

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JAMES M. CROWHORN, on behalf :
of himself and all others similarly situated, :
 : C.A. No. 00C-06-010 WLW
 :
Plaintiff, :
 :
 :
 :
v. :
 :
 :
 :
NATIONWIDE MUTUAL INSURANCE :
COMPANY, :
 :
 :
 :
Defendant. :

Submitted: May 10, 2001
Decided: June 13, 2001

ORDER

Upon Plaintiff's Motion for Reargument. Denied.

John S. Spadaro, Murphy, Spadaro & Landon, Wilmington, Delaware, attorneys for the Plaintiff.

Keith E. Donovan, Swartz, Campbell & Detweiler, Wilmington, Delaware, attorneys for the Defendant.

WITHAM, J.

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This 7th day of June, 2001, upon consideration of James M. Crowhorn's Motion for Reargument pursuant to Superior Court Civil Rule 59(e) as well as the record in this case, it appears that:

(1) On April 26, 2001, the Court denied Nationwide Mutual Insurance Company's ("Nationwide") motion to dismiss James M. Crowhorn's ("Crowhorn") complaint. The Court granted Nationwide's alternative motion for a more definite statement. Nationwide's original motion also included a motion to strike paragraphs 14-37 of Crowhorn's complaint. The Court gave Crowhorn the option of striking paragraphs 14-37 from the complaint or naming the Delaware Department of Insurance and the Insurance Commissioner as defendants in the lawsuit. Paragraphs 14-37 contain specific allegations against the Department of Insurance and the Insurance Commissioner essentially alleging that the legislatively enacted regulatory process for insurance is failing in Delaware.

(2) Both parties agree that "[a] motion for reargument is appropriate where it is shown that the Court either overlooked a precedent or legal principle that would have controlling effect, or misapprehended the law or the facts such as would affect the outcome of the decision."¹ Delaware courts have also stated that motions for reargument are usually denied "unless the Court has overlooked a decision or principle of law that would have controlling effect or the Court has misapprehended

¹ *Chemical Industry Council of Delaware, Inc. v. State Coastal Zone Industrial Control Board*, Del. Ch., C.A. No. 1216-K, Jacobs, V.C. (June 10, 1994), Op.at 1.

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the law or the facts so that the outcome of the decision would be affected.”² Motions for reargument are also denied when they are merely a rehash of arguments already made.³

(3) Crowhorn argues that the Court misapplied the standard for a motion to strike. According to Crowhorn, paragraphs 14-37 are relevant to his cause of action because they show why a jury should award punitive damages against Nationwide when it is subject to other forms of punishment through the State’s regulatory process. Crowhorn also believes that Nationwide is going to raise the regulatory process as a defense before the trial; therefore, Crowhorn “should be permitted to preempt this theme before the jury; and if it is raised by Nationwide, he should certainly be able to

² *St. Catherine of Sienna Catholic Church v. Hart Construction Co.*, C.A. No. 97C-09-181, Toliver, J. (Aug. 23, 2000), Ord. at 1, (citing *Miles v. Cookson America, Inc.*, Del. Ch., 677 A.2d 505, 506 (1995) (citation omitted)).

³ *St. Catherine* at 1-2.

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respond.”⁴ In its earlier decision, the Court stated that it questioned the relevance of paragraphs 14-37, and Crowhorn claims that the law requires any doubt to be resolved in favor of the pleading.

⁴ Pl[’s] Mot. for Reargument at 5.

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(4) If the Court's earlier decision appears unclear, the Court will clarify its position. Crowhorn and the alleged class members are bringing suit against Nationwide by essentially alleging breach of contract and bad faith for delay or denial in the payment and handling of PIP claims. In an expansive complaint, the Plaintiffs take twenty-three paragraphs to detail that "a) the regulatory process in Delaware is a dismal failure, and b) if Delaware juries do not police Nationwide's misconduct, no one will."⁵ In its earlier decision, the Court used the word "questions," which brought on this motion for reargument. To clarify, the Court finds that paragraphs 14-37 are not relevant to the matter before the Court, i.e., Nationwide's alleged bad faith breach of contract; nor are they relevant in response to anything Nationwide has plead in this case, as Nationwide has yet to file an answer. The Court agrees that if Nationwide raises the regulatory process as a defense against punitive damages or other aspects of the litigation, Crowhorn will be permitted an appropriate response. The cart will not be placed before the horse. The Court finds that the bad faith breach of contract claims are the relevant issues in this case, not the action or inaction of the regulatory process.

(5) Crowhorn also refers to some publications that appear to show, among other things, a change in jury attitudes towards class action plaintiffs, class action

⁵ *Id.*

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litigation and consumer protection lawsuits. Other than this material, no new arguments are raised and the Plaintiff merely rehashes his earlier arguments. The current, reported status of public opinion or discourse does not change the Court's finding with respect to the relevancy of paragraphs 14-37. Finally, the Court is putting the parties on notice that should this matter go to trial before a jury, the issues must be as clear as possible and last-minute arguments raising issues or defenses that were not plead or litigated will be disfavored.

For the foregoing reasons, Crowhorn's motion for reargument is **denied**. IT IS SO ORDERED.

J.

dmh

oc: Prothonotary

xc: Order Distribution