

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION-CIVIL**

GERMANTOWN CAB CO.,	:	May Term 2014
	:	
Plaintiff,	:	
	:	
v.	:	No. 1787
	:	
PINELANDS INSURANCE COMPANY RISK	:	
RETENTION GROUP, INC. ET.AL,	:	COMMERCE PROGRAM
	:	
Defendants.	:	1564 EDA 2015
	:	
	:	

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**OPINION**

**GLAZER, J.**

**July 23, 2015**

This opinion is submitted relative to the appeal filed by defendant Pinelands Insurance Company Risk Retention Group, Inc. of this court’s order dated May 14, 2015. For the reasons discussed below, this court’s order should be affirmed.

Germantown Cab Co. (“Germantown”) is a partial rights carrier regulated by the Pennsylvania Public Utility Commission which provides non-medallion taxi and para-transit service primarily in Germantown, PA. Pinelands Insurance Company Risk Retention Group, Inc. (“Pinelands”) is a federal risk retention group authorized to issue insurance in the Commonwealth of Pennsylvania. Pinelands had been managed and controlled by Ronald Hambrecht, Sr. and his son Ronald Hambrecht, Jr. (“Hembrecht”). Prior to the institution of the instant lawsuit, Germantown was an insured of Pinelands for a period of eight years. On May 10, 2013, Germantown and Pinelands entered into a settlement agreement wherein Pinelands agreed to renew Germantown’s insurance for the policy years October 31, 2013-October 31, 2014 and October 31, 2014 to October 31, 2015 as occurrence policies at the rate of \$5,750/vehicle.



On October 31, 2013, Germantown paid Pineland \$613,600.00 in premiums for insurance for more than 100 vehicles. Pinelands issued insurance to Germantown effective October 31, 2013.

In April 2014, Hambrecht Sr. demanded that Germantown invest additional hundreds of thousands of dollars into Pinelands to remedy Hambrecht's alleged mismanagement of the company. When Germantown refused to pay the additional sums, Pinelands issued a notice of cancellation on March 20, 2014, allegedly as a means to induce Germantown into making the additional investment. At the same time, Hambrecht Sr. caused Pinelands to issue a Form "K" revoking previously issued certificates of insurance. On April 3, 2014, Germantown made written demand for facts underlying the notice of cancellation. The only response allegedly received by Germantown was if Germantown bailed out Hambrecht by paying \$880,000, the notice of cancellation would be rescinded. Germantown refused to pay the sums demanded.

On May 15, 2014, Germantown instituted this action against Pinelands alleging breach of contract, declaratory judgment, breach of fiduciary duty and tortious interference with existing and prospective contracts. In addition to Pinelands, Germantown also sued Richard Meltzer, Esquire ("Meltzer"). Meltzer was appointed by Pinelands to represent Germantown with respect to claims arising from automobile accidents which were potentially covered by the Pinelands insurance policies for a period of approximately ten years. Meltzer filed a motion for judgment on the pleadings seeking judgment in his favor. The court granted Meltzer's motion and he has been dismissed as a defendant.

In addition to filing a complaint, Germantown also filed a petition for preliminary injunction. On May 22, 2014, after a response and a hearing, the court issued an order requiring Pinelands to continue to provide the existing insurance coverage to Germantown through midnight May 30, 2014 at which time the coverage terminated in accord with the notice of

cancellation previously provided. The court further ordered Germantown to use its best efforts to obtain other insurance coverage. Additionally, the court directed Pinelands to provide Germantown with loss runs within a specific period of time.

Germantown propounded discovery upon Pinelands requesting all communications with Pinelands regarding coverage of Germantown claims (Interrog. 51), all discussions with Pinelands regarding possible cancellation of the Germantown policies (Interrog. 52), all discussions with Pinelands regarding aggregate limits of the Germantown policies (interrog. 53), all communications with Pinelands regarding the Settlement Agreement (Interrog. 66); any documents, etc. between Plaintiff and Pinelands regarding Meltzer (RFP 23); and any documents between Pinelands and Meltzer regarding the subject matter of this litigation (RFP 25). In response to said discovery, Pinelands asserted the attorney client privilege. Germantown filed a motion to strike the assertion of attorney client privilege and to compel responses to discovery and for costs. On May 14, 2015, the court, after taking into consideration the parties respective submissions as well the recommendation of the Discovery Master<sup>1</sup> appointed by the court, found that “since Defendant selected and designated Richard Meltzer, Esquire, to represent Plaintiff in numerous automobile accident claims against which Defendant had insured Plaintiff (subject to applicable policy terms), Defendant has waived its right to assert, or is estopped from asserting, any claim of attorney-client privilege” with respect to certain communications. The court, specifically ordered that Pinelands produce all written and oral communications between defendant and Meltzer regarding Pineland’s obligations with respect to coverage of claims against plaintiff (Interr. 51), all written and oral communications between defendant and Meltzer regarding possible cancellation of insurance policies issued by Pineland to plaintiff (Interr. 52), all written and oral communications between defendant and Meltzer regarding the aggregate

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<sup>1</sup> On February 23, 2015, the court appointed former Judge Craig Lord of ADR Options as discovery master.

limits of insurance policies issued by Pineland to Germantown (Interr. 53) and any written communications between Pinelands and Meltzer regarding the subject matter of this litigation (RFP 25). On May 19, 2015, Pinelands appealed the court's order pursuant to Pa. R. Civ. P. 313. Pinelands did not file a motion for reconsideration of this court's order nor did it request a hearing.

## DISCUSSION

The issue presented to this court is whether Meltzer's communications with Pinelands are protected by the attorney client privilege. According to Pinelands, these communications are privileged because, under the applicable insurance policies, Pinelands has both the exclusive right to control the defense of each case and the sole right to settle covered claims without the consent or ratification of Germantown. This argument is neither persuasive nor supported by any authority.

In Pennsylvania, the attorney-client privilege generally provides: "In a civil matter counsel shall not be competent or permitted to testify to confidential communications made to him by his client, nor shall the client be compelled to disclose the same, unless in either case this privilege is waived upon the trial by the client."<sup>2</sup> The attorney client privilege operates in a two-way fashion to protect confidential client-to-attorney or attorney-to-client communications made for the purpose of obtaining or providing professional legal advice.<sup>3</sup>

Under Pennsylvania law, when an insurer retains an attorney to represent an insured pursuant to the insurer's duty to defend, that attorney's client is the insured.<sup>4</sup> The insurer may be,

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<sup>2</sup> 42 Pa. C. S. § 5928.

<sup>3</sup> *Gillard v. AIG Ins.*, 609 Pa. 65, 15 A.3d 44, 59 (2011).

<sup>4</sup> *CAMICO Mut. Ins. Co. v. Heffler, Radetich & Saitta, LLP*, 2013 WL 315716 at 5 (E.D. Pa. Jan. 28, 2013); see also, *Tower Investments Inc. v. Rawle & Henderson LLP*, 2008 WL 1923170, 2 Pa. D.&C.5<sup>th</sup> 537 (Pa. Com. Pl.

but is not always, a co-client of the insured.<sup>5</sup> Here, Pinelands retained Meltzer to represent Germantown for a period of eight years. When Meltzer communicated with Pinelands regarding defenses of Germantown, Meltzer acted as the attorney for Germantown and Pinelands. In these communications, Pinelands may not claim attorney-client privilege. When an attorney represents both parties to a transaction, “no communications in relation to the common business are privileged in favor or against either, but only against a common adversary.”<sup>6</sup>

Germantown’s discovery requests that were the subject of this court’s May 14, 2015 order seek disclosure of communications between Meltzer and Pinelands with respect to coverage determinations, termination issues as well as this pending lawsuit. If such communications exist, then the interest of Germantown and Pinelands diverged and became conflicted. At this point, Pinelands should have obtained independent counsel. If a conflict of interest arises between an insurer and its insured, the attorney representing the insured must act exclusively on behalf of and in the best interests of the insured.<sup>7</sup> Pinelands, however, never obtained independent counsel despite its knowledge of a longstanding attorney client relationship between Meltzer and Germantown. As a result of Pinelands failure to obtain conflict free independent counsel, Pinelands is now estopped from using the attorney client privilege to act as a shield from producing the requested discovery.<sup>8</sup> Pinelands knew its interest diverged from

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2008); *Rector, Wardens and Vestryman of St. Peter's Church v. Am. Nat'l Fire Ins. Co.*, 2002 WL 59333 (E.D.Pa.2002). While decisions of the lower federal courts are not binding on Pennsylvania courts, they are persuasive. *Stone Crushed Partnership v. Kassab Archbold Jackson & O'Brien*, 589 Pa. 296, 310, 908 A.2d 875, 884-85 n. 10 (2006).

<sup>5</sup> *CAMICO Mut. Ins. Co. v. Heffler, Radetich & Saitta, LLP*, 2013 WL 315716 at 5 (E.D. Pa. Jan. 28, 2013).

<sup>6</sup> *Id.*

<sup>7</sup> *Rector, Wardens and Vestryman of St. Peter's Church v. Am. Nat'l Fire Ins. Co.*, 2002 WL 59333 (E.D.Pa.2002).

<sup>8</sup> Equitable estoppel is a doctrine that prevents one from doing an act differently than the manner in which another was induced by word or deed to expect. A doctrine sounding in equity, equitable estoppel recognizes that an

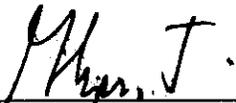
Germantown and therefore Meltzer could not represent it, yet it continued to have communications with Meltzer thereby exacerbating the conflict of interest. Consequently, Pinelands is estopped from asserting the attorney client privilege and has waived the application of said privilege to the communications at issue herein.

**CONCLUSION**

For the forgoing reasons, this court's order dated May 14, 2015 should be affirmed.

Date: 7-23-15

BY THE COURT,

  
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GLAZER, J.

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informal promise implied by one's words, deeds or representations which leads another to rely justifiably thereon to his own injury or detriment may be enforced in equity. *Prime Medica Associates v. Valley Forge Ins. Co.*, 970 A.2d 1149, 1157 (2009), quoting *Kreutzer v. Monterey County Herald Co.*, 560 Pa. 600, 606, 747 A.2d 358, 361 (2000) (quoting *Novelty Knitting Mills v. Siskind*, 500 Pa. 432, 435, 457 A.2d 502, 503 (1983)). Conversely, waiver is the act of *intentionally* relinquishing or abandoning some known right, claim or privilege. *Id.* Here, Pinelands relinquished its right to assert the attorney client privilege since it knew its interests diverged from those of Germantown and should have procured conflict free counsel.