

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES J. BROWN and : CIVIL ACTION
MILLICENT N. BROWN, h/w :
 :
v. :
 :
 :
U.S. AIRWAYS, INC., CUSHMAN, :
INC. and NOLAND CART CO. : NO. 97-CV-7238

MEMORANDUM ORDER

J. M. KELLY, J.

July , 1998

Presently before the Court is Attorney John M. Donahue's ("Donahue") Petition to Withdraw his Appearance for Defendant Noland Cart Company ("Noland"). The Plaintiffs are suing for injuries allegedly caused, in part, by a defectively designed Noland cart. Noland manufactured the cart in 1988. Noland was acquired by Defendant Cushman in 1989.

On January 22, 1998, at the direction of the CIGNA insurance company, Donahue entered his appearance on behalf of Cushman and Noland. Donahue then filed an answer in which he admitted that Noland is a Delaware corporation with a principal place of business in Lincoln, Nebraska. He represented Noland for five months, without any reservation of rights by CIGNA. CIGNA has now decided to deny coverage to Noland. Donahue filed his petition to withdraw his appearance on behalf of Noland on June 23, 1998.

At this stage of the case, Donahue's withdrawal would cause unfair prejudice. The Plaintiffs would be forced to go through a second round of discovery and trial would probably be delayed.

Despite repeated requests, Donahue has not produced any insurance policies related to this case. Donahue did not dispute the contention that his law firm is essentially in-house counsel for CIGNA, with access to their records. Nevertheless, Donahue is asking the Court to allow him to withdraw, to the Plaintiffs' detriment, on the basis of a document that has not been produced to the Court or the Plaintiffs.

Considering the progress of this case, the prejudice to the Plaintiffs and CIGNA's failure to assert its rights in a timely manner, it is ordered that Attorney John M. Donahue's Petition to Withdraw Appearance is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.