

[J-112-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.

PATRICIA M. EGGER, ADMINISTRATRIX	:	No. 27 EAP 2005
OF THE ESTATE OF CHARLES EGGER,	:	
DECEASED AND NATIONAL UNION	:	Appeal from the Judgment of the Superior
FIRE INSURANCE COMPANY,	:	Court entered December 22, 2004 at No.
	:	1001 EDA 2004 affirming the Order of the
	:	Court of Common Pleas of Philadelphia
v.	:	County entered August 11, 2003 at Civil
	:	Division, 1908 May Term 2001
	:	
GULF INSURANCE COMPANY,	:	
BROWNYARD GROUP, INC., W.H.	:	
BROWNYARD CORPORATION AND/OR	:	ARGUED: OCTOBER 17, 2005
BROWNYARD BROTHERS, INC. AND	:	
AON RISK SERVICES, INC. OF	:	
PENNSYLVANIA AND BROKERAGE	:	
PROFESSIONALS, INC. ,	:	
	:	
	:	
APPEAL OF: GULF INSURANCE	:	
COMPANY	:	

CONCURRING OPINION

MR. CHIEF JUSTICE CAPPY

DECIDED: August 23, 2006

I join the Majority Opinion. I write separately to address the suggestion that our decision in the present appeal is merely advisory, which is raised by the inference that the assignment between Appellee Patricia M. Egger (“Egger”) and Foulke Associates, Inc. (“Foulke”), taking place on March 15, 2001 after both Charles Egger’s death on September 5, 1997 and the jury’s excess verdict on February 9, 2001, is necessarily post-loss. See

Sgarlat v. Board of Adjustment of Kingston Borough, 180 A.2d 769, 771 (Pa. 1962) (reiterating that our courts concern themselves with facts and actual controversies; their obligations do not include deciding moot, hypothetical, fictitious and abstract principles of law.)

I believe that our opinion is not advisory in nature. For purposes of applying the guiding principles this Court set forth in National Memorial Services, Inc. v. Metro Life Ins. Co., 49 A.2d 382 (Pa. 1946), to determine whether an insured's assignment of its interests in an insurance policy will be upheld because it was post-loss, the pre-verdict contract that Egger and Foulke entered on February 8, 2001, wherein Foulke agreed to assign its rights under the Gulf Insurance Company ("Gulf") policy to Egger in the event of an excess verdict, was the legally significant transaction. It is the February 8, 2001 contract that Gulf argues changed the risk that it undertook to insure, such that under National Memorial, Foulke's assignment to Egger was essentially pre-loss and should not be validated. Thus, despite the fact of the assignment's actual execution on February 9, 2001, there was a disputed question for this court to resolve in this appeal as to whether the assignment, which arose out of the pre-verdict contract to assign, was post-loss within the meaning of National Memorial.