

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JUDI KENNEDY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N09C-06-271 MMJ
	)	
ENCOMPASS INDEMNITY CO.,	)	
	)	
Defendant/Third-Party	)	
Plaintiff,	)	
	)	
v.	)	
	)	
GOVERNMENT EMPLOYEES	)	
INSURANCE CO.,	)	
	)	
Third-Party Defendant.	)	

Submitted: January 19, 2012

Decided: February 28, 2012

On Defendant Encompass Indemnity Company's Motion for Reargument or to  
Modify Judgment

**ORDER**

Kevin G. Healy, Esquire, Morris James LLP, Newark, Delaware, Attorneys for Plaintiff

Arthur D. Kuhl, Esquire, Reger Rizzo & Darnall LLP, Wilmington, Delaware, Attorneys  
for Defendant

Dawn L. Becker, Esquire, Law Office of Dawn L. Becker, Wilmington, Delaware,  
Attorney for Defendant GEICO

**JOHNSTON, J.**

1. On November 4, 2011, the Court heard oral argument on the Motion for Summary Judgment filed by Defendant Encompass Indemnity Company (“Encompass”). By Order dated December 9, 2011, the Court denied Encompass’s Motion for Summary Judgment, for the reasons set forth on the record.

2. Encompass has moved for reargument, claiming that the Court erred in relying on the Delaware Supreme Court’s decision in *State Farm Mut. Auto. Ins. v. Patterson*.<sup>1</sup> According to Encompass, *Patterson* is not applicable until a factual finding is made that Plaintiff Judi Kennedy was injured by an uninsured motorist.

3. The purpose of reargument is to seek reconsideration of findings of fact, conclusions of law, or judgment of law.<sup>2</sup> Reargument will usually be denied unless the moving party demonstrates that the Court overlooked a precedent or legal principle that would have a controlling effect, or that it has misapprehended the law or the facts in a manner affecting the outcome of the decision. “A motion for reargument should not be used merely to rehash the arguments already decided by the court.”<sup>3</sup>

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<sup>1</sup> 7 A.3d 454 (Del. 2010).

<sup>2</sup> *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969).

<sup>3</sup> *Wilmington Trust Co. v. Nix*, 2002 WL 356371, at \*1 (Del. Super.).

4. The Court has reviewed and considered Defendant's motion. The Court did not overlook a controlling precedent or legal principle, or misapprehend the law or the facts in a manner affecting the outcome of the decision.

5. The Court finds that its reliance on *Patterson* was appropriate. The undisputed record establishes that Plaintiff's claim was denied by Defendant's automobile insurance company – Government Employee Insurance Company ("GEICO") – on May 20, 2009. GEICO denied Plaintiff's claim after finding that her injuries were not sufficiently "permanent" to pierce the "verbal threshold" under New Jersey's Verbal Tort Threshold Statute.<sup>4</sup> Further, as part of litigation in New Jersey, an arbitrator found that Plaintiff failed to meet the "verbal threshold." A New Jersey tribunal having determined the "verbal threshold" issue, under *Patterson*, Delaware law entitles Plaintiff to pursue Uninsured Motorist benefits from her automobile insurance company – Encompass.

**THEREFORE**, Defendant Encompass Indemnity Company's Motion for Reargument is hereby **DENIED**.

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<sup>4</sup> N.J.S.A. § 39:6A-8.

**IT IS SO ORDERED.**

/s/ *Mary M. Johnston*  
The Honorable Mary M. Johnston