

July 13, 2001

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Re: *Allstate Insurance Company as subrogee of James W. Fennell v. Jay Ringgold, James Ringgold, and Ida Ringgold* - Civil Action No. 99C-09-149 SCD

Dear Counsel:

The defendant has filed a motion to reargue this Court's oral decision on defendant's Motion to Dismiss or, in the alternative, for Summary Judgment, which was denied on April 12, 2001.

One of the issues raised by the defendants at the argument and in connection with the reargument is standing. The caption of the case is Allstate Insurance Company as subrogee of James W. Fennell. The complaint is extremely brief in its statement of the claim. Although the complaint does not explain the circumstances in any detail, it appears from the various papers that have been filed that Mr. Fennel had a relative, insured under his policy, who was operating a rental car at the time of the collision in question. Under the terms of the insurance policy the family member, Julienne Fennel received \$9500 in uninsured motorist coverage benefits. The complaint also alleges payment for property damage and no-fault benefits, but plaintiff's response to the defendants' motion for summary states: "The only amount sought is subrogation for uninsured motorist payments". Mindful of the concession, the issue of standing ripens. The policy benefits were paid to Julienne, presumably a minor in 1998 when Mr. Fennell signed the release on her behalf. I assume she is now an adult.

Superior Court Rule 17 addresses real party in interest. It appears to me that the plaintiff Allstate Insurance Company is the real party in interest, but as

subrogee of Julienne Fennell. It also appears that the claims for property damage and no-fault benefits have been abandoned. It further appears that the claim for uninsured benefits is properly brought against the tortfeasor, not the carrier. Having said that, the question remains as to when the right of subrogation arises. Defendant argues that the right is governed by the same statute of limitations as the injured party. That is not the case; a subrogor does not have a right against a third party until it has paid a loss. That principle was expressed, in the context of a PIP claim, in *Harper v. State Farm*, Del. Supr., 703 A.2d 136 (199&). The claim for reimbursement of uninsured motorist benefit is derived from statute. It is subject to a three-year statute of limitations.

The plaintiff has twenty-one (21) days from the date of this decision to amend the complaint to properly state the name of the real party in interest.

The defendant's motion for reargument is DENIED.

IT IS SO ORDERED.

Very truly yours,

Susan C. Del Pesco

SCD/msg
Original to Prothonotary

¹ 18 Del. C. 3902(a)(4) provides:

In the event of payment to any person under uninsured vehicle coverage . . . the insurer shall be entitled to the proceeds of any settlement recovery from any person legally responsible for the bodily injury or property damage as to which such payment was made. . . provided, that this right of subrogation is limited to the amount of coverage required by the financial responsibility law.