IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Michael J. Carlozzi and Patricia B. Carlozzi,	)	
Plaintiffs,	)	
5.	)	C.A. No. 99C-03-083-JRS
Fidelity and Casualty Company, a Non Delaware corporation,	)	
Defendant.	)	

Submitted: May 17, 2001
Decided: June 27, 2001

***Upon Consideration of Plaintiffs' Motion for Reargument*.**
DENIED.

This 27th day of June, 2001, upon consideration of Plaintiffs' Motion for Reargument and Defendant's response thereto, it appears to the Court that:

1. Plaintiffs Michael J. Carlozzi and Patricia B. Carlozzi ("Plaintiffs") filed the instant Motion for Reargument pursuant to Superior Court Civil Rule 59(e). The

Motion questions this Court's previous disposition of Cross-Motions for Summary Judgment.[1] For

[1] *Carlozzi v. Fid. & Cas. Co.*, Del. Super., C.A. No. 99C-03-083, Slights, J. (May 3, 2001)(Mem. Op.).

the reasons that follow, Plaintiffs' Motion is **DENIED**.

2. Plaintiffs' home suffered damage to its foundation beginning in 1993 and continuing through the present. Although the cause of the damage is disputed by the parties, the Court, in resolving Defendant's Motion for Summary Judgment, viewed all facts in a light most favorable to Plaintiffs as the non-moving party. According to that version of the facts, a corroded drainpipe leaked water which, in turn, caused settlement damage to the home's foundation. Plaintiffs brought the current action seeking coverage for that damage under their homeowner's insurance policy.

3. In its previous decision, this Court ruled that the settlement damage to Plaintiffs' home, even if caused by water leaking from a drainpipe, was excluded from coverage by the clear language of the insurance policy.[2] The Court also held that a clause in the policy creating an exception to the listed exclusions does not provide coverage for settlement damage even if caused by leaking water.[3] As part of

[2] *Id.* at 18.

[3] *Id.* at 18-20.

this ruling, the Court held that the policy language was clear and unambiguous, negating the application of *contra proferentem*.[4]

4. Motions for Reargument under Superior Court Civil Rule 59(e) will only be granted in limited circumstances. A "movant must demonstrate [that] 'the Court has overlooked a decision or principle of law that would have controlling effect or the Court has misapprehended the law or the facts so that the outcome of the decision would be affected.'"[5]

[4] *Id.* at 20.

[5] *Mainiero v. Microbyx Corp.*, Del. Ch., 699 A.2d 320, 321 (1997)(citing *Stein v. Orloff*, Del. Ch., C.A. No. 7276-NC, Hartnett, V.C. (Sept. 26, 1985), Mem. Op. at 3). *See also Steadfast Ins. Co. v. Eon Labs Mfg., Inc.*, Del. Super., C.A. No. 98C-01-058, Del Pesco, J. (Aug. 18, 1999), Letter Op. at 2 (citing *Mainiero*, 699 A.2d at 321).

5. In their Motion, Plaintiffs argue two grounds in an attempt to justify reargument. First, they assert that the policy's plain language covers the settlement damage. Second, they assert that the policy is ambiguous, mandating that the Court apply the principle of *contra proferentem* and construe the language in their favor.[6] Both of these grounds previously were raised, considered and decided by the Court in its decision.[7] "Motions for reargument will be denied where they rely on grounds not raised in the original proceeding or where they merely advance the same matters that were already considered in the original proceeding."[8] Plaintiffs' Motion does precisely that; accordingly, the Motion for Reargument is **DENIED**.

IT IS SO ORDERED.

Judge Joseph R. Slights, III

Original to Prothonotary

cc: Richard L. Abbott, Esquire
Thomas J. Gerard, Esquire

[6]The Court notes that Plaintiffs, in their Motion for Reargument, have directed the Court to a decision of our Supreme Court which they now contend is controlling authority even though it was cited in their earlier submissions as support only for general principles of contract interpretation. *See Phillips Home Builders, Inc. v. Travelers Ins. Co.*, Del. Supr., 700 A.2d 127 (1997). In *Phillips*, the Court held that policy language quite different from the language in this case was ambiguous and, therefore, consistent with the doctrine of *contra proferentem*, construed the policy against the carrier to find coverage. In contrast, this Court has concluded that the policy language *sub judice* is clear and unambiguous. For this reason, the Supreme Court's decision in *Phillips* does not mandate a result different than the result announced by the Court in its initial decision.

[7]*Carlozzi*, *supra*, Mem. Op. at 18-20.

[8]*Steadfast*, *supra*, Letter Op. at 2 (citing *Miles, Inc. v. Cookson Am., Inc.*, Del. Ch., 677 A.2d 505, 506 (1995)).