plaintiffs in the pending wrongful death and survival action. We will, acccordingly, deny Scottsdale's motion for summary judgment and order that judgment be entered in favor of plaintiffs declaring that they qualify as insureds under the Scottsdale policy.[4]

The final issue which we must address is that presented by current counsel for plaintiffs. That issue involves the entitlement of counsel to be reimbursed by Scottsdale for his legal fees accumulated in bringing this declaratory judgment action and in his defense of plaintiffs in the underlying tort action.

Counsel's involvement, to date, has included attendance at numerous depositions. It is firmly established in Pennsylvania law that breach, without good cause, by an insurance company of its duty to defend gives rise to the right of recovery by the insured for the costs of hiring substitute counsel and other costs of defense. *Gedeon v. State Farm Mutual Acutomobile Insurance Co.*, 410 Pa. 55, 188 A.2d 320 (1963). Moreover, an insured who is compelled to initiate a decaratory judgment action in order to establish his insurer's duty to defend an underlying action bought by a third party may recover counsel fees incurred in the declaratory judgment action. *Kelmo Enterprises v. Commercial Union Insurance*, 285 Pa.Super. 13, 426 A.2d 680 (1981).[5]

4In view of our conclusion that plaintiffs are entitled to coverage under the Scottsdale policy alone, we need not address the alternative argument presented by Scottsdale regarding primary versus excess insurance coverage.

5We observe that the Superior Court's decision in *Kelmo* indicates that good faith would be a defense to a refusal to defend which would effectively bar recovery of costs and attorney's fees by an insured in a declaratory judgment action. *See also J.H. France Refractories Co. v. Allstate Insurance Co.*, 396 Pa.Super.185, 578 A.2 468 (1990), *appeal granted*, 527 pa. 634, 592 A.2d 1302 (1991). The Superior Court in *Gedeon*, 410 Pa. at 59, n.4, 188 A.2d at 322 n.4, stated that "the good faith of the insurer's belief that it had no contractual duty to defend a particular action is not a defense." Thus, we believe that the issue of good faith is not a relevant consideration in this matter. The Court, additionally, noted that good faith is to be distinquished from good cause, which could give rise to a defense for breach of the duty to defend. Good cause would exist, for example, where the insured refuses to cooperate with the insurer in preparation for litigation. No such circumstance exists in this case.

In the instant case, we believe that the record is insufficiently developed to enable the Court to render an aware of attorney's fees at this time. Plaintiff's counsel has filed an affidavit documenting his unseccessful efforts to seek representation by Scottsdale on behalf of plaintiffs. He has not however, provided an itemization of his fees and costs, nor do the pleadings indicate whether punitive damages are sought to be awarded against Scottsdale in this matter. We will, accordingly, grant leave for an evidentiary hearing to be scheduled at which time the Court will receive evidence relevant to plaintiffs' claim for attorney's fees and costs incurred in litigating the declaratory judgment action as well as the pending civil action brought by the estate of Christopher Thompson.

ORDER OF COURT

NOW, this 15th day of September, 1993, it is ordered that the motion for summary judgment filed by Scottsdale Insurance Company in DENIED. It is further ordered that the motion for summary judgment filed by the plaintiffs, Mary Jane and John Black be GRANTED as against Scottsdale Insurance company and DENIED as against Tuscarora Wayne Mutual Insurance Company, pursuant to the analysis set forth in the foregoing opinion.

It is further ordered that an evidentiary hearing be scheduled, upon motion to the Court, to determine appropriate damages to be imposed upon Scottsdale Insurance Company for breach of its duty to defend the plaintiffs.

ELHAJJ V. ELHAJJ, C.P. Franklin County Branch, No. F.R. 1986-716

Divorce - Equitable Distribution of Marital Property - Pension Evaluation - Reconsideration after Remand by Superior Court - Limitations of Ambit of Reconsideration to Appropriate Manner of Pension Distribution [Pa. R.A.P. 2591(a) cited] - "Immediate Offset" or "Deferred Distribution" Method Discussed - When counsel Fees May Be Awarded -Other subordinate or secondary issues: Interest Claim on Vacated Award - Claims for Sharing of Real Estate Taxes, Repair Expenses and Rental value of Marital Dwelling - Claim for Share of Survival Annuity and Application Thereto of Coverture Fraction

1. Upon remand the Trial Court has a duty to strictly comply with the Superior Court's mandate of remand (cites Pa. R.A.P. 2591(a).

2. In the instant case, the Trial Court is of opinion the remand Order limits the Trial Court's consideration to the appropriate manner of distibution (i.e. immediate offset or deferred distribution), based on the evidence currently of record.

3. It appears that the existing evidence is too speculative, concerning the defendant's projected retirement age, and therefore the immediate offset method of distribution seems inappropriate, at this time in this particular case.

4. Instead of applying the immediate offset method, the deferred distribution method is more appropriate, on the existing evidence, because it obviates the necessity of calculating the pension's present value.

5. The provisions of § 2503(7) and (9) of the Judicial Code, 42 P.S. § 2503 (7) and (9), providing for the award of a reasonable counsel fee do not permit such an award in this case, because the stringent standard of vexatious, bad faith or dilatory conduct are not met by the alleged conduct of the Defendant.

6. An issue concerning a claim of Plaintiff for interest based on an alleged agreement of counsel is ruled upon against the Plaintiff, because the Court finds insufficient evidence of meeting of the minds, and because the Superior Court has vacated the award on which such claim of interest would run.

7. An issue concerning Plaintiff's claim for reimbursement of one-half of delinquent real estate taxes is deemed waived by failure to assert the same, in prior proceedings before the Trial Court.

8. The Plaintiff is entitled to receive payment of one-half of the fair rental value of the marital dwelling, so long as the Defendant remains in exclusive possession thereof.

9. The Defendant is deemed to have waived certain of his claims for repair expenses, to the marital residence.

10. The Court is of opinion that prior references to the survivor annuity policy, in earlier Court proceedings, preserves the Plaintiff's right to litigate her claim to same, but limits such claim to the coverture portion of the pension, on equitable considerations, determines that it must

project the portion of the total pension asset which Plaintiff is likely to receive upon a deferred distribution thereof, and calculates the coverture fraction to be applied, from evidence already of record.

Carol Van Horn, Esquire, Attorney for Plaintiff
Bradley Griffie, Esquire, Attorney for Defendant

OPINION AND ORDER

KAYE, J., October 14, 1993:

OPINION

This matter, involving equitable distribution, is currently before the Court for the third time. The instant proceeding was prompted by the parties' filing of cross-petitions for special relief. A hearing was conducted on the petitions on June 2, 1993.

Our initial involvement with the case, which addressed exceptions to the original master's report, resulted in a remand to the master for a revaluation of the civil service retirement pension of the defendant, William J. Elhajj. Exceptions were also filed to the master's supplemental report and recommendation. Upon review, we determined that the master had erred in accepting a pension valuation which was not based upon the formula set forth by the Superior Court in *DeMasi v. DeMasi,* 366 Pa.Super. 19, 530 A.2d 871 (1987), *allocatur denied,* 517 Pa. 631, 539 A.2d 811 (1988). Since valuations which did comport with the *DeMasi* formula were of record, we analyzed those valuations and determined that $34,167.00 represented a fair and accurate assessment of the pension's present value.

An issue of considerable dispute between the parties in reaching a fair pension valuation has been the defendant's intended age of retirement. The accepted valuation of $34,167.00 was based on the assumption that the defendant would continue to work for the federal government until age 65. The plaintiff, Lorraine A. Elhajj (now Lorraine A. Lomman), contended that the defendant's assertion regarding his retirement age was, at a minumum, disingenuous since he could retire from the civil service system at an earlier age with no reduction in retirement benefits. We, indeed, recognized the logic of this challenge to the

defendant's credibility. However, rather that ascribe an earlier retirement age, which could have dramatically increased the present value of the pension to $84,339 (assuming retirement at age 55), we resolved to accept the defendant's assertion as to his projected age of retirement. A critical condition of our decision, however, was that we would retain jurisdiction over the matter for the limited purpose of revaluing the pension should the defendant, in fact, retire before the age of 65. Thus, the immediate offset of the pension which we ordered would remain final unless defendant's projected retirement age was erroneous. We believed that this result was equitable to both parties in that defendant was given the benefit of a lower present pension valuation based on his asserted retirement age, while the plaintiff was protected against a loss in pension assets which would occur if the defendant subsequently opted to retire at an age earlier than 65.

The defendant appealed our ruling to Superior Court, which vacated our decision and remanded for a determination of whether the immediate offset method or the deferred method of pension distribution should be utilized in allocating the defendant's pension. The basis for the Court's ruling was its determination that our use of the immediate offset method in conjunction with a retention of jurisdiction essentially "utilized a present value to order a deferred payment" *Elhajj v. Elhajj*, 413 Pa.Super. 578, 582, 605 A.2d 1268, 1270 (1992).

Superior Court also noted our evident concern regarding the extreme variation in pension valuations offered by the parties' experts, which ranged from a low of $24,205.00 to a high of $170,348.78, depending on the variables utilized by the experts in their calculations. The Court further stated that it did not understand how we could, with equity, have used the immediate offset method in distributing the defendant's pension in light of the variation in expert testimony on present value.

Our difficulty with the pension valuations offered into evidence was not simply the degree of variation among them or that they lacked mathematical accuracy, but rather, that a determination of appropriate variables to be applied by the experts in their calculations was critical and would significantly

affect the pension valuation outcome.[1] In particular, we observe that

> "the large variation between the two lower valuations of $28,851.00 and $34,167.00 and the higher valuation of $84,339.00, is primarily due to differing assumptions as to the defendant's anticipated retirement age."

Thus, the importance of an accurate finding regarding defendant's retirement age was readily apparent to the Court. Our solution to this dilemma, as previously discussed, was to retain jurisdiction in order to assure the accuracy of the defendant's stated intent regarding his retirement.

The Court's concern regarding projected retirement age would have been largely alleviated had we been able to determine retirement age in an impartial manner, apart from the potentially self-serving testimony of a party in interest. A respected analyst in the area of pension valuation for equitable distribution recently noted the current difficulty in determining the appropriate retirement age to be assumed in calculating present value of a defined benefit plan for immediate offset purposes. Troyan, Evaluation of Qualified Defined Benefit Plans as a Result of the *Berrington* and *Katzenberger* Decisions, XIII P.F.L. No. 5 (1992). He observes that any of the following could validly be employed by an evaluator under the *DeMasi* formula with resulting variation in present value calculations:

1. Earliest Retirement Age.
2. Normal Retirement Age.
3. Any point between Earliest Retirement Age and Normal Retirement Age.

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[1] We suspect that the variation in pension valuations exhibited in this case is not unusual given the complexity of the *DeMasi* formula, and its inclusion of a number of variables which are subject to legitimate manipulation be actuarial experts. As we view it, the challenge to the judiciary is to define, as precisely as possible, the parameters within which variables, such as retirement age, are to be determined. In doing so, the fluctuation in pension valuations may be limited.

4. The earliest date at which no reduction is imposed for retirement prior to normal retirement age.
5. The mandatory retirement age.

Id. at 10.

Mr. Troyan suggests that an objective means of determining retirement age is currently available through the Pension Benefit Guaranty Corporation (PBGC).

> "The PBGC ... has useful tables for the purpose of determining an individual's expected retirement age. These Tables of the PBGC are its Expected Retirement Age Tables (XRA). Use of these tables make available an impartial, annually updated resource for the courts to use to determine the Assumed Retirement Age of the employed spouse." *Id.* at 10.

We agree that use of the PBGC tables would facilitate a fair calculation of present value in many instances, and would likely have been of assistance in the instant case at the time the experts rendered their valuations. While we would consider the possibility of opening the record for revaluation using the PBGC tables, we believe that the Superior Court's remand order limits our consideration at this time to the appropriate manner of pension distribution, (i.e., immediate offset or deferred distribution) based on the evidence currently of record. We, of course, have a duty to strictly comply with the Superior Court's mandate which, in this instance, does not include leave for the presentation of additional evidence. *See* Pa.R.A.P. 2591(a). We are also sensitive to the additional time and expense which would result from a further remand to the master in these already protracted proceedings.

Thus, while we would prefer to employ the immediate offset method, given the apparent availability of resources to do so and the finality such distribution would bring to the litigation, we believe that the speculative nature of the evidence regarding defendant's projected retirement age dictates that we, instead, order a deferred ditribution. A deferred distribtuion will, of course, obviate the necessity of calculating the pension's present value. *Lowry v. Lowry,* 375 Pa.Super. 382, 544 A.2d 972 (1988). At the time of distribution, plaintiff will be entitled to receive sixty-five (65%) percent of the coverture portion of the

defendant's pension benefits. Defendant will be entitled to receive the remaining thirty-five (35%) of the coverture portion of the pension. This division of the pension assets is consistent with that ordered previously by this Court on July 11, 1991. Since the Superior Court's decision did not alter or require reconsideration of our ruling as to the appropriate distributional share to be awarded to the parties, we hereby reaffirm our prior ruling in that regard.

The parties have raised numerous other issues in their cross petitions for special relief. We, initially, note that we are neither authorized nor inclined to reconsider our prior resolution of those issues which the Superior Court ruling left undisturbed. Although we recognize that the Superior Court order vacated our detailed order of July 11, 1991 in its entirety, we consider ourselves bound by the Court's statement that the purpose of the instant remand is "to allow the trial court to determine whether the immediate offset method or the deferred distribution method of equitable distribution should be utilized in the present case." *Elhajj,* 413 Pa.Super. at 583, 605 A.2d at 1271. Accordingly, we will refuse to reconsider issues previously raised in these proceedings. Furthermore, we will consider any issue which could have been raised at an earlier stage of these proceedings to have been waived. With these considerations in mind, we will address the remaining issues presented in the parties' petitions for special relief, beginning with those asserted by the plaintiff.

Plaintiff contends that she is entitled to an award of counsel fees which were incurred between the time the defendant filed his notice of appeal to the Superior Court on July 25, 1991, and September 9, 1991, the date on which the defendant indicated he would comply with Court conditions for entry of a supersedeas. Counsel's time during this period was apparently devoted to an effort to negotiate procedural details regarding the private auction of the parties' marital home which would have proceeded in the absence of a supersedeas. Plaintiff asserts that defendant indicated he would not comply with the supersedeas conditions on or about August 21, 1991. She contends that his subsequent action in changing his mind regardingg his intent to comply with the supersedeas conditions constituted vexatious and bad faith conduct warranting an award of counsel fees. We disagree.

Section 2503 (7) and (9) of the Judicial Code, 42 Pa.C.S. § 2503 (7) and (9), provides that a reasonable counsel fee may appropriately be awarded to:

> (7) Any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter.
>
> ....
>
> (9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith.

We do not consider plaintiff's allegations regarding the behavior of the defendant in deciding whether to comply with the Court-imposed conditions for a supersedeas to meet the stringent standard of constituting vexatious, bad faith or dilatory conduct. *See O'Connell v. O'Connell,* 409 Pa.Super. 25, 597 A.2d 643 (1991). Defendant testified at hearing that he decided to comply with the supersedeas order after he discovered that he would not be able to bid on the marital dwelling at auction due to financing difficulties. We do not consider defendant's conduct in this regard to have been undertaken in bad faith or with vexatious intent. Moreover, the work performed by counsel to negotiate procedural terms for the private auction was not necessarily undertaken in vain, as such auction will be ordered to be scheduled in the near future. While we decline plaintiff's request to amend our prior order regarding the auction, since that aspect of the order was not challenged on appeal, we observe that the parties remain free to stipulate additional procedural requirements. We trust that both parties will act in good faith in complying with the terms of our attached order, including the auction of the marital real estate.

Plaintiff next contends that she is entitled to receive interest on the $25,295.00 amount of the cash distribution awarded to her by our order of July 11, 1991. Plaintiff has calculated the interest for the period from July 11, 1991 through the March 23, 1993 filing date of the Superior Court's decision on appeal, to be $1,061.56. Plaintiff's interest claim is based on an alleged agreement reached between counsel for the parties following defendant's decision to satisfy the Court's supersedeas conditions.

On September 11, 1991, plaintiff's counsel wrote as follows:

> [W]e would be willing to agree that you place the supersedeas bond in an interest bearing account with the interest to be payable and taxable to Husband so long as we have your written confirmation that we will receive interest at the legal rate on $25,295 from July 11, 1991, to the date of the final decision on appeal so long as the decision on appeal results in our continuing to receive at least 65% of the marital property.

Plaintiff alleges that defendant's counsel[2] responded to this communication on November 18, 1991 as follows:

> I agree with your position to the effect that Mr. Elhajj owes 6% interest upon the money due which your client is entitled from the time it is paid.

The Court has difficulty determining from these communications what, if any, meeting of the minds occurred between counsel on this subject. We also note that since our order of July 11, 1991 has been vacated by the Superior Court, plaintiff is no longer "entitled" to any payments pursuant to that order. Moreover, in light of our present determination that a deferred distribution of the defendant's pension is required, the prior calculation of a cash distribution to the plaintiff will, likewise, be altered. Under these circumstances, we find no basis to enforce the asserted agreement between counsel for the parties and will, accordingly, deny plaintiff's request for interest.

Plaintiff next requests that defendant be required to make all family photographs and movies available to her for copying. Plaintiff asserts that defendant agreed to provide these items at the time of division of the household contents. Defendant testified that he does not know what happened to the pictures and movies. He claims that he did not dispose of the items, but is also unable to locate them. Defendant agrees that it would be appropriate for the Court to order that any family photographs

[2]At the time this letter was drafted, defendant was represented by William C. Cramer, Esq. He has since acquired new counsel and is now represented by Bradley L. Griffie, Esq.

and movies in his possession be made available to plaintiff. We will, accordingly, incorporate such a provision in the attached order.

The fourth issue presented by plaintiff is whether she is entitled to be reimbursed for one-half of delinquent real estate taxes which she paid in September of 1989 and 1990. We consider this to be an issue which should have been raised in prior proceedings and has been waived by the failure to do so. Plaintiff contends that provision for such payment should have been included in our order of July 11, 1991. Indeed, she correctly notes that should one of the parties be successful in purchasing the marital residence our order provided that "[w]homever pays 1987 or later real estate taxes shall be reimbursed by the other at settlement for one-half thereof." Her objection relates to the failure of the Court to include a similar provision in the event of other disposition of the real estate. Since plaintiff filed no appeal from our prior order, however, we must conclude that the issue has not been preserved for our consideration at this time.

We agree with plaintiff's contention that she is entitled to receive payment of one-half of the fair rental value of the marital dwelling so long as defendant remains in exclusive possession thereof. ***Butler v. Butler***, Pa.Super. 621 A.2d 659 (1993). Indeed, our supersedeas order filed on August 2, 1991, provided that

> "Defendant shall pay to plaintiff one-half the fair rental value of the former marital real estate, which amount will be reduced by one-half of all mortgage payments, insurance, and real estate taxes actually paid by defendant."

Our order will, accordingly, provide for payment of fair rental value to plaintiff.

Defendant contends that he is entitled to a credit for certain maintenance expenses which he has incurred for a sewer permit and connection, installation of a new garage door and repair and replacement of the dwelling's water heater and boiler. Plaintiff concedes that reimbursement for the sewer connection and permit is appropriate as a permanent improvement to the property, but contends that the remaining expenses constitute

repairs, the costs of which should be borne by the defendant. In support of her position, plaintiff notes that by Court order of January 19, 1989, as a condition of being granted exclusive possession of the marital residence, defendant was ordered to

> "perform at his expense all reasonable and necessary ordinary repairs and upkeep, shall maintain the premises in a clean and sanitary condition, and shall not alter nor damage the premises in any way until further order of court."

We observe that certain of the claimed expenses were evidently incurred prior to the filing of the divorce action on June 7, 1988.[3] The remaining expenses sought to be reimbursed by the defendant were incurred during the pendency of the 1989 order.[4] Since defendant never challenged his obligation to perform such ordinary repairs and upkeep, we conclude that he has waived his right to now seek reimbursement for these expenses. We further note that these expenses were incurred at a time when defendant was under no obligation to pay a rental equivalent for his residence in the marital dwelling, thus rendering his payment of such expenses fair and equitable.

As a supplement to her argument that deferred distribution of defendant's pension is now appropriate, plaintiff contends that she is entitled to be named sole beneficiary of the survivor benefit annuity that is available. She contends that the status as a beneficiary is necessary to protect her adjudicated interest in defendant's fully vested pension in the event of his death. Defendant argues that this issue has been waived by plaintiff's failure to raise the issue in prior proceedings. We observe, however, that the issue of the survivor's annuity was discussed by plaintiff's counsel in a brief filed on December 4, 1989, prior to the filing of our initial opinion and order in this matter. The matter of survivor's benefits was also addressed in a Court order dated December 5, 1989, entered pursuant to stipulation of the parties. Moreover, the recent focus of these proceedings has been

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[3]Replacement of the water heater occurred on or about February 4, 1988. (Defendant's Exhibit 2.)

[4]Remaining expenses were incurred in February, 1981 and August, 1991.

on the valuation of defendant's pension, with both parties apparently favoring an immediate offset of the pension. Thus, a discussion of the ramifications of a deferred distribution has not been pursued in any depth. Suffice it to say, we believe that prior references in these proceedings to the survivor annuity policy have adequately preserved the issue for our consideration at this point.

Defendant contends that if plaintiff is entitled to beneficiary status on the survivor's annuity, such status should be limited to her projected portion of pension benefits. Plaintiff, on the other hand, points out that only a fifty-five (55%) percent annuity is available and that to designate her as less than sole beneficiary would inadequately protect her interest. We believe, however, that equitable considerations dictate that plaintiff's beneficiary status be limited to the coverture portion of the pension. This will provide plaintiff with protection available under the annuity equal to her share of pension assets. It will, likewise, permit defendant to name another qualified beneficiary for the remaining share of the annuity.

In order to determine plaintiff's appropriate share of the annuity, we must project the portion of the total pension asset which plaintiff is likely to receive upon a deferred distribution thereof. In so doing, we must determine an appropriate coverture fraction to apply to calculate the marital asset portion of the pension.

In order to adequately protect plaintiff's interest, we will utilize the coverture fraction which would apply if defendant were to retire at age fifty-five (i.e., the earliest possible retirement age). Expert evidence which was previously introduced indicates that the coverture fraction should defendant retire at age fifty-five would be 204/412 or 49.5%. Multiplying that percentage by plaintiff's sixty-five (65%) percent share of the pension asset results in an estimated total share of approximately thirty-two (32%) percent of defendant's pension. Thus, we find that plaintiff is entitled to be designated as beneficiary of a thirty-two (32%) percent share of defendant's survivor benefit annuity. The attached order will reflect this finding.

Finally, plaintiff contends that defendant has removed her

name as a covered party under the homeowner's policy maintained by defendant on the marital home. In defense of her failure to raise this issue previously, plaintiff avers that she first learned of the "deletion" while preparing for the hearing on the subject petitions for special relief. Defendant argues that he did not actively delete plaintiff's name from the policy. Instead, he testified that, for unknown reasons, her name was never included on the policy. Regardless of the underlying reason, the parties agree that plaintiff's name currently does not appear on the homeowner's policy, despite that fact that the parties own the real estate as tenants-by-the-entireties. We will, accordingly, order that plaintiff be added to the policy as a named insured.

Having diposed of all issues properly raised by the parties, [5]we will enter the attached order.

ORDER OF COURT

NOW, October 14, 1993, upon consideration of the parties' cross-petitions for special relief and the order of the Superior Court vacating and remanding our order of July 11, 1991, it is ordered and decreed that:

1. The request of the plaintiff for attorney's fees in the amount of $462.50 is DENIED;

2. The request of plaintiff for a judgment in the amount of $1,061.56 plus interest at the legal rate from March 23, 1992 is DENIED;

3. Defendant is ordered to make available to plaintiff all family photographs and movies in his possession to allow copying of such photographs and movies by plaintiff;

4. The request of plaintiff for reimbursement from defendant of one-half of delinquent real estate taxes paid in 1989 and 1990 is DENIED;

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[5]The defendant has abandoned his request for counsel fees incurred in preparing a marital settlement agreement at an early state of the proceedings.

5. Pending the private auction of the real estate, defendant shall maintain all real estate taxes on the Bikle Road residence in a current satus so as to avoid the possibility of the parties' former marital residence being sold for delinquent real estate taxes;

6. Defendant shall pay to plaintiff one-half the fair rental value of the former marital residence from March 23, 1992 through the date of closing on the disposition of the real estate pursuant to the private auction as hereinafter described. The fair rental value shall be reduced by one-half of all mortgage payments, insurance, and real estate taxes actually paid by defendant;

7. Defendant is granted reimbursement for one-half the expenses incurred in connecting the marital assets as hereinafter set forth. Reimbursement for other repair and maintenance costs is DENIED;

8. Defendant's request for attorney's fees incurred for the preparation of a comprehensive marital settlement agreement is DENIED;

9. Within thirty (30) days of the date of this order, defendant shall include plaintiff as a named insured on the insurance policy covering the marital residence which the parties own as tenants-by-the-entireties;

10. Within thirty (30) days of the date of this order, defendant shall designate plaintiff as the beveficiary of a thirty-two (32%) percent share of the survivor annuity of his pension. The designation of the plaintiff as a beneficiary of the survivor annuity shall be irrevocable during her lifetime. The cost of the survivor annuity shall be deducted from plaintiff's share of the pension as it is distributed;

11. The distribution of the parties' marital property as set forth in subparagraphs 2(A)-(D) of our order of July 11, 1991, is hereby reaffirmed with the following exceptions:

A. Plaintiff shall receive sixty-five (65%) of the coverture portion of defendant's Federal Civil Service Retirement pension by a deferred distribution to be determined upon defendant's actual receipt of pension benefits;

B. Any reference to distribution of defendant's retirement pension by the immediate offset method in our order of July 11, 1991 is hereby deleted;

C. Defendant is entitled to a cash credit for one-half of sewer connection expenses in the amount of $1,125.00;

D. The foregoing changes to the distribution schedule set forth in our order of July 11, 1991 will result in the following net asset valuations:

Net asset value to defendant: $10,576.00

Net asset value to plaintiff: $14,685.00

E. A calculation of the cash distribution award requires payment by defendant of $1,970.00. In the event that plaintiff is the successful bidder at the private auction of the marital residence, she may set off defendant's cash obligation to her from the purchase price for the marital residence;

12. Provisions for distribution of the marital residence as set forth in subparagraph 2(E) of our order of July 11, 1991 is hereby reaffirmed;

13. All transfers to effect the foregoing distribution (other than cash or residence) shall be made by the responsible spouse within thirty (30) days of this order;

14. Cost of the proceedings to date are to be paid equally by the parties. To the extent not deposited, remaining costs shall be paid within ten (10) days of this order;

15. The terms of this order shall survive the death of either party; and

16. The Court will retain jurisdiction of the subject matter set forth herein for the purposes of implementing a deferred distribution of the defendant's Federal Civil Service Retirement pension.

COMMONWEALTH OF PENNSYLVANIA V. DAVID KENNETH COOL, C.P. Franklin County Branch, No. 1993-418