



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

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FAITH ASSEMBLY OF GOD,	:	
	:	JULY TERM, 2001
Plaintiff,	:	
	:	
v.	:	No. 01637
	:	
RONALD E. PAYTON,	:	
JEROME D. PAYTON,	:	Commerce Program
PAYTON & ASSOCIATES CONTRACTING	:	
& CONSULTING FIRM, INC.,	:	
KEMPER INSURANCE COMPANY,	:	Control No. 111307
MARGIE HAMILTON,	:	
STEPHEN R. FIGLIN, SPPA, FPPA,	:	
STEPHEN R. FIGLIN & ASSOCIATES, INC.	:	
and BROTHERHOOD MUTUAL	:	
INSURANCE COMPANY,	:	
	:	
Defendant.	:	

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**MEMORANDUM OPINION**

The Motion for Summary Judgement of defendant Brotherhood Mutual Insurance Company (“Brotherhood”) is presently before the Court. For the reasons set forth below, said Motion is denied.

This action was brought by plaintiff Faith Assembly of God (the “Church”) as the result of a fire that partially destroyed a building that the Church had purchased and was renovating for purposes of expansion. The fire was apparently caused by the contractor that was working on the building, who is also a defendant (“Payton”). Brotherhood is the Church’s insurer, and defendant Kemper Insurance Company (“Kemper”) is Payton’s insurer.

Some time after the fire, as a result of the efforts of defendant Stephen A. Figlin

(“Figlin”), the insurance adjuster hired by the Church, Kemper agreed to pay the Church \$377,039.00 for the damage resulting from the fire, and the Church signed a Release of claims for that amount. However, Kemper actually paid the Church only \$94,000.95 because Kemper had previously paid the remainder of the settlement amount to Payton, who did not pass it on to the Church.

When Kemper refused to pay the Church any additional sums, the Church turned to Brotherhood for payment. Brotherhood has refused to pay the Church any money because Brotherhood asserts that the Church never submitted an insurance claim to Brotherhood and that, by signing the Release, the Church impaired Brotherhood’s subrogation rights.

The Church and the other defendants point to numerous documents indicating that Brotherhood was aware of the Church’s potential claim long before this suit was brought, so there is certainly a disputed issue of material fact as to whether the Church made a formal claim against Brotherhood under the insurance contract. In addition, since the validity of the Release is still at issue, its effect on Brotherhood’s subrogation rights against Kemper cannot be determined. Furthermore, since the Church has asserted claims in this action against Payton and Figlin, Brotherhood could have subrogation rights against those parties as well. Therefore, the issue of whether the Church has complied with its responsibilities under its insurance contract with Brotherhood is not amenable to disposition by summary judgment.

**CONCLUSION**

For all of the foregoing reasons, this court denies Brotherhood Mutual Insurance Company's Motion for Summary Judgment.

**BY THE COURT,**

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**Gene D. Cohen, J.**

Dated: March 13, 2003