

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

	:	CIVIL ACTION
BLACKWATER SECURITY CONSULTING,	:	
LLC, a Delaware Limited Liability Company;	:	
and BLACKWATER LODGE AND	:	
TRAINING CENTER, INC., a Delaware	:	
Corporation,	:	Civil Action No. 2:05-cv-06020-PBT
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
WESTCHESTER SURPLUS LINES	:	
INSURANCE COMPANY, a Georgia	:	
Corporation; EVANSTON INSURANCE	:	
COMPANY, an Illinois Corporation;	:	
FIDELITY AND CASUALTY COMPANY	:	
OF NEW YORK, a South Carolina	:	
Corporation; and LIBERTY INSURANCE	:	
UNDERWRITERS, a Massachusetts	:	
Corporation,	:	
	:	
Defendants.	:	
	:	

ORDER

AND NOW this ____ day of _____, 2007, upon consideration of Defendant Fidelity and Casualty Company of New York's Motion to Substitute Parties, and Memorandum in support thereof, it is hereby **ORDERED** that said Motion is **GRANTED**, and the Continental Insurance Company is substituted as the real party in interest for Fidelity and Casualty Company of New York.

BY THE COURT:

J.

IN THE UNITED STATES DISTRICT COURT
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COMPANY, an Illinois Corporation;	:	
FIDELITY AND CASUALTY COMPANY	:	
OF NEW YORK, a South Carolina	:	
Corporation; and LIBERTY INSURANCE	:	
UNDERWRITERS, a Massachusetts	:	
Corporation,	:	
	:	
	:	
Defendants.	:	
	:	

MOTION TO SUBSTITUTE PARTIES AND NOTICE OF HEARING

Defendant Fidelity and Casualty Company of New York hereby moves the Court pursuant to Federal Rules of Civil Procedure 25(c) to substitute the Continental Insurance Company as the real party in interest for Defendant Fidelity and Casualty Company of New York. Defendant submits the attached Memorandum in support of this Motion and Notice of Hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ronald P. Schiller", is written over a horizontal line.

Ronald P. Schiller/RPS4415

Michael R. Carlson

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Attorneys for Continental Insurance Company and
Continental Insurance Company as Successor by
Merger to Fidelity and Casualty Company of New
York

Dated: February 27, 2007.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BLACKWATER SECURITY CONSULTING,	:	CIVIL ACTION
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and BLACKWATER LODGE AND	:	
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Corporation,	:	Civil Action No. 2:05-cv-06020-PBT
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WESTCHESTER SURPLUS LINES	:	
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Corporation; EVANSTON INSURANCE	:	
COMPANY, an Illinois Corporation;	:	
FIDELITY AND CASUALTY COMPANY	:	
OF NEW YORK, a South Carolina	:	
Corporation; and LIBERTY INSURANCE	:	
UNDERWRITERS, a Massachusetts	:	
Corporation,	:	
	:	
	:	
Defendants.	:	
	:	

MEMORANDUM IN SUPPORT OF MOTION TO SUBSTITUTE PARTIES

F.R.C.P. 25(c) provides:

RULE 25. SUBSTITUTION OF PARTIES

* * *

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

As of December 31, 2006, and pursuant to the applicable laws of the Commonwealth of Pennsylvania, Fidelity and Casualty Company of New York has been merged into the

Continental Insurance Company. As a result of the merger, Defendant Fidelity and Casualty Company of New York no longer exists and Continental Insurance Company has become legally liable for all of Defendant Fidelity and Casualty Company of New York's liabilities, obligations, debts, and duties.

In Kanaji v. Philadelphia Child Guidance Center of Children's Hospital, 2001 WL 708898, *1 (E.D. Pa. June 20, 2001), the United States District Court for the Eastern District of Pennsylvania recognized that corporate mergers constitutes a "transfer of interest" under Rule 25(c):

It is undisputed that PCGC merged into Children's Hospital in January 2001 and defendant has not suggested that the merger has substantively affected this lawsuit in any way. Such a substitution of corporate defendants to reflect a post-complaint merger is appropriate. See Fed.R.Civ.P. 25(c) (permitting substitution of parties when there has been a "transfer of interest"); Luxliner P.L. Export, Co. v. RDI/Luxliner, Inc., 13 F.3d 69, 71 (3d Cir.1993) ("transfer of interest" for purposes of Rule 25(c) occurs "when one corporation becomes the successor to another by merger or other acquisition of the interest" of the original corporate party). See also Virgo v. Riviera Beach Assocs., Ltd., 30 F.3d 1350, 1358 (11th Cir.1994) (allowing substitution of one corporate defendant for another after asset purchase); DeVilliers v. Atlas Corp., 360 F.2d 292, 297 (10th Cir.1966) (Rule 25(c) substitution proper to reflect merger). The court will permit substitution of Children's Hospital for PCGC as the proper defendant in this action.

Id. (*emphasis added*). See also, Arch v. American Tobacco Co., Inc., 984 F.Supp. 830, 840 (E.D. Pa. 1997) ("As a matter of law, a corporation succeeds to the liabilities of another corporation...where two or more corporations combine through merger or consolidation and the corporation or corporations that are merged cease to exist.")

Based upon the foregoing, the merger of Defendant Fidelity and Casualty Company of New York into the Continental Insurance Company, and F.R.C.P. 25(c), Defendant Fidelity and Casualty Company of New York respectfully moves the Court to substitute the Continental

Insurance Company as the real party in interest for Defendant Fidelity and Casualty Company of New York.

Respectfully submitted,



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Continental Insurance Company as Successor by
Merger to Fidelity and Casualty Company

Dated: February 27, 2007.

NOTICE OF HEARING

To:

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Pursuant to F.R.C.P. Rule 25, please take notice that, if this Motion to Substitute Parties is opposed, on April 1, or as soon thereafter as counsel can be heard, the undersigned will bring the above motion for a hearing before the Honorable Petrese B. Tucker.



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CERTIFICATE OF SERVICE

I, Michael R. Carlson, certify that on February 27, 2007, a true and correct copy of the foregoing Motion to Substitute and Notice of Hearing was filed electronically and it is available for viewing and downloading from the ECF system; a true and correct copy of same was sent via first class mail, postage pre-paid, upon the following:

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