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FILED
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE
DEC 27 2000
CLERK OF COURT
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

U.K. ABBA PRODUCTS, INC.,
Plaintiff,

vs.

NORTHBROOK NATIONAL INSURANCE
COMPANY, EMC INSURANCE
COMPANIES, NATIONWIDE INDEMNITY
COMPANY, WAUSAU BUSINESS
INSURANCE COMPANY, GENERAL
STAR INDEMNITY COMPANY,

Defendants.

CASE NO. 818029
~~PROPOSED~~ JUDGMENT

The above-entitled matter came on regularly for trial on December 4, 2000, in Department H5 of the above-entitled court, the Honorable Eleanor M. Palk, presiding and sitting without a jury, a jury having been duly waived.

Plaintiff U.K. ABBA PRODUCTS, INC. appeared by its counsel, John Belcher. Defendant NORTHBROOK NATIONAL INSURANCE COMPANY appeared by its attorney Larry Nathenson, Esq. of Neumeyer & Boyd, LLP. Defendant GENERAL STAR INDEMNITY COMPANY appeared by its counsel Christian W. Trunnell, Esq. of Barbanel, Treuer & Dantzler. Defendant NATIONWIDE MUTUAL INSURANCE COMPANY appeared by its counsel Mark R. Israel, Esq. of Daniels, Fine, Israel & Schonbuch.

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Evidence, both oral and documentary, having been presented by all parties, the case having been argued and submitted for decision, and a statement of decision not having been requested,

IT IS ORDERED, ADJUDGED and DECREED as follows:

- 1. Plaintiff shall take nothing by way of its complaint and judgment is entered in favor of defendant NORTHBROOK NATIONAL INSURANCE COMPANY;
- 2. Defendant NORTHBROOK NATIONAL INSURANCE COMPANY to recover against plaintiff costs in the amount of \$_____ per cost bill to be filed;
- 3. Plaintiff shall take nothing by way of its complaint and judgment is entered in favor of defendant GENERAL STAR INDEMNITY COMPANY;
- 4. Defendant GENERAL STAR INDEMNITY COMPANY to recover against plaintiff costs in the amount of \$_____ per cost bill to be filed;
- 5. Plaintiff shall take nothing by way of its complaint and judgment is entered in favor of defendant NATIONWIDE MUTUAL INSURANCE COMPANY; and
- 6. Defendant NATIONWIDE MUTUAL INSURANCE COMPANY to recover against plaintiff costs in the amount of \$_____ per cost bill to be filed.

DATED: Dec 27, 2000

COMMISSIONER ELEANOR M. PALK

HON. ELEANOR M. PALK
Commissioner of the Orange County
Superior Court

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

MINUTE ORDER

Department H5

Court convened at:

On, DECEMBER 7, 2000, present

Commissioner: ELEANOR M. PALK;

Janet Young, Deputy Clerk;

Bailiff: J. STRINGER

Reporter: NONE CSR No. NONE;

and the following proceedings were had:

81 80 29 U K ABBA PRODUCTS -VS- NORTHBROOK NATIONAL INSURANCE
COMPANY ET AL

RE: MATTER TAKEN UNDER SUBMISSION ON DECEMBER 4, 2000

No Appearances. This matter having been taken under submission on December 4, 2000, court now rules as follows: This bifurcated trial regarding the issue of the defendants' duty to defend was argued before the court on December 4, 2000. The trial was concluded within one day and the matter was submitted. There being no request by any party for a statement of decision pursuant to CCP 632, such a request is thereby deemed waived. The court hereby issues its tentative decision:

The court initially rules that plaintiff's obligation in the underlying cases to participate in binding arbitration did not abrogate defendants' duties to defend. Defendants' characterization of plaintiff's settlements as voluntary also did not excuse defendants from defending. The court does find, however, that in the underlying cases tendered for defense to the insurers/defendants there were no issues bringing the claims and/or potential claims within the scope of the various insurance policies.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

MINUTE ORDER

DECEMBER 7, 2000

Department H5

81 80 29 U K ABBA PRODUCTS -VS- NORTHBROOK NATIONAL INSURANCE
COMPANY ET AL

(Continued from page one)

Specifically, there were no claims of (and no evidence of potential claims of) defamation, loss of use of property, or misappropriation of advertising ideas or style of doing business. Defendants General Star Indemnity Company and Nationwide Mutual Insurance Company raised the additional issue of lack of coverage during the applicable policy dates. There was no refutation of this issue by plaintiff.

The court thereby rules there was no duty to defend on the part of the insurers/defendants and it logically follows there thus could be no bad faith on their part in failing to defend.

Judgment to be entered for defendants Northbrook National Insurance Company, Nationwide Indemnity Company and General Star Indemnity Company. Defendants to agree among themselves as to who should prepare the proposed judgment.

Clerk to give notice. ENTERED; DECEMBER 7, 2000.