

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

<b>RAYMOND MORANT,</b>	)	
<b>ALICIA MORANT, his wife,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>C.A. No. 99C-03-162-SCD</b>
	)	
<b>v.</b>	)	<b>JURY OF TWELVE</b>
	)	<b>DEMANDED</b>
	)	
<b>DANIELLE M. LANG and</b>	)	<b>ARBITRATION CASE</b>
<b>JOHN DOE,</b>	)	
	)	
<b>Defendant.</b>	)	

**Date Submitted: January 24, 2001**  
**Date Decided: January 29, 2001**

**John E. Sullivan, Esquire, Wilmington, DE.**

**Louis B. Ferrara, Esquire, Ferrara, Haley, Bevis & Solomon,  
Wilmington, DE.**

**ORDER**

**DEL PESCO, J.**

**This 29<sup>th</sup> day of January 2001, upon consideration of the  
Defendant's, Danielle Lang's, application for certification of  
interlocutory appeal, it appears that:**

**January 29, 2001**

- (1) Defendant has applied for certification of interlocutory appeal of this Court's Letter Opinion dated January 5, 2001 denying Defendant's motion for summary judgment. (copy attached)**
- (2) The facts of this case have been written about extensively in the January 5<sup>th</sup> Letter Opinion of the Court and will not be repeated here.**
- (3) The criteria for certification are specified in Supreme Court Rule 42(b) which states, in pertinent part:**

**No interlocutory appeal will be certified by the trial court or accepted by this Court unless the order of the trial court determines a substantial issue, establishes a legal right and meets 1 or more of the following criteria:**

- (i) Same as certified question. Any of the criteria applicable to proceedings for certification of questions of law set forth in Rule 41; or**
- (ii) Controverted jurisdiction. The interlocutory order has sustained the controverted jurisdiction of the trial court; or**
- (iii) Substantial issue. An order of the trial court has reversed or set aside a prior decision of the court, a jury, or an administrative agency from which an appeal was taken to the trial court which had determined a substantial issue and established a legal rights, and a review of the interlocutory order may terminate the litigation, substantially reduce further litigation, or otherwise serve considerations of justice; or**
- (iv) Prior judgement opened. The interlocutory order has vacated or opened a judgment of the trial court; or**

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<sup>1</sup> *Morant v. Lang*, Del. Super., C.A. No. 99C-03-162, Del Pesco, J. (Jan. 5, 2001) (Letter Op.).

<sup>2</sup> Rule 41 states certification may be accepted for:

- (i) Original question of law. The question of law is one of first instance in this State;**
- (ii) Conflicting decisions. The decisions of the trial courts are conflicting upon the question of law;**
- (iii) Unsettled question. The question of law relates to the constitutionality, construction or application of a statute of this State which has not been, but should be, settled by the Court. Supr. Ct. R. 41(b).**

**(v) Case dispositive issue. A review of the interlocutory order may terminate the litigation or may otherwise serve considerations of justice.**

**(4) Defendant asserts in her application that this Court's Letter Opinion of January 5, 2001 determined a substantial legal issue, established legal rights and duties, conflicts with a prior decision of the Court, and meets the criteria of Supreme Court Rule 42(b)(iii).**

**(5) After reviewing the Defendant's contentions, the Court finds that its Letter Opinion of January 5<sup>th</sup> did not determine a substantial legal issue, nor did it establish a legal right. Furthermore, this case is a poor candidate for certification of interlocutory appeal due to its underdeveloped record. The incomplete status of discovery has contributed to an uncertainty of facts, including and most importantly the identity and location of the driver, Defendant John Doe. The deficiencies in the record could render inapplicable any ruling of the Supreme Court. This case will be in a much better posture for review once the record is closed.**

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<sup>3</sup> Supr. Ct. R. 42(b).

<sup>4</sup> The unsuccessful summary judgment motion from which this appeal is sought was presented and rejected based on the lack of sworn testimony. Defendant Lang's deposition was then taken. No deposition of plaintiff is available. There have been various representations about efforts to secure the participation of the missing John Doe driver, such that the trial date was continued and a motion for leave to file an amended complaint was granted.

**Civil Action No. 99C-03-162 SCD**

**January 29, 2001**

**(6) This Court further finds that Defendant has failed to establish the criteria for certification in Rule 42. Although Defendant argues that this Court's Letter Opinion meets the criteria of Supreme Court Rule 42(b)(iii), this conclusion is unfounded.**

**(7) For the reasons set forth above, the Defendant's application for certification of interlocutory appeal does not satisfy the necessary requirements and is therefore DENIED.**

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**Judge Susan C. Del Pesco**

**Original to Prothonotary**

**xc: John E. Sullivan, Esquire  
Louis B. Ferrara, Esquire**

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<sup>5</sup> This Court's Letter Opinion did not reverse or set aside a prior decision of the Court, a jury, or an administrative agency.