

IN THE SUPREME COURT OF THE STATE OF DELAWARE

| | | |
|---|---|-----------------------|
| NANCY CARTER, Individually, and as | § | |
| Administratrix of the Estate of WILLARD | § | No. 207, 1999 |
| CARTER, MICHAEL BRIAN CARTER | § | |
| and MARGARET ANN CARTER, Minor | § | |
| Children, by their Next Friend, NANCY | § | |
| CARTER, | § | |
| | § | |
| Plaintiffs Below, | § | |
| Appellants, | § | |
| | § | |
| v. | § | Court Below: Superior |
| | § | Court of the State of |
| BRIAN McLAUGHLIN, DELAWARE | § | Delaware in and for |
| ADMINISTRATION FOR REGIONAL | § | New Castle County |
| TRANSIT, ST. PAUL MERCURY | § | C.A. Nos. 96C-03-128 |
| INSURANCE CO. and DELAWARE | § | and 98C-04-028 |
| TRANSIT CORPORATION, | § | |
| | § | |
| Defendants Below, | § | |
| Appellees. | § | |

Submitted: July 31, 2000
Decided: August 11, 2000

Before **VEASEY**, Chief Justice, **HOLLAND**, **HARTNETT**¹ and **BERGER**, Justices, and **CHANDLER**², Chancellor, constituting the Court *en Banc*.

O R D E R

This 11th day of August, 2000, upon consideration of the parties' Joint Application for Vacatur and Dismissal, it appears to the Court that:

¹ Designated pursuant to Art. IV, §38 of the Delaware Constitution and Supreme Court Rules 2 and 4.

² Designated pursuant to Art. IV, §12 of the Delaware Constitution and Supreme Court Rules 2 and 4.

1) This appeal was taken from a May 6, 1999, order of the Superior Court which granted the defendants' motions for summary judgment and denied the plaintiffs' motion for summary judgment. On April 14, 2000, this Court issued its Opinion and Order reversing the trial court and remanding the case for further action in accordance with the Opinion. Appellees filed a motion for rehearing and reargument *en banc* with the Court on April 28, 2000, which motion was granted on May 25, 2000. The matters designated by the Court for reconsideration have been fully briefed by the parties, and the April 14, 2000 Opinion and Order of the Court is now under reconsideration by the Court. On July 24, 2000 the parties reached an agreement in principle which would result in the settlement of both the coverage and underlying tort actions in the Superior Court. One of the conditions of the parties' settlement is that the Court vacate its April 14, 2000, Opinion and Order and dismiss the pending appeal as moot.

2) The parties have joined in an application to the Court requesting that the Court vacate its Opinion and Order of April 14, 2000, under the rule of vacatur, dismiss the pending appeal as moot, and remand

the matter to the Superior Court with instructions to vacate its opinion dated May 6, 2000.

NOW, THEREFORE, IT IS ORDERED:

A) The parties' Joint Application for Vacatur and for Dismissal is GRANTED. The decision of the Court dated April 14, 2000, is hereby vacated and the appeal is dismissed as moot.

B) The matter is remanded to the Delaware Superior Court with instructions to vacate its opinion and order dated May 6, 1999, and to retain jurisdiction of the matter for purposes of entertaining the parties' stipulation to dismiss the consolidated actions pursuant to Delaware Superior Court Civil Rule 41(a).

BY THE COURT:

/s/ Carolyn Berger
Justice