

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SUSAN P. ROBBINS, Individually and :
as Administratrix of the Estate of :
Gary D. Robbins, II and :
GARY D. ROBBINS, SR., :
:
Plaintiffs, :

C.A. No. 04C-06-289 SCD

v. :

WILLIAM H. PORTER, INC., a Delaware :
corporation, d/b/a Porter Nissan; :
GOVERNMENT EMPLOYEES :
INSURANCE COMPANY, :
SHAWN T. WAGNER and :
HELEN M. WAGNER :
:
Defendants. :

O R D E R

Submitted: April 27, 2006
Decided: October 3, 2006

The plaintiffs have filed a motion in limine to exclude certain evidence. Defendants Government Employees Insurance Company (“GEICO”) and William H. Porter, Inc. (“Porter”) have filed objections. Upon review of the papers submitted, it appears:

1. The plaintiffs’ decedent, Gary D. Robbins, II, (“Robbins”) was one of four teenagers in an automobile at the time of a single vehicle accident on September 13, 2002. The vehicle had been stolen from the used car lot of defendant Porter on or about August 31, 2002. Jose Rodriguez (“Rodriguez”) was also killed in the accident. Surviving the collision were Shawn Wagner (“Wagner”) and Aaron Hollis (“Hollis”). The vehicle was operated for a number of days prior to the accident by Rodriguez, who was thought by the survivors to own the vehicle.

2. A key issue in the case is the identity of the driver of the vehicle at the time of the accident. That information is relevant to plaintiffs' claim for uninsured\nderinsured motorist coverage.
3. There are two evidentiary concerns raised by the plaintiffs. The first is the admissibility of evidence of toxicology reports of blood samples taken from Robbins, Rodriguez and Wagner which tested positive for cannabinoids. Wagner's sample is also positive for opiates.
4. Plaintiffs argue that none of the toxicology results are admissible as there is no expressed level of the drugs, and no indication that the individuals were under the influence of marijuana at the time of the accident. Plaintiffs also argue that the prejudicial effect of the testimony outweighs its probative value.
5. Defendant GEICO is the Robbins' uninsured\nderinsured motorist carrier. GEICO wishes to introduce the evidence of drug use and evidence of intent to purchase drugs on the day of the accident in support of its contention that Wagner, not Rodriguez, was the operator of the vehicle. GEICO's theory of relevance is that Wagner was given the privilege of driving because he had money for drugs. GEICO's defense is also supported by testimony from an eyewitness who identifies Wagner as the driver. GEICO's theory as presented in the papers submitted is far too speculative to justify the admissibility of the evidence regarding marijuana.
6. GEICO also argues that the evidence of marijuana use is relevant to the issue of Robbins' future earning potential, and the likelihood of a contribution to his parents. Plaintiffs' evidence regarding future earnings of the decedent has not been outlined in the papers. GEICO has not provided anything but argument to support its contention that marijuana use is associated with poor performance in employment. While such data may exist, it is not in this record.

7. Porter makes a different argument. Porter's defense is based on proximate cause. Porter alleges that any negligence on its part with regard to the theft of the vehicle was not the proximate cause of Robbins' death because subsequent intervening events broke the chain of causation. Again, there may be competent medical testimony which speaks to the issue of the nature or extent of the impairment of the young men involved, but that evidence is not in this record. A fair inference from the testimony provided is that the cannabinoid use was at an earlier time, and that the individuals were not under the influence at the time of the accident.

8. The bare toxicology reports are not admissible regarding causation. The motion to exclude the references to marijuana use is GRANTED until such time as a solid basis for its relevance may be established.

9. The second issue raised by the plaintiffs' motion relates to evidence that the decedent and his friends intended to procure marijuana on the afternoon of the accident. This too is inadmissible. There is no indication of why intent to do something after the accident would be relevant, particularly in light of the highly prejudicial nature of the testimony.

WHEREFORE, the plaintiffs' motion in limine is GRANTED.

IT IS SO ORDERED.

/s/ Susan C. Del Pesco

Susan C. Del Pesco