

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

LIBERTY MUTUAL INSURANCE	)	
COMPANY,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No.: N12A-03-003 CLS
	)	
JESUS SILVA-GARCIA AND CITY	)	
WINDOW CLEANING OF	)	
DELAWARE, INC.,	)	
	)	
Appellees.	)	

**ORDER**

AND NOW, TO WIT, this 14<sup>th</sup> day of August, 2012, **IT IS HEREBY**

**ORDERED** as follows:

**Introduction**

This case arises from an injury that allegedly occurred at Harrington Raceway and Casino, located in Kent County, Delaware. It is alleged by Appellee, Jesus Silva-Garcia (“Silva-Garcia”) that on January 15, 2010, he was injured while working in the course and scope of his employment with City Window Cleaning of Delaware, Inc., (“City Window” or “CWC”) and sustained multiple injuries as a result of the accident.

On June 13, 2012, this Court entered an Order dismissing Appellant’s, Liberty Mutual Insurance Company, (“Liberty Mutual” or “Appellant”) appeal as

interlocutory. Additionally, the Court remanded the case to the Industrial Accident Board (“IAB”) to decide Silva-Garcia’s Petition to Determine Compensation Due (“Petition”). On June 19, 2012, Liberty Mutual timely filed a motion for reargument based on the dismissal of the appeal. The issues raised in Liberty Mutual’s motion for reargument were already contemplated by the Court in deciding that the IAB’s order was interlocutory and thus, not appealable pursuant to Super. Ct. Civ. R. 72(i). Therefore, as Liberty Mutual merely rehashes the same argument outlined in its supplemental brief, the motion for reargument is **DENIED** and the Board is directed to set a hearing date for consideration of Silva-Garcia’s Petition.

### **Parties’ Contentions**

In its motion, Liberty Mutual first argues that the Court misapprehended the law and/or facts when it did not take into consideration that the Board ordered Liberty Mutual to reimburse City Window \$250.00 in weekly benefits and payment of prescriptions. Secondly, Liberty Mutual contends that the issue of insurance coverage, which was raised by City Window, has been resolved and there is nothing left to decide with respect to that issue. Therefore, Liberty Mutual argues that reargument is appropriate in this case as the Board’s order pertaining to insurance coverage was a final award.

Appellees, City Window and Silva-Garcia take no position on Liberty Mutual's motion for reargument.

### **Discussion**

Pursuant to Superior Court Civil Rule 59(e), a motion for reargument "shall be served and filed within 5 days after the filing of the Court's opinion or decision . . . and shall briefly and distinctly state the grounds"<sup>1</sup> for reargument. This Court will only grant reargument when it "has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision."<sup>2</sup> "A motion for reargument should not be used merely to rehash the arguments already decided by the [C]ourt."<sup>3</sup>

First, Liberty Mutual argues that the Court's Order is unclear as to how the Order to pay \$250 for weekly prescriptions is not a final award. This Court follows the meaning of the word "award" as set forth by the Supreme Court of Delaware in *Eastburn v. Newark Sch. Dist.*<sup>4</sup> In *Eastburn*, the Court stated the following:

The word "award" must be read as the final determination of the Board in the case. The word itself requires that connotation; and the

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<sup>1</sup> Super. Ct. Civ. R. 59(e).

<sup>2</sup> *State Farm Fire and Cas. Co. v. Middleby Corp.*, 2011 WL 2462661, at \*2 (Del. Super. June 15, 2011) (citing *Kennedy v. Invacare Corp.*, 2006 WL 488590, at \*1 (Del. Super. Jan. 31, 2006)).

<sup>3</sup> *Wilm. Trust Co. v. Nix*, 2002 WL 356371, at \*1 (Del. Super. Feb. 21, 2002).

<sup>4</sup> 324 A.2d 775 (Del. 1974).

urgency of workmen's compensation cases, as well as the improvement of judicial administration, militates against a ruling permitting fragmentation of such litigation by interim appeals.<sup>5</sup>

A party seeking appellate review of an interlocutory order must wait until there has been a final determination by the Board.<sup>6</sup>

The Court recognized and took into consideration that in rendering a decision on the insurance coverage issue, the Board directed Liberty Mutual to reimburse City Window \$250.00 a week for compensation paid to Silva-Garcia. This is evident by the language set forth in the Order which states, “even though the Board ruled that City Window is entitled to a certain amount of compensation on the insurance coverage issue, a final determination has not yet been decided pertaining to compensation.”<sup>7</sup> While it is accurate that the Board directed Liberty Mutual to reimburse City Window, that fact alone does not mean that the award is final. This is so because a final determination has not yet been decided on Silva-Garcia’s Petition that was filed with the Board approximately two and a half years ago. Thus, because Silva-Garcia’s Petition is still pending before the Board and the insurance coverage issue arose from the Petition, the Court properly held that Board’s order is unappealable at this time.

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<sup>5</sup> 324 A.2d 775, 776 (Del. 1974).

<sup>6</sup> *Id.*

<sup>7</sup> *Liberty Mutual v. Jesus Silva-Garcia, et. al.*, C.A. No.: N12A-03-003 CLS, at \*10 (Del. Super. June 13, 2012).

Secondly, Liberty Mutual argues that the insurance coverage action constitutes a case dispositive decision that is not interlocutory. Liberty Mutual's argument merely rehashes the arguments presented to the Court in its supplemental briefing. The Court articulated in its June 13, 2012 Order that the Board's order pertaining to insurance coverage was not a final order of the Board.<sup>8</sup> Given the fact that the Petition before the Board that is still not resolved and there are additional issues for the Board to decide, the Board's order denying Liberty Mutual's motion for reargument is not a final order. Therefore, once a final determination has been made by the Board pertaining Silva-Garcia's Petition, Liberty Mutual may appeal that decision to Kent County.<sup>9</sup>

Liberty Mutual has failed to establish that: (1) the Court overlooked a precedent or legal principle that would have a controlling effect; or (2) the Court has misapprehended the law or the facts which would affect the outcome of the decision.

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<sup>8</sup> *Liberty Mutual v. Jesus Silva-Garcia, et. al.*, C.A. No.: N12A-03-003 CLS (Del. Super. June 13, 2012).

<sup>9</sup> *See* 19 *Del. C.* § 2349.

**Conclusion**

Based on the foregoing, Liberty Mutual's Motion for Reargument is **DENIED** and the Board is directed to set a hearing date to determine Silva-Garcia's Petition.

**IT IS SO ORDERED.**

/S/CALVINL. SCOTT  
Judge Calvin L. Scott, Jr.