

COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
WILMINGTON, DELAWARE 19801

JOHN K. WELCH
JUDGE

November 10, 2009

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**Re: Government Employees Insurance Company, a foreign corporation,
as subrogee of Adrienne Everett v. Elli Rodriguez Bermudez
(C.A. No. 2008-03-604)**

MEMORANDUM OPINION

Trial took place in the above captioned matter on November 5, 2009 at 9:00 a.m. in New Castle County Court of Common Pleas. Following the receipt of evidence and sworn testimony the Court reserved decision. This is the Court's Final Order and Opinion.

The Facts

This is a subrogation case. Plaintiff, Government Employees Insurance Company ("Geico") as subrogee of Adrienne Everett ("Everett") has filed a complaint against the Defendant, Elli Rodriguez Bermudez ("Bermudez"). Everett was Geico's insured and her motor vehicle was being operated by one Azziza Simmons ("Simmons") with her permission on the date of the accident in question. According to the complaint, on September 19, 2007 Bermudez was operating a motor vehicle in an allegedly careless and negligent manor causing a collision

with the rear end of Everett's motor vehicle. The complaint alleges five counts of negligent conduct.¹ The Defendant answered the Complaint and denied most of the allegations.

At trial the Court heard testimony from Ms. Gail Brown, a claims adjustor from Geico, who was charged with investigating this auto accident. Brown testified that on September 13, 2007 Geico's insured's motor vehicle owned by Everett was in an accident with the Defendant. Everett had granted permission to Simmons to drive her motor vehicle which collided with Defendant who rear ended Everett's motor vehicle on the date charged in the complaint, September 19, 2007. Copies of photographs of the damage were received into evidence with no objection. A loss report from September 19, 2007 was also admitted without objection. According to Plaintiff's Exhibit 1, Defendant's insurance carrier cancelled his motor vehicle insurance one and a half months before the subject accident. As a result of Bermudez's negligent conduct Geico's insured Everett was paid the salvage value of her motor vehicle in the amount of \$1,246.50 which is the sum in the complaint plus costs. Geico has forgone the actual property damage estimate as money damages. According to the witness, Everett's vehicle was making a left hand turn on 4th Street at Delamore Place and Defendant rear ended Everett's motor vehicle causing this damage and the car to be totaled.

The Defendant presented his case in chief. He claims that the insured authorized driver, Simmons, never put the turn signal on to make a left and there were two other cars in the way and he couldn't see in order to stop his 1500 truck to avoid the accident slamming in the back of Everett's motor vehicle.

¹ Failed to keep a proper lookout in violation of 21 Del. C. §4176; count two failed to give full time and attention to the operation of the vehicle the Defendant was operating in violation of 21 Del. C. §4176; count three alleges that Defendant failed to maintain appropriate control of the vehicle he was operating in violation of 21 Del. C. §4176; count four the Defendant operating a vehicle in a careless and inattentive manor in violation of 21 Del. C. §4176; count five in a willful and wanton disregard for the safety of persons or property in violation allegedly of 21 Del. C. §4175.

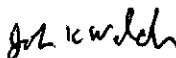
During cross examination it was learned that the Defendant was given a motor vehicle citation for Following Too Closely but it was ultimately dismissed by the Court. Defendant confirmed the accident occurred September 19, 2007.

Before the close of the trial Plaintiff's counsel made an offer of proof that Defendant had not answered the Request for Admissions as ordered by the Honorable Jay Paul James on July 25, 2008. Defendant agreed that he had failed to answer the admissions timely as ordered by Judge James. The Court therefore deemed these admissions admitted. Those admission are incorporated by reference into the trial record. The Court must conclude on this record because these admissions are deemed admitted that on September 19, 2007 at approximately 6:31 p.m. defendant's motor vehicle struck Everett's vehicle while making a right hand turn on 4th Street onto Delamore Place; Everett's vehicle sustained property damage of \$1,246.50; and that the cause of the collision was the striking of the rear of Everett's vehicle with the front of the Defendant's motor vehicle. (See; Request for Admissions).

Opinion and Order

The Court finds by preponderance of evidence that Geico has proven in the trial record actual monetary damages of \$1,246.50 plus court cost and post judgment interest at the legal rate. 6 Del. C. §2301 et. seq.

IT IS SO ORDERED.



The Honorable John K. Welch

cc: Luann Smith, Civil Case Manager
File