI, LTD.

BY:

HENRI MARCEL, ESQUIRE  
Counsel for Petitioner

**VERIFICATION**

I, Henri Marcel, Esquire, do hereby aver that I am local counsel for Petitioner in the within matter; I am authorized to make this Verification on behalf of Petitioner; and that the facts set forth in the foregoing Petition are true and correct to the best of my knowledge, information and belief. I further understand that this verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Dated: 11/19/67

  
HENRI MARCEL, ESQUIRE

**DEASEY, MAHONEY & VALENTINI, LTD.**  
**BY: Henri Marcel, Esquire**  
**ATTORNEY I.D. NO.: 62815**  
**1601 MARKET STREET, SUITE 3400**  
**PHILADELPHIA, PA 19103**  
**(215) 587-9400**

**Attorney for Defendant  
Atlantic Risk Management, Inc.**

**CLARENDON NATIONAL INSURANCE COMPANY,** Plaintiff, : **COURT OF COMMON PLEAS**  
: **CLEARFIELD COUNTY**

-vs- : No.:

ATLANTIC RISK MANAGEMENT, INC.,

**Defendant**

**MEMORANDUM OF LAW IN SUPPORT OF  
PETITION FOR THE ISSUANCE OF A SUBPOENA  
UPON FOR USE IN AN OUT-OF-STATE PROCEEDING**

Petitioner, Atlantic Risk, seeks to serve a subpoena upon Plaintiff's counsel in the underlying litigation that is the subject of this lawsuit, Timothy L. Kephart, who currently works at 983 Woodland Bigler Highway, Bigler, PA 16825 for use in a proceeding currently pending in the Supreme Court of the State of New York, County of New York, Index No. 106324/06.

The issuance of a subpoena upon a Pennsylvania corporation for the purpose of taking its deposition for use in a case pending in a court of another state is permitted pursuant to 42 Pa. C.S.A. §5326. This section provides in relevant part:

(a) General Rule - A court of record in this Commonwealth may order a person who is domiciled or is found within this Commonwealth to give his testimony or statement or to produce documents or other things for use in a matter pending in a tribunal outside this Commonwealth.....

42 Pa. C.S.A. §5326 (1978). Accordingly, Petitioner files the within Petition for the Issuance of a Subpoena to obtain the deposition testimony of Mr. Kephart, for use in the

New York proceeding.

The New York Rules of Civil Procedure require the Appointment of a Commissioner for taking this deposition. The New York Court has entered an Order authorizing the Appointment of a Commissioner for the purpose of taking said deposition. See Exhibit "A". Therefore, it is respectfully requested that the within Petition be granted.

Respectfully submitted,

DEASEY, MAHONEY & VALENTINI, LTD.

BY:

  
HENRI MARCEL, ESQUIRE

Counsel for Petitioner

Henri Marcel, Esquire  
Deasey, Mahoney & Valentini, Ltd.  
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