

**SUPERIOR COURT  
of the  
STATE OF DELAWARE**

**Susan C. Del Pesco**  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
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March 31, 2005  
Via facsimile only

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Re: *Tyrone M. Brown, Jr., v. AIG National Insurance Company, Zachary Jackson and Budget Rent-a-Car - C.A. No. 02C-04-101 SCD*

Dear Counsel:

Defendant Budget Rent a Car has filed a motion for summary judgment to which co-defendant AIG has filed a response. AIG has filed its own motion for summary judgment. Although this case has been pending since April of 2002,<sup>1</sup> the parties have saved their motions for presentation two weeks before the pre-trial conference, and provided little aid to the court in that they have filed 4 page motions, with large appendices, based largely on a single deposition taken over a year ago.

A motion for summary judgment may only be granted where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.<sup>2</sup>

The facts are that the plaintiff was allegedly injured by a vehicle rented by Donna Hope aka Donna Brown from Budget Rent a Car. At the time of the accident in question, the vehicle

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<sup>1</sup> The case was stayed from September 2002 until October 2003 while defendant Budget was in bankruptcy proceedings.

<sup>2</sup> *Merrill v. Crothall-American, Inc.*, 606 A.2d 96 (Del. 1992).

was operated by Zachary Jackson. Hope says she did not give Jackson permission to operate the vehicle. Jackson has never been served with the complaint in this action.

Budget is self-insured for motor vehicle liability. Motor vehicle liability policies are required to insure the person to whom the policy is issued, and “any other person . . . using any such motor vehicle . . . with the express or implied permission of such named insured.”<sup>3</sup> There is a special statute which relates to civil liability for the negligence of owners of rental vehicles. The statute provides that if the rental company permits the renter, or a person operating the rental vehicle with the renter’s permission, to operate the vehicle without insurance consistent with the statutory minimums, then the rental company is “jointly and severally liable with the renter for any damages caused by the negligence of the latter in operating the vehicle . . .”<sup>4</sup>

There is no contention here that Budget did not have the requisite insurance. It is self-insured. By statute, it is obligated to respond to the plaintiff’s claim if the driver of the vehicle at the time of the accident was a permissive user. Budget argues that based on the deposition taken of Ms. Hope on January 7, 2004, there was no permission to use the vehicle on the night in question. The response from AIG is that there is sufficient evidence from which a fact finder might conclude that there was implied permission.<sup>5</sup>

I conclude that there is an issue of fact regarding permissive use of the vehicle, given the fact that the driver of the vehicle had access to the renter’s residence, was allowed to come and go at will, and had used her other vehicles without permission on other occasions. Budget’s Motion for Summary Judgment is DENIED.

AIG’s motion seems to argue that if the facts indicate that the Budget vehicle was operated by someone who was not a permissive user, then the vehicle would be uninsured -- a result which would be in violation of the compulsory liability insurance provisions of the Delaware law. Consequently, AIG argues that such a result is impermissible. It is the objective of the law to make insurance available for vehicles that are operated by the owner or with the owner’s permission. However, there are circumstances when there is no insurance on a vehicle. That is when uninsured insurance policies come in to play. AIG is plaintiff’s uninsured insurance carrier. If the vehicle use is determined to be without permission, AIG must respond.

AIG’s motion for summary judgment on the grounds that Budget must respond to this claim regardless of whether or not the use of the vehicle by Jackson was permissive is DENIED.

IT IS SO ORDERED

Very truly yours,  
*/s/ Susan C. Del Pesco*  
Susan C. Del Pesco

Original to Prothonotary

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<sup>3</sup> 21 *Del. C.* § 2902(b)(2).

<sup>4</sup> 21 *Del. C.* § 6102(a) & (c).

<sup>5</sup> 21 *Del. C.* § 2902(b)(2).