

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ENCOMPASS INDEMNITY	§	
COMPANY,	§	No. 568, 2012
	§	
Defendant/Third-Party	§	
Plaintiff Below,	§	Court Below–Superior Court of
Appellant,	§	the State of Delaware in and for
	§	New Castle County
v.	§	
	§	
JUDI KENNEDY,	§	
	§	
Plaintiff Below,	§	
Appellee,	§	
	§	
v.	§	
	§	
GOVERNMENT EMPLOYEES	§	
INSURANCE CO.,	§	
	§	
Third-Party Defendant Below,	§	C.A. No. 09C-06-271
Appellee.	§	

Submitted: November 1, 2012
Decided: November 15, 2012

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 15th day of November 2012, it appears to the Court that:

(1) Defendant and third-party plaintiff/appellant, Encompass Indemnity Company (“Encompass”), has petitioned this Court, pursuant to Supreme Court Rule 42, to accept an appeal from an interlocutory order of the Superior Court. The interlocutory order, which is a Superior Court opinion that issued on

September 28, 2012, denied Encompass' motion for summary judgment and granted a motion to dismiss filed by third-party defendant/appellee, Government Employees Insurance Co. ("GEICO").

(2) Encompass' application for certification sought review of the following four "unsettled" questions of law:

(1) whether a person can file an uninsured motorist claim when the tortfeasor is actually insured; (2) whether mere allegations of failure to pierce New Jersey's Verbal Threshold Statute triggers a Delaware uninsured motorist claim; (3) If both questions outlined above are in the affirmative, then who decides if the threshold has been pierced and (4) whether an uninsured motorist carrier can subrogate against the tortfeasor's insurance company directly.

Plaintiff/appellee, Judi Kennedy, and GEICO each filed a response opposing Encompass' application for certification. By order dated October 31, 2012, the Superior Court found that questions (1), (2) and (4) do not involve unsettled questions of Delaware law but that question (3) involves an issue of first impression interpreting Delaware's uninsured motorist statute.

(3) Applications for interlocutory review are addressed to the sound discretion of this Court and are granted only in exceptional circumstances. The Court has examined the Superior Court's September 28, 2012 opinion according to the criteria set forth in Supreme Court Rule 42 and has concluded that exceptional circumstances meriting interlocutory review do not exist in this case.

NOW, THEREFORE, IT IS HEREBY ORDERED that the interlocutory appeal is REFUSED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice