IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ANTHONY W. BOYLE, Plaintiff, v. CHRISTINA SCHOOL DISTRICT BOARD OF EDUCATION, as defined in Title 14 of the State of Delaware Code through JAMES R. DURR, Individually and as President of the Board; CHRISTIANA HIGH SCHOOL through DR. LILLIAN M. LOWREY, Individually and as Superintendent of Schools and MEGAN MORRISSEY, Individually and as representative of DIAMOND STATE WILDCATS, Defendants.	)	C.A. No. 07C-07-248 JAP

Submitted: December 14, 2009
Decided: December 17, 2009

MEMORANDUM OPINION

Robert Jacobs, Esquire, Wilmington, Delaware – Attorney for Plaintiff.

Stephen J. Milewski, Esquire, Wilmington, Delaware – Attorney for Defendants Christina School District Board of Education, James R. Durr, Christiana High School and Dr. Lillian M. Lowrey.

William J. Cattie III, Esquire, Wilmington, Delaware – Attorney for Defendant Megan Morrissey.

Defendant Diamond State Wildcats ("DSW") have moved from reargument from that portion of this Court's November 30, 2009 Memorandum Opinion holding that DSW is obligated to defend and hold harmless the Christina School District from the claims made by plaintiff Boyle in this matter. For the reasons which follow, that motion is **DENIED**.

The Court's November 30 Memorandum Opinion arose in part from a motion by the Christina School District to require DSW to defend it and hold it harmless from the Plaintiff's claims under the terms of an agreement between it and DSW. DSW responded by arguing that the indemnification provision contained in the agreement was void by reason of 6 *Del. C*. §2704(a). The Court rejected DSW's argument.

Now DSW argues--for the first time--that it should not be required to defend or hold harmless Christina School District for acts of the district's employees which may constitute gross or wanton negligence. It contends that such an indemnification would be void because it is against public policy. DSW further argues that the language of the indemnification provision between it and the school district cannot be read to encompass gross or wanton negligence but is instead limited to mere negligence. DSW's new argument is presumably prompted by another portion of the Court's November 30 Memorandum Opinion in which it held that the school district could not avail itself of certain

statutory immunity for acts of its employees which are ultimately determined to constitute gross or wanton negligence.

DSW's motion for reargument must be denied because it was not presented that argument when DSW first opposed the district's motion seeking indemnification. It is well-settled that a motion for reargument is not an appropriate vehicle for the losing party to present new arguments to the Court.[1] DSW points to no reason why it could not have presented this argument at the time it opposed the school district's motion. Nor does the Court believe that there is any reason why DSW could not have presented its new argument. Certainly, the aspect of the Court's ruling denying in part Christina's claim of statutory immunity for allegedly gross or wanton negligence was not a startling one which DSW could not have anticipated. Rather the Court's ruling was made on the basis of the record developed in this case and was presaged by the arguments of the other parties. Accordingly, DSW's motion for reargument is **DENIED**.[2]

John A. Parkins, Jr.

[1] E.g., *Accu-Fire Fabrication, Inc. v. Corrozi-Fountainview LLC*, 2009 WL 930006 (Del. Super. Mar. 26, 2009)("A motion for reargument is not an opportunity for a party to rehash arguments already decided by the Court or to present new arguments not previously raised."); *Dunlap v. State Farm Fire and Cas. Co*., 2007 WL 2677128 (Del. Super. Sept. 7, 2007)("Nor can [motions for reargument] be used to raise matters or arguments that could have been raised prior to the Court's earlier opinion"); *Denison v. Redefer*, 2006 WL 1679580 (Del. Super. Mar. 31, 2006)(motions for reargument are "not a device for raising new arguments or stringing out the length of time for making an argument").

[2] The Court expresses no opinion as to the merits of DSW's latest argument.

oc: Prothonotary