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Colbert v. Dymacol Inc

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PRECEDENTIAL

Filed March 10, 2003

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-4397

BRENT COLBERT, ON BEHALF OF HIMSELF AND
ALL OTHERS SIMILARLY SITUATED

v.

DYMACOL, INC.; INTELLIRISK MANAGEMENT CORP.,
Appellants

On Appeal From the United States Court of Appeals
For the Eastern District of Pennsylvania
(D.C. Civ. No. 01-cv-03577)
District Judge: Honorable Clarence C. Newcomer

Before: BECKER, *Chief Judge*, SLOVITER, SCIRICA,
NYGAARD, ALITO, ROTH, McKEE, RENDELL, BARRY,
AMBRO, FUENTES and ROSENN, *Circuit Judges*

O R D E R

In view of the fact that Rule 23(f) of the Federal Rules of Civil Procedure was promulgated pursuant to 28 U.S.C. § 1292(e), see Advisory Committee Notes, and an appeal granted pursuant to § 1292(b) may be dismissed if improvidently granted, see e.g., *Maryland Cas. Co. v. W.R. Grace & Co.*, 128 F.3d 794, 798 (2d Cir. 1997); *Van Meter v. Barr*, 976 F.2d 1 (D.C. Cir. 1992); *Int'l Soc'y for Krishna Consciousness, Inc. v. Air Canada*, 727 F.2d 253, 255 (2d Cir. 1984); *New York Health & Hosp. Corp. v. Blum*, 678 F.2d 392, 393 (2d Cir. 1982); *Nickert v. Puget Sound Tug &*

Barge Co., 480 F.2d 1039, 1041 (9th Cir. 1973); and in further view of the fact that the Court finds that the question presented by Appellants in their Application Pursuant to Fed. R. Civ. P. 23(f) for Permission to Appeal from the October 2, 2001 Order was inaccurate in that Appellee had not received all relief requested in his complaint, see Respondent's Answer to Application for Permission to Appeal from the October 2, 2001 Order, and in that Appellee opposed the grant of permission to appeal on that ground;

It is ORDERED that this appeal is dismissed as improvidently granted and the case is remanded to the District Court for further proceedings.

BY THE COURT,

/s/ Edward R. Becker

Chief Judge

DATED: 10 March 2003

A True Copy:
Teste:

*Clerk of the United States Court of Appeals
for the Third Circuit*