

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. Henley Graves
Resident Judge

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
(302) 856-5257

January 10, 2005

David A. Boswell
Wachovia Bank Building
4602 Highway One, Second Floor
Rehoboth Beach, DE 19971-9794

Michael Silverman, Esquire
Silverman & McDonald
1010 N. Bancroft Parkway, Suite 22
Wilmington, DE 19805

Robert J. Leoni, Esquire
131 Continental Drive, Suite 206
Newark, DE 19713

Gregory A. Morris, Esquire
Liguori, Morris & Redding
46 The Green
Dover, DE 19901

Sean A. Dolan, Esquire
Marshall Dennehey Warner Coleman &
Goggin
1220 N. Market Street, 5th Floor
P.O. Box 8888
Wilmington, DE 19899

Bruce C. Herron, Esquire
Akin & Herron, P.A.
1220 N. Market St, Suite 600
P.O. Box 25047
Wilmington, DE 19899

RE: Allstate Insurance v. Luciano Salem
C.A. No. 02C-11-019

Date Submitted: November 24, 2004

Dear Counsel:

On December 5, 2001, Abraham Sanchez-Caza (hereinafter "Abraham") sustained personal injuries in a tragic automobile accident. The same accident claimed the life of his mother, Nancy Suarez. Abraham, through his father and legal guardian, Rogelio Sanchez, instituted this action against William Lloyd and the Estate of Susan Whetstone, the driver of the other vehicle, who also sustained fatal injuries in the accident. Two interpleader actions were filed by the insurers responsible for providing coverage to the defendants. The issue before this Court involves whether

Abraham's claims, one for his personal injuries, and a second for the wrongful death of his mother, are subject to the "per person" liability limitation of William Lloyd's insurance policy with Allstate.

William Lloyd's insurance policy contains limits on the amount of coverage provided for damages arising out of automobile accidents. The policy provides \$100,000 maximum coverage "per person" sustaining injuries in an accident, and \$300,000 for "per accident." The policy reads that

[t]he limits shown on the Policy Declarations are the maximum we will pay for any single accident involving an insured auto. The limit stated for each person for bodily injury is our total limit of liability for all damages because of bodily injury sustained by one person, including all damages sustained by anyone else as a result of that bodily injury. Subject to the limit for each person, the limit stated for each accident is our total limit of liability for all damages for bodily injury.

Abraham's complaint alleges damages for his personal injuries, as well as damages stemming from the wrongful death of his mother.

This motion for partial summary judgment arose to prevent Abraham from claiming damages under both categories. This is the Court's decision on Allstate Insurance Company's Motion for Partial Summary Judgment. For the reasons set forth herein, the Motion is DENIED.

According to Superior Court Civil Rule 56(c) summary judgment should be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."¹ The Court must view the record in light most favorable to the non-moving party, and if it finds that there are no material issues of fact therein, it may grant a motion for summary judgment.² The burden is first on the moving party to show that there are no material issues of fact, but the burden then shifts to the non-moving party to demonstrate what material issues of fact remain.³

The Delaware Code permits the spouse, parent, child and siblings of a deceased person to bring an action for a wrongful death resulting from "an act, neglect or default including a felonious act which would have entitled the party injured to maintain an action and recover damages if death

¹See Sup. Ct. Civ. Rule 56(c).

²See *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

³See *id.*

had not ensued.”⁴ A wrongful death action was created to benefit family members for the damages they sustained as a result of a decedent’s death. It is a derivative claim, which permits certain family members to recover separate damages upon proof of their personal loss.⁵ However, a wrongful death claim yields only one cause of action with respect to the death of a single person, regardless of the number of those claiming damages.⁶

The Code also permits actions for the recovery of compensatory damages arising from personal injuries received as a result of another’s negligence. There is no statutory indication that an action for physical injuries or wrongful death limits the right of a claimant to pursue the other. However, parties are permitted to alter their statutory rights by contractual agreements.

The terms of the Allstate insurance policy may affect the rights of Abraham to recover damages arising from this accident. Allstate argues that the terms of its agreement alter Abraham’s right to bring an action for his own personal injuries as well as the wrongful death of his mother. Allstate claims that the policy language limits Abraham’s recovery to “one share of the policies for his personal injury and wrongful death claims, arising out of the December 5, 2001 accident, notwithstanding how many claims he may have.” Allstate’s interpretation of its policy allows Abraham only one claim, forcing him to choose which action he wishes to pursue.

But Allstate’s interpretation of its “per person” injury limit is not appropriate because a personal injury claimant may also claim wrongful death for the fatal injuries caused to another in the same accident. Abraham has a personal injury claim for the injuries he sustained in the accident. An independent claim exists for his mother’s wrongful death, which may be pursued by her heirs. Abraham’s involvement and injury in the accident shall have no effect on his ability to claim a portion of the recovery allotted for the wrongful death of his mother. The insurance policy provides a \$100,000 per person limit. The actual policy reads that “[t]he limit stated for each person for bodily injury is our total limit of liability for all damages because of bodily injury sustained by one person, including all damages sustained by anyone else as a result of that bodily injury.”

⁴See 10 Del. C. §§ 3721-24.

⁵See *Frantz v. United States*, 791 F. Supp. 445 (D. Del. 1992).

⁶See *Essick v. Barksdale*, 882 F. Supp. 365 (D. Del. 1995).

In plain language, the Court reads this to mean that Abraham has a claim for the bodily injury he sustained (“for all damages of bodily injury sustained by one person”). He has a separate claim arising out of the injuries causing his mother’s death (“including all damages sustained by anyone else [Abraham] as a result of that bodily injury [injury to Nancy Suarez, Abraham’s mother].” Injuries to two persons yield two separate claims. Abraham may rightfully seek damages arising from his mother’s injuries and death.

As plaintiff’s counsel aptly pointed out, should the Court adopt the Allstate reading of its policy, Abraham would be forced to choose between his personal injury claims and the wrongful death action. Abraham could then pursue his own claim and recover up to \$100,000. But his deceased mother’s spouse, parent, siblings or other children could pursue the wrongful death action without him. This would result in the remaining relatives splitting a larger award based solely on Abraham’s exclusion from the recovery. Nothing in the insurance policy or related case law supports this reading to preclude Abraham from claiming a derivative portion of his mother’s wrongful death action while pursuing damages for his own injuries. According to my interpretation of the policy, a child who simultaneously lost his mother and incurred his own personal injuries in a single automobile accident shall not be denied his rightful opportunity to recover for the both of them. Should the Court award damages for physical injuries and the wrongful death of Nancy Suarez, Abraham will be permitted to recover for himself and derivatively for his mother.

Allstate’s Motion for Partial Summary Judgment is therefore denied.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

jfg

oc: Prothonotary