

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHNSON CONTROLS, INC.,	§
KEMPER INSURANCE GROUP,	§ No. 421, 2005
INC.,andAMERICAN MOTORISTS	§
INSURANCE CO.,	§
	§ Court Below—Superior Court
Defendants Below-	§ of the State of Delaware
Appellants,	§ in and for Kent County
	§ C.A. No. 04C-10-024
v.	§
	§
ROBERT D. BARKLEY,	§
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 30, 2005

Decided: October 18, 2005

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 18th day of October 2005, upon consideration of the appellee’s motion to dismiss and the appellants’ response thereto, it appears to the Court that:

(1) In October 2004, plaintiff-appellee, Robert D. Barkley, filed a complaint in the Superior Court seeking damages from defendants-appellants, Johnson Controls, Inc., and its workers compensation insurance carriers, Kemper Insurance Group and American Motorists Insurance Co., for failure to timely pay workers compensation benefits. The parties

subsequently filed cross motions for summary judgment in the Superior Court. The motions dealt solely with the issue of liability.

(2) On August 18, 2005, the Superior Court issued its decision, which granted Barkley's motion for summary judgment and denied the appellants' motion. In its decision, the Superior Court stated that an inquisition hearing on damages would be scheduled if the parties were not able to agree on the amount of damages owed.

(3) Under Delaware law, an order is deemed final and appealable if the trial court has clearly declared its intention that the order be the court's "final act" in disposing of all justiciable matters within its jurisdiction.¹ In a suit for money damages, "settlement of the amount due is a condition precedent to the finality of a judgment."² Thus, an appeal from a determination of liability only, where damages have not been fixed, constitutes an impermissible interlocutory appeal if the provisions of Supreme Court Rule 42, which governs interlocutory appeals, have not been observed.³ In this case, the appellant has not observed the requirements of Supreme Court Rule 42.

¹ *J.I. Kislak Mortgage Corp. v. William Matthews, Builder, Inc.*, 303 A.2d 648, 650 (Del. 1973).

² *Id.*

³ *Id.*

NOW, THEREFORE, IT IS ORDERED that the appellee's motion to dismiss is GRANTED. This appeal is DISMISSED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice