

[J-151-00]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

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| COMMONWEALTH OF PENNSYLVANIA, | : | No. 0003 M.D. Appeal Dkt. 2000 |
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| Appellee | : | Appeal from the Order of the Superior |
| | : | Court entered June 1, 1999 at No. |
| | : | 2447PHL 1998, reversing the Order |
| v. | : | entered July 31, 1998 in Court of Common |
| | : | Pleas, Bucks County, Criminal Division at |
| | : | No. 1677/1998 and remanding case for |
| CYNTHIA EFAW, | : | further proceedings |
| | : | |
| | : | |
| Appellant | : | |
| | : | ARGUED: October 18, 2000 |

DISSENTING OPINION

MR. JUSTICE NIGRO

DECIDED: June 20, 2001

I respectfully dissent. Unlike the majority, I would reverse the Superior Court's decision and reinstate the trial court's order denying the Commonwealth's motion to admit the information Appellant provided to State Farm once the Commonwealth invoked its right to receive that information under ARIA.

In my view, an insured clearly has a reasonable expectation of privacy in information provided to an insurance company. See, e.g., Commonwealth v. DeJohn, 486 Pa. 32, 45-49, 403 A.2d 1283,1289-92 (1979) (depositor has reasonable expectation that the information in his bank records will remain confidential).¹ I also believe that under ARIA

¹ I disagree with the majority that the relationship between an insurance company and an insured is clearly distinct from that between a bank and a depositor. Indeed, the view of the majority endorses the idea that the relationship between the insurance company and (continued...)

an insurance company acts as an agent of the Commonwealth because ARIA specifically requires insurance companies to notify the Commonwealth of suspected arson and disclose to the Commonwealth, at the Commonwealth's request, any information that an insured has provided to the company. See 40 Pa.C.S. § 1610.3. Given these obligations under ARIA, I would find that in order to adequately protect an insured's Fifth Amendment privilege against self-incrimination, once an insurance company suspects that an insured has committed arson, the insurance company must notify the insured that any information he or she provides to the company may be turned over to the Commonwealth. This notification should be required regardless of whether or not the Commonwealth has requested the insured's information pursuant to ARIA.²

In the instant case, the trial court found that on December 29, 1995, Fire Marshal Copper contacted State Farm regarding the disclosure of Appellant's insurance information pursuant to ARIA and subsequently made arrangements with State Farm to investigate Appellant's home. At this time, State Farm was aware that the fire may have been the result of arson and was also aware of its responsibilities to provide Appellant's information

(...continued)

an insured must always be adversarial. Although the relationship between the insurance company and an insured may often become adversarial, the relationship between a bank and a depositor likewise may turn adversarial.

² I do not believe, however, that an insurance company has to provide notice to the insured before giving the Commonwealth information that the insured has already voluntarily provided to the insurance company. I would find that notification is needed once the insurance company suspects arson because at that point, ARIA mandates that the company notify the Commonwealth of its suspicion and disclose information given by the insured upon the Commonwealth's request. See 40 Pa. C.S. § 1610.3(b). Thus, in order to assure that the insured thereafter knowingly and voluntarily waives her Fifth Amendment (continued...)

to the Commonwealth. I believe that on January 3, 1996, before asking Appellant for her consent to take evidence from her home and to investigate her credit history, State Farm should have notified Appellant that any information derived from those actions would be disclosed to the Commonwealth. In light of the fact that Appellant was not warned that the information she provided to State Farm would be turned over to the Commonwealth, I agree with the trial court that Appellant did not knowingly waive her Fifth Amendment rights and therefore, the Commonwealth should be precluded from using this information or anything derived from the information. Given that the majority finds otherwise, I must respectfully dissent.

(...continued)

rights, the insurance company should be required to notify the insured of its duties to the Commonwealth under ARIA.