

Superior Court
of the
State of Delaware

Jan R. Jurden
Judge

New Castle County Courthouse
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Date Submitted: April 28, 2006

Date Decided: May 8, 2006

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**RE: Kerri Ann Hill v. Teofil Hernandez, Eduardo Montero, and
Travelers Insurance Company
C.A. No. 02C-11-239-JRJ**

Dear Counsel:

This Opinion follows the bench trial held on Monday, March 27, 2006. This case arises from a hit and run collision that occurred on September 17, 2001, at approximately 2:30 p.m. The Plaintiff was traveling westbound on 10th Street, with a green light, when a vehicle operated by an unknown driver disregarded a red light and struck her vehicle. The unknown driver abandoned his vehicle and fled the scene.

At 6:00 p.m. on the day of the collision, the Defendant Teofil Hernandez contacted the Philadelphia Police Department to report that his vehicle had been stolen from in front of his home on September 15th. The Defendant's vehicle was the same vehicle involved in the September 17, 2005 hit and run collision.

According to the evidence presented at trial, Mr. Hernandez left his vehicle

parked in front of his home on Saturday, September 15, 2001, while he went to New York City with his wife and children. On Monday, September 17, 2001, Mr. Hernandez's brother called him in New York. Mr. Hernandez' brother informed Mr. Hernandez that Mr. Eduardo Montero, an acquaintance and co-worker living in Mr. Hernandez's home, had taken the vehicle. Upon returning from New York later that same day, Mr. Hernandez went to the Philadelphia Police Department and reported his vehicle stolen.

At trial, Mr. Hernandez testified that he had never permitted or authorized Mr. Montero to drive his vehicle, Mr. Montero had never driven Mr. Hernandez's vehicle before this incident, Mr. Montero did not have a driver's license, and Mr. Montero was in the United States illegally. Mr. Hernandez's testimony was undisputed and credible on these points.

Pursuant to Pennsylvania law,¹ the parties agree that Mr. Hernandez's ownership of the vehicle creates a rebuttable presumption that Mr. Montero had his express or implied consent to operate Mr. Hernandez's vehicle on the day of the collision. At trial, the Defendants offered credible evidence to the contrary, particularly Mr. Hernandez's testimony. Therefore, the presumption was successfully rebutted. Thus, the Court finds that Mr. Montero, who was in the Country illegally and uninsured, was the driver of the vehicle involved in the hit and run collision and did not have Mr. Hernandez's express or implied consent to drive the vehicle. Consequently, the Plaintiff Ms. Hill's uninsured/underinsured motorist carrier is obligated to pay the stipulated damages, and not Mr. Hernandez's liability carrier.

IT IS SO ORDERED.

Jan R. Jurden, Judge

cc: Prothonotary – Original

¹ See *Waters v. New Amsterdam Cas. Co.*, 144 A.2d 354, 356-57 (Pa. 1958), citing *Watkins v. Prudential Ins. Co.*, 173 A. 644 (Pa. 1934).