

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

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|--------------------------|---|-------------------------|
| ROLANDO RAFAEL CASTILLO, |) | |
| |) | |
| v. |) | C.A. No. 06C-08-069 CLS |
| |) | |
| CLEARWATER INSURANCE |) | |
| COMPANY. |) | |
| |) | |

ORDER

AND NOW, TO WIT, this 25th day of January, 2012, **IT IS HEREBY**

ORDERED as follows:

Introduction

On December 1, 2011, an order was issued granting Plaintiff's, Rolando Rafael Castillo ("Plaintiff") Motion to Quash a potential assertion of a workers' compensation lien in New Jersey. On December 8, 2011, New Jersey Manufacturers Insurance Company, ("NJM") a non-party to this case,¹ filed a Motion for Reargument, pursuant to Superior Court Civil Rule 59(e). Plaintiff responded on December 23, 2011. The Motion is **DENIED** because the issues raised in the motion were already considered in the Court's December 1st order.

¹ NJM is the workers' compensation carrier for International Motor Freight and has paid workers' compensation benefits to Plaintiff in the amount of \$303,287.49, with expected additionally benefits of \$133,200. NJM's workers' compensation lien will be in excess of \$186,000.

Parties' Contentions

In its Motion, NJM argues that: (1) NJM should have been provided the opportunity for additional briefing or oral argument; (2) this Court did not address the argument that the parties stipulated that this issue would be addressed by a workers' compensation Judge in New Jersey; and (3) NJM seeks clarification on the Court's resolution of the choice of law analysis.

Discussion

This Court will only grant a motion for reargument when it “has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision.”²

“A motion for reargument should not be used merely to rehash the arguments already decided by the [C]ourt.”³

First, NJM claims it should have been provided the opportunity for additional briefing or oral argument. If NJM felt as though more pages were needed to adequately convey its point, an extension for the motion could have been requested. However, NJM did not request an extension of the standard page limitation. Oral argument is at the discretion of this Court. The parties written

² *State Farm Fire and Cas. Co. v. Middleby Corp.*, 2011 WL 2462661, at *2 (Del. Super. June 15, 2011) (citing *Kennedy v. Invacare Corp.*, 2006 WL 488590, at *1 (Del. Super. Jan. 31, 2006))

³ *Wilm. Trust Co. v. Nix*, 2002 WL 356371, at *1 (Del. Super. Feb. 21, 2002).

submissions were sufficient for the Court to rule on the Motion to Quash the asserted workers' compensation lien and oral argument was not necessary.

Second, NJM alleges that this Court did not address the argument that the parties agreed to New Jersey law as the forum for resolution of the workers' compensation issue. However, this Court did consider this agreement in its order dated December 1, 2010. In its order, the Court stated, “[b]ased on the earlier settlements between the parties, Plaintiff is not estopped from denying reimbursement because the July 28, 2009 letter indicates that the lien depends on applicable [S]tate law.”⁴ The Court considered the previous settlement but ultimately held that Delaware and not New Jersey law applied to this issue.

Lastly, NJM seeks clarification on the choice of law analysis. This Court held in an order issued on November 21, 2006, and on December 1, 2011, that Delaware law applies to the interpretation of the insurance policy. NJM alleges, that New Jersey law, and not Delaware law, has the most significant relationship to the workers' compensation issue. However, Delaware law applies to both the interpretation of the insurance policy and the workers' compensation issue before this Court. Castillo, a Delaware resident, was injured in an accident in Delaware. Castillo subsequently recovered monies from a personally purchased underinsured motorist (“UIM”) policy, with Clearwater Insurance Company, a Delaware

⁴ *Castillo v. Clearwater Ins. Co.*, C.A. No. 06C-08-069, at *12 (Del. Super. Dec. 1, 2011).

Corporation. NJM will potentially assert a workers' compensation lien against the monies recovered from the Clearwater Policy. Because Delaware has the most significant relationship to this action, the Court determined that Delaware law precludes a lien on proceeds from a personally purchased UIM policy.

NJM has failed to establish that: (1) the Court overlooked a precedent or legal principle that would have a controlling effect; or (2) the Court has misapprehended the law or the facts which would affect the outcome of the decision. NJM has essentially rehashed the same argument set forth in its response to Plaintiff's Motion.

Conclusion

Based on the forgoing, Defendant's Motion for Reargument is **DENIED**.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.