SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

P.O. Box 746
COURTHOUSE
GEORGETOWN, DE 19947

August 25, 2004

Thomas J. Stumpf, Esquire
Stumpf, Vickers & Sandy, P.A.
8 West Market Street
Georgetown, DE 19947

Nancy Chrissinger Cobb, Esquire
Chrissinger & Baumberger
Three Mill Road, Suite 301
Wilmington, DE 19806

RE: Ruggiero v. Montgomery Mutual Insurance Company
C.A. No. 03C-04-022 ESB

Date Submitted: July 12, 2004

Dear Counsel:

This is my decision on the motion for reargument filed by plaintiffs Robin P. Ruggiero and Anthony M. Ruggiero (the "Ruggieros") of my Order that denied the Ruggieros' motion for summary judgment against defendant Montgomery Mutual Insurance Company ("Montgomery Mutual"). The Ruggieros' motion is denied for the reasons stated herein.

1. Robin Ruggiero was injured in an auto accident on March 15, 1996. At the time of the accident, Robin Ruggiero was operating a vehicle she personally owned and was negligently struck by the driver of another vehicle, Linnie A. Bryan ("Bryan"). Robin Ruggiero was paid the policy limits of $100,000 by the liability carrier. In this declaratory judgment action, Robin Ruggiero claimed that Bryan was underinsured in light of the severity of her injuries and damages. Robin

Ruggiero sought additional compensation from Montgomery Mutual, which insured a small fleet of vehicles owned by her employer, Phillips Sign, Inc. ("Phillips Sign").

2. Robin Ruggiero was both an employee of, and corporate officer for, Phillips Sign for many years. Phillips Sign specifically notified Montgomery Mutual of Robin Ruggiero's authorization to drive company-owned and insured vehicles in March 1992 via a "Driver Information" sheet, which listed Robin Ruggiero as one of many permissible "drivers" under the applicable policy. At the time of the accident, however, Robin Ruggiero was not driving a company-owned vehicle, nor was she driving in the course or furtherance of her employer's business.

3. The Ruggieros filed a motion for summary judgment claiming that they are "insureds" under the policy and are entitled to judgment as a matter of law since there are no material facts in dispute. In an Order dated June 28, 2004, I denied the Ruggiero's motion for summary judgment.[1]

4. In my Order, I followed Delaware legal precedent and found that the language at issue in this case was ambiguous, but nevertheless, found that Robin Ruggiero was not an insured at the time of the accident.

5. The Ruggieros have now filed a Motion for Reargument.

6. It is well established in Delaware that "reargument will usually be denied unless it is shown that the Court overlooked a precedent or legal principle that would have controlling effect, or that is has misapprehended the law or the facts such as would affect the outcome of the decision."[2]

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[1] *Ruggiero v. Montgomery Mut. Ins. Co.*, Del. Super. Ct., C.A. No. 03C-04-022, Bradley, J. (June 28, 2004).

[2] *Citifinancial Mortgage Co. v. Edge*, 2004 WL 692728, at *1 (Del. Super. Ct.), *citing Monsanto Co. v. Aetna Cas. And Sur. Co.*, Del. Super. Ct., C.A. No. 99-Ja-118, Mem. Op. at 2, Ridgely, P.J. (Jan. 14, 1994) (quoting *Wilshire Restaurant Group, Inc. v. Ramada, Inc.*, Del. Ch., C.A. No. 11506, Let. Op. at 2, Jacobs, V.C. (Dec. 1990)).

7. In their motion for reargument, the Ruggieros claim that my finding that Robin Ruggiero was not an insured at the time of the accident, and therefore, was not eligible for compensation under the terms of the Montgomery Mutual policy, is based on a misapprehension of the law and legal precedent. The Ruggieros argue that I primarily focused on the perceived expectations of the parties and erroneously concluded that Robin Ruggiero could only reasonably expect to be covered under the policy at issue either while operating a company-owned vehicle, or working in the course of her employment. Although the policy language does not expressly require occupancy in a company-owned vehicle nor job related purpose, the Ruggieros' claim for coverage in these circumstances is simply unreasonable. No reasonable person would expect that their employer's insurance would cover them when they are not driving a company-owned vehicle or working in the course of their employment.

8. The Ruggieros argue that I considered an unnecessary step in my analysis to find that both Robin Ruggiero and Phillips Sign could only reasonably expect coverage under the policy if Robin Ruggiero was occupying a company-owned vehicle or working in the course of her employment. The Ruggieros cite Delaware case law which supports a finding of coverage, in support of their motion. However, these cases are factually distinguishable from the case at bar. Unlike Robin Ruggiero, the individuals seeking coverage in *Reese v. Wheeler*,[3] *State Farm Mut. Auto Ins. Co. v. Harris*,[4] and *Fisher v. Nat'l Union Fire Ins. Co. of Pittsburgh*,[5] were injured while in the course of,

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[3]2003 WL 22787629 (Del. Super. Ct.).

[4]1996 WL 280770 (Del. Super. Ct.).

[5]1997 WL 817893 (Del. Super. Ct.), *aff'd*, 719 A.2d 490 (Table), 1998 WL 665074 (Del.).

or in the furtherance of, their employment, and were either in a company-owned vehicle at the time of the accident, or were in close proximity to the company-owned vehicle. Moreover, despite the Ruggieros' contention that these factors are not prerequisites to the Court's holding, it is hard to fathom how these factors are not central to the determination that coverage exists.

9. The Ruggieros cite *Harleysville v. Grzbowski*, 2002 WL 1859193 (Del. Super. Ct.), in support of their motion. However, once again, this case can easily be distinguished from the case at bar. The Ruggieros correctly state that the Court in *Harleysville* found coverage to exist, despite Grzbowski's non-occupancy of an insured vehicle, and non-business purpose.[6] However, the Ruggieros have neglected to provide that the individual seeking coverage in *Harleysville* was the individual business owner of a sole proprietorship.[7] The Court found that since the company was a sole proprietorship and not a corporation, Grzbowski had a reasonable expectation of coverage under the commercial auto insurance policy.[8] Moreover, "where a sole proprietor purchases an insurance policy under his trade name, the trade name is equated with the proprietor's name, making the proprietor an insured."[9] Robin Ruggiero is an employee of Phillips Sign, and was injured while engaged in personal activities and driving her own vehicle. Therefore, this case clearly does not apply.

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[6] *Harleysville v. Grzbowski*, 2002 WL 1859193 (Del. Super. Ct.).

[7] *Id.*

[8] *Id.*

[9] *Del Collo v. Houston*, 1986 WL 5841, at *4 (Del. Super. Ct. 1986), *citing Hartford Accident and Indemnity Co.*, 639 F.2d 1019 (3d Cir. 1981).

10. I find that the Ruggieros have failed to meet the standard necessary for reargument in this case.

**CONCLUSION**

The Ruggieros' Motion for Reargument is denied for the reasons stated herein.

**IT IS SO ORDERED.**

Very truly yours,

E. Scott Bradley

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cc: Prothonotary's Office