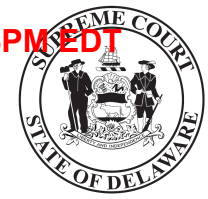
EFiled: Aug 06 2013 04:46PM EDT
Filing ID 53456260
Case Number 468,2012



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANGELA M. BARLOW, et. al. Plaintiffs Below, Appellees as to Barlow, v. MICHAEL P. FINEGAN, et. al., Defendants Below, Appellees,	)))))))))	No. 468, 2012 Court Below – Superior Court of the State of Delaware in and for New Castle County C.A. No.: N11C-04-237 JAP (Consolidated)
DAWN LOCKE, as Guardian Ad Litem of KIMBERLY FOTH, Appellee Below, Appellant, v. MICHAEL PATRICK FINEGAN and MICHAEL P. FINEGAN, JR., Defendants Below, Appellees,	))))))))	C.A. No.: N11C-09-105 CHT
TITAN INDEMNITY COMPANY, Plaintiff Below, Appellee, v. DAWN LOCKE, as Next Friend of KIMBERLY FOTH and ANGELA BARLOW, as Next Friend of JOHN BARLOW, III, Defendants Below, Appellant as to Foth.	))))))))))	C.A. No.: N12C-03-013 JAP

<u>APPELLEE TITAN INDEMNITY COMPANY'S SUPPLEMENTAL MEMORANDUM</u>

This case stems from a motor vehicle collision that occurred on October 2, 2009 in which Angela Barlow and the minors, John Barlow, III and Kimberly Foth, were injured. At the time of the collision, the tortfeasor, Michael Patrick Finegan ("Finegan") was insured by Appellee Titan Indemnity Company ("Titan") and carried the mandatory minimum amount of bodily injury liability insurance coverage of $15,000.00 per person and $30,000.00 per accident. Titan agreed to tender $30,000 in order to resolve the three personal injury claims of Angela Barlow, John Barlow, III ("John") and Kimberly Foth ("Kimberly") in exchange for a release of all claims against Titan's insured driver, the named insured, and Titan. (B-7).[1] The settlement also required Court approval for the minor's claims. *Id*.

On November 4, 2011, Kimberly's counsel agreed to Angela and John Barlow's proposed division of the settlement proceeds and accepted the $7,500.00 apportionment for Kimberly's. (B-11). On December 19, 2011, Kimberly's counsel again confirmed the settlement agreement in writing. (B-13). On December 20, 2011, Titan's confirmed to all parties the settlement agreement and also confirmed that Court approval would be required for the minor's settlements. (B-14). On December 21, 2011, Kimberly's counsel then advised for the first time that he would not be able to obtain Foth's authorization to the split between the minors

until he received the medical records for John to verify that both minors were similarly injured. (B-15).

John then filed a Motion to Enforce Settlement Agreement in the Trial Court. Titan later filed an interpleader action and interplead the $15,000 into the Court. On March 2, 2012 the Superior Court granted the Motion to Enforce Settlement Agreement. On July 26, 2012, the Trial Court entered a Final Judgment in the consolidated actions holding that John and Kimberly would each receive $7,500, that the Prothonotary must immediately disburse the interplead money to the parties, and that the consolidated cases were dismissed with prejudice.

Kimberly filed an Appeal of the Orders of the Superior Court. On May 6, 2013 this Court vacated the Final Judgment of the Trial Court and remanded the case directing the Superior Court to conduct a minors' settlement hearing for John and Kimberly's settlements and this Court stated that the Trial Court should determine the proposed settlement's relative fairness to the minors. The Trial Court conducted the hearing and on July 8, 2013 issued a Report on Remand and held that the agreed settlement of a 50/50 split of the remaining $15,000 policy limit between the minors was fair and reasonable. (See Exhibit "A" attached hereto). The Trial Court also stated that if it was making a "clean slate" determination it would hold that Kimberly should get $10,000 and John should get

---

[1] Citations to "B-_" refer to the Appendix to the Appellees Joint Answering Brief filed on November 28, 2012.

$5,000.

Appellee hereby adopt and incorporate herein the arguments in the Supplemental Memoranda submitted by Appellee Angela Barlow as next friend of John Barlow, III and Appellee Finegan.

Kimberly seeks to continue to pursue claims against the Finegans regardless of the fact that she agreed to settle the claims against the Finegans and execute releases in their favor once there is a court approval of the settlement. The Titan $15,000 policy limit applicable to the claims of John and Kimberly was interplead into the Trial Court for disbursement as directed by the Trial Court once the determination of the proper apportionment was determine by the Trial Court. That does not mean that the settlement agreement became any less binding on Kimberly and John once the court approval was accomplished. Upon court approval of the minors' settlements, the settlements are final and complete.

As to Kimberly's claim that Titan should be required to pay all of Kimberly's court costs, Kimberly fails to cite any statute or case law to support this contention. The settlement agreement did not provide for Titan to pay any court costs. The settlement funds were interplead into the Trial Court and the Trial Court simply released the settlement funds once the Court entered the final judgment enforcing the settlement agreement. If it is finally determined that the split of the settlement funds provides for a higher amount being paid to Kimberly and a lesser amount

being paid to John, then John's counsel will pay the difference to Kimberly because John's counsel is holding the funds paid by the Court in escrow. Thus, there will be no loss to Kimberly.

WHEREFORE, the Appellee Titan Indemnity Company respectfully requests this Court to affirm the decisions of the Superior Court.

SHESBY& LEONI

*/s/**Robert J. Leoni***

Robert J. Leoni, Esquire (ID 2888)
221 Main Street
Wilmington, DE 19804
(302) 995-6210
Attorneys for Appellee Titan Indemnity Company

Dated: August 6, 2013