

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

GARY THOMPSON and)
DELAWARE INSURANCE GUARANTY)
ASSOCIATION)
Plaintiffs,)
v.)
REINCO, INC., a foreign corporation)
Defendant.)

C.A. No. 01C-04-076 JRJ

**ORDER GRANTING LEAVE TO APPEAL
FROM INTERLOCUTORY ORDER**

This 9th day of May, 2005, the Defendant having made application pursuant to Rule 42 of the Supreme Court and Rule 74 of the Superior Court for an order certifying an appeal from the interlocutory opinion and order of this Court, dated April 11, 2005 granting a new trial; and the Court having found that such order determines substantial issues and establishes legal rights, and having further found that the Court's ruling involves case dispositive issues that may terminate the litigation, and a review of these issues would serve considerations of justice as further explained below;

IT IS ORDERED that the Court's order of April 11, 2005, is hereby certified to the Supreme Court of the State of Delaware pursuant to Supreme Court Rule 42(b).

During the week of January 24, 2005, the above matter was tried before a jury. On January 28, 2005, the jury returned a verdict finding the Defendant was not liable. On February 11, 2005, the Plaintiffs filed a Motion for a New Trial. The Court granted the Plaintiffs' motion in a letter Opinion on April 11, 2005, and the Defendant then sought certification of an interlocutory appeal. The Court hereby grants leave to appeal from this interlocutory order because there are central issues that are dispositive and may lead to a termination of the litigation in this case.

This Court granted the Plaintiffs' Motion for a New Trial due to its great concern "that the jury was confused by the Court's ruling after all the evidence was submitted that as a matter of law plaintiff was not comparatively negligent."¹ The Court further stated "the confusion caused by the introduction of evidence on comparative negligence, the Court's multiple rulings during trial on the issue of clogs and the resultant prejudicial piecemeal testimony regarding the same" and "testimony offered by Mr. Clauser [that] ... was highly prejudicial, not very probative, and very confusing."² If the Supreme Court finds that the evidence cited above did not have any impact on the jury's finding of no liability on the part of the Defendant, then this case will be dismissed. Prompt resolution of these legal issues will certainly save substantial time and expense while serving the administration of justice.

¹ See *Thompson v. Reinco, Inc.*, Del. Super. Ct., 2005, No. 01C-04-076, Jurden, J. (April 11, 2005).

² *Id.*

Date: May 9, 2005

Jan R. Jurden, Judge