

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

THE BURLINGTON INSURANCE §  
COMPANY, §  
§  
Plaintiff, §  
§  
v. §  
§  
SUPERIOR NATIONWIDE LOGISTICS §  
LTD., TOBY ALLEN POTTER, T.A. §  
POTTER MANAGEMENT, LLC, A&P §  
TRANSPORTATION CO., INC., §  
CLAYTON ALLEN POTTER, ROBERT P. §  
MCGINNIS, and NORTH AMERICAN §  
TRANSPORT CONCEPTS, INC., §  
§  
Defendants. §

CIVIL ACTION NO. H-09-2424

**FINAL JUDGMENT**

For the reasons stated in the Court's August 10, 2010 Memorandum and Opinion, and the separate Order on Pending Motions signed this date, it is

ORDERED and ADJUDGED that Plaintiff The Burlington Insurance Company has no duty to defend Superior Nationwide Logistics, Ltd., Toby Allen Potter, Clayton Allen Potter, T. A. Potter Management, P.C., or A&P Transportation Co. against the counterclaims or third-party claims asserted against them by North American Transport Concepts, Inc. in the lawsuit styled A&P Transportation Co., Inc. v. North American Transport Concepts, Inc., No. 2008-65931, in the 133rd Judicial District Court of Harris County, Texas. It is further

ORDERED and ADJUDGED that Counter-Plaintiffs Superior Nationwide Logistics, Ltd., Toby Allen Potter, Clayton Allen Potter, T. A. Potter Management, P.C., and A&P Transportation Co.'s counterclaim against Counter-Defendant The Burlington Insurance Company for indemnity on Policy No. 261B003386 is DISMISSED WITHOUT PREJUDICE as not ripe, and Counter-Plaintiffs shall take nothing on the remaining counterclaims they asserted against Counter-Defendant The Burlington Insurance Company. It is further

ORDERED and ADJUDGED that (i) Plaintiff The Burlington Insurance Company's request for a declaration that it has no duty to indemnify Superior Nationwide Logistics, Ltd., Toby Allen Potter, Clayton Allen Potter, T. A. Potter Management, P.C., or A&P Transportation Co. against the counterclaims or third-party claims asserted against them by North American Transport Concepts, Inc. in the lawsuit styled A&P Transportation Co., Inc. v. North American Transport Concepts, Inc., No. 2008-65931, in the 133rd Judicial District Court of Harris County, Texas, and (ii) Superior Nationwide Logistics, Ltd., Toby Allen Potter, Clayton Allen Potter, T. A. Potter Management, P.C., or A&P Transportation Co.'s counterclaim that Plaintiff does have such a duty of indemnity, are both premature and not ripe for adjudication. Accordingly, both Plaintiff The Burlington Insurance Company's and Superior Nationwide Logistics, Ltd., Toby Allen Potter, Clayton Allen Potter, T. A. Potter Management, P.C., or A&P Transportation Co.'s

claims for a declaration regarding the duty to indemnify are DISMISSED WITHOUT PREJUDICE to the re-filing of same.

All costs are taxed against Superior Nationwide Logistics, Ltd., Toby Allen Potter, Clayton Allen Potter, T. A. Potter Management, P.C., and A&P Transportation Co.

All relief not granted in this order is expressly DENIED.

This is a **FINAL JUDGMENT**.

The Clerk will enter this Order, providing a correct copy to all parties of record.

SIGNED at Houston, Texas, on this 27<sup>th</sup> day of September, 2010.

  
EWING WERLEIN, JR.  
UNITED STATES DISTRICT JUDGE