

No. \_\_\_\_\_

**IN THE  
SUPREME COURT OF THE UNITED STATES**

\_\_\_\_\_  
KELLY DUTTON,

Petitioner,

v.

AMERICAN BANKERS INSURANCE COMPANY,

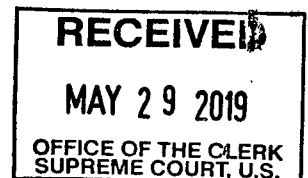
Respondent,  
\_\_\_\_\_

**Appeal No. 443 EAL 2018  
Court Docket No. 1288 EDA 2017  
Trial Court Trial Court Docket  
September Term No. 2016 No. 01412**  
\_\_\_\_\_

**APPLICATION FOR EXTENSION OF TIME  
TO FILE PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES SUPREME COURT**  
\_\_\_\_\_

To the Honorable (Justice) of the  
United States Supreme Court  
\_\_\_\_\_

Petitioner, Kelly Dutton request (60) days extension of time to file Writ of Certiorari. Final judgment date was 03/06/2019. The date for Writ of certiorari will expires on 06/03/ 2019. This application is being filed (10) days prior to the due date. Here is attached copy of opinion from Philadelphia county first judicial district of Pennsylvania Court of common pleas. The statue of jurisdiction of this court is invoked under 42. Pa. 5524



### **BACKGROUND**

This is a direct appeal from a final order of the court of Common Pleas, Philadelphia County, granting motion for summary judgment for defendant 42 Pa. C.S. 5524(7)

### **ORDER/DETERMINATION AND QUESTION**

This first order appeal from was entered by the court of Common Pleas July 18, 2016. Granting motion for summary judgment for defendant from was entered by the court of Common Pleas July 20, 2016 order is appended hereto.

### **STATEMENT OF QUESTIONS INVOLVED**

When the court dismiss plaintiff's case, were appellant rights violated?

### **STATEMENT OF THE CASE**

This is an appeal from motion for summary judgment for defendant.

### **FORM OF ACTION AND PROCEDURAL**

### **HISTORY OF THE CASE**

Attorney David A Silverstein did not represent defendant Tenille Timbers. Attorney David A Silverstein represented American Bankers Ins. Co. of Florida (ABICOF). Plaintiff Kelly Dutton filed a Lawsuit against defendant, Tenille Timbers on or about June 25, 2014 in municipal court of Philadelphia. The filing of the lawsuit was within the two-year statute limitation. At that time of filing, plaintiff cap damages at \$12,000 .00, because of the cap (plaintiff) could not sue in court of common pleas. On October 31, 2014 defense attorney for (ABICOF) misled the court when defendant attorney said "Mr. Dutton did not have standing to sue the insurance, co. The court agreed and dismissed (ABICOF) . Plaintiff withdrew his complaint and all parties agreed to resolve all claims. After looking over (ABICOF) attorney testimony, plaintiff found testimony to be false and misleading. Under rule 42. PA. C.S . 8371 (bad faith) plaintiff can sue the insurance co., as third party.

### **SUMMARY ARGUMENT**

Defendant attorney filed motion for summary judgment 4/15/16. On May 18, 2016 was assigned to Judge Young, plaintiff believed defendant attorney had the case transferred to Judge: Daniel, because Judge Daniel did not believe pro se litigation have standard in the court, unlike Judge Daniel, who do. Judge Young rule against defendant attorney preliminary objection to have the case dismiss. Judge Daniel, who had this case from the beginning should have been given the opportunity to rule on the motion, this was a error of the supervising judge who made the decision to reassign the case to Judge Daniel : 6/15/16. On 7/ 13/16 motion for relief filed by defendant was assigned to Judge Young; On 07/14/16. Motion for relief was Denied. On 07/18/16 Judge Daniel granting summary judgment for defendants. Judge Cohen rule that 42 pa. C.S.A. 5524 apply, this was a error of the court.

This rule does not exclude municipal court from statute of limitations. Judge Cohen felt that there were no genuine issues of material fact. Judge Daniel felt otherwise and rule against defendant attorney and allowed the case to go to trial. This is a breach of contract and bad faith claim. Under 42 PA. C. S. A. 5525(a) set forth the statute of limitation of 4 years for breach of contract. Because (ABICOF) insured with negligent , the contract between insured and plaintiff allow plaintiff to collect for damages.

### **ARGUMENT**

Just like the Judge in Municipal Court made in error, when the court dismissed plaintiff complaint against (ABICOF), reason given by the court "plaintiff" had no contact with insurance, Co. under 42.PA. C. S. 8371 plaintiff can sue insurance, Co. as third party. Now the court of Common Pleas has made an error in law. PA. 42.C. S. 5524 Can only apply to the insurance, Co. (ABICOF) and their insured. The insured was defendant, Tenille Timbers not plaintiff Under PA. 42.C. S. 5525 plaintiff have four years to sue defendant, Tenille Timbers. The insurance company gave up their rights in municipal court when the case was dismissed against (ABICOF.) now they want the case dismissed against Tenille Timbers, even those defense Attorney did not represent defendant Tenille Timbers, only her interest as an insured.

### **CONCLUSION**

Summary judgment is appropriate only in those cases where the record clearly demonstrates that there is no genuine issue of material facts. When considering a motion for summary judgment, the trial court must take all facts of record and reasonable inferences therefore in a light most favorable to the non-moving party. In so doing, the trial court must resolve all doubts as to the existence of a genuine issue of material facts against the moving party, and, thus, may only grant summary judgment "where the right to such judgment it's clear in freeform doubt." An appellate court may reverse a grant of summary judgment if there has been an error of law or an abuse of discretion.

1. Third party beneficiary is a lien holder of a title, deed as well as a property owner. Property owner has the same rights to be protected from loss, either by accidental or negligent act.

2. On or about 01/08 2013 appellant suffered a fire at 46 N 51st Street Phila, Pa. The cause of the fire was negligent by the insured.

3. Appellant filed a lawsuit against Appellee ( ABIC and TIMBERS) in Municipal court on 12/15/2015 within two year statute limitation, this toll the statute of limitation.

4. A trial Court may grant a motion for summary judgment only if there are no disputed issues of facts. Clearly there are issues that have not been resolve.

A- THIRD PARTY RIGHTS

B- STATUTE OF LIMITATION

5. Appellee never requested assignment right letter.

6. UNDER ARTICLE V of Pa. Constitution

Section 1- Municipal Courts are a part of judicial system and therefore the statute of limitation was toll.

7. Pa Statute Limitation is Two years.

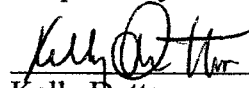
8. Pa. Rule preceeds Insurance Regulation

9. The opinion of the court is based on state court vs. federal court. municipal court is part of Philadelphia court system. There is nothing in 42. Pa.5524 that exclude Municipal Court from statue of lamination. Therefore plaintiff complaint did toll the statute of limitation.

10. The court should reverse the summary judgment because Judge Anders Daniel abuse his discretion and made an error of law. 42 PA. 5524 do not exclude municipal court and 42 PA. 5525 gives plaintiff four years to Sue. For all of above reasons, this court should GRANT appellants Petition for Allowance of appeal and reinstate plaintiff complaint.

Reason for extension of time petitioner in involved in a bankruptcy claim and need more time to prepare petition. Petitioner is asking for (60) day's extension. The date of this request is 05/23/2019.

Respectfully submitted,



Kelly Dutton

5607 Warrington Ave

Philadelphia, PA 19143

267 349 9192

spikenoone@yahoo.com

Date: May 23, 2019

**CERTIFICATE OF SERVICE**

I, Kelly Dutton, Prepared and send a certificate of service

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kelly Dutton", is written over a horizontal line.

Kelly Dutton

5607 Warrington Ave  
Philadelphia, PA 19143

267 349 9192

spikenoone@yahoo.com

Date: May 23, 2019

## Supreme Court of Pennsylvania



## Allocatur Docket Sheet

Docket Number: 443 EAL 2018

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## FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
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## INTERMEDIATE APPELLATE COURT INFORMATION

Court Name:	Superior	Docket Number:	1288 EDA 2017
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Date of Order:	August 22, 2018	Rearg/Recon Disp Date:	
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Rearg/Recon Disposition:	
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Judge(s):	Panella, Jack A. Olson, Judith F. Stevens, Correale F.
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Intermediate Appellate Court Action:	Affirmed
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Referring Court:	
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## AGENCY/TRIAL COURT INFORMATION

Court Below:	Philadelphia County Court of Common Pleas
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County:	Philadelphia
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Division:	Philadelphia County Civil Division
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Date of Agency/Trial Court Order:	April 5, 2017
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Docket Number:	September Term, 2016 No. 01412
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Judge(s):	Anders, Daniel J.	OTN:	
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Order Type:	Order
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## ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content/Description
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## Record Remittal:

## DISPOSITION INFORMATION

Related Journal No:	Judgment Date:
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Category:	Decided
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Disposition Author:	Per Curiam
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Disposition:	Order Denying Petition for Allowance of Appeal
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Disposition Date:	March 6, 2019
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Dispositional Filing:	Author:
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Filed Date:	
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## DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
September 19, 2018	Petition for Allowance of Appeal	Petitioner	Dutton, Kelly

## Supreme Court of Pennsylvania



## Allocatur Docket Sheet

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## CAPTION

Kelly Dutton, Petitioner

v.

American Bankers Insurance Company, Respondent

## CASE INFORMATION

Initiating Document: Petition for Allowance of Appeal

Case Status: Closed

Journal Number:

Case Category: Civil

Case Type(s): Insurance

## CONSOLIDATED CASES

## RELATED CASES

## COUNSEL INFORMATION

Pro Se: Dutton, Kelly  
 Address: 5607 Warrington Avenue  
 Philadelphia, PA 19143  
 Phone No: (267) 349-9192  
 Receive Mail: Yes  
 Pro Se: Dutton, Kelly, Petitioner  
 Pro Se: Yes  
 IFP Status: Pa.R.A.P. 551

Attorney: Faranda-Diedrich, Matthew P.  
 Royer Cooper Cohen Braunfeld LLC  
 Address: Royer Cooper ET AL  
 2 Logan Sq 100 N 18th St Ste 710  
 Philadelphia, PA 19103  
 Phone No: (215) 839-1000  
 Receive Mail: Yes  
 Receive Email: Yes  
 Representing: American Bankers Insurance Company, Respondent  
 Pro Se: No  
 IFP Status:

## SUPREME COURT INFORMATION

Appeal From:

Appeal Filed Below:

Probable Jurisdiction Noted:

Docketed Date:

September 24, 2018

Allocatur/Miscellaneous Granted:

Allocatur/Miscellaneous Docket No.:

Allocatur/Miscellaneous Grant Order:

## FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
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## Supreme Court of Pennsylvania



## Allocatur Docket Sheet

Docket Number: 443 EAL 2018

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**DOCKET ENTRY**

Filed Date	Docket Entry / Representing	Participant Type	Filed By
September 19, 2018	Verified Statement in Support of Continuation of IFP Status	Petitioner	Dutton, Kelly
September 20, 2018	In Forma Pauperis Continued		Supreme Court of Pennsylvania Person, John W., Jr.
October 4, 2018	Answer to Petition for Allowance of Appeal	Respondent	American Bankers Insurance Company
March 6, 2019	Order Denying Petition for Allowance of Appeal		Per Curiam
Comments: AND NOW, this 6th day of March, 2019, the Petition for Allowance of Appeal is DENIED.			
March 6, 2019	Order Exited		Office of the Prothonotary
March 26, 2019	Notice of Disposition Sheet Exited		Office of the Prothonotary

**CROSS COURT ACTIONS**

Docket Number:

1288 EDA 2017

**Additional material  
from this filing is  
available in the  
Clerk's Office.**