IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MICHAEL S. RUDERMAN, Individually and as next friend of PAIGE RUDERMAN, a minor child,	:	
Plaintiffs,	:	
v.	:	**C.A. No. 00C-05-148 SCD**
STATE FARM FIRE AND CASUALTY COMPANY, JAMES D. HEEREN and LISA M. RUDERMAN,	:	
Defendants.	:	

Submitted: November 13, 2000
Decided: January 8, 2001

Upon Plaintiff's motion for reargument: DENIED.

ORDER

DELPESCO, J.

This 8th day of January 2001, upon consideration of the motion for reargument filed by plaintiffs, it appears to the Court that:

(1) On October 27, 2000, this Court granted the motion for partial summary judgment filed by defendant Lisa M. Ruderman ("Lisa"). The Court ruled that plaintiffs Michael S. Ruderman ("Michael") and Paige

Ruderman ("Paige") failed to create a genuine issue of material fact concerning whether defendant was negligent as a matter of law in permitting her child, plaintiff Paige, to occupy the front seat of defendant's vehicle when Paige was under the age of 12 years and less than 65 inches in height. Plaintiffs seek reargument of this decision.

(2) The reargument motion claims that the Court misapprehended the law in construing the language in 21 *Del. C.* § 4803(f), which states:

> **A violation of this section shall not be considered as evidence of either comparative or contributory negligence in any civil suit or of criminal negligence or recklessness in any criminal action arising out of any motor vehicle accident in which a child under 16 is injured, nor shall failure to wear a child passenger restraint system or seat belt in violation of this section be admissible as evidence in the trial of any civil action.**

Plaintiff argues that the statutory language makes failure to wear child passenger restraint system or seat belt in violation of the statute inadmissible in a civil action, but it does not make inadmissible any other violation of the statute, such as occupation of the front passenger seat of a vehicle equipped with a passenger side airbag.

(3) "The goal of statutory construction is to determine and give effect to legislative intent." If the statute at issue is clear and unambiguous, the plain meaning of the statute controls and judicial interpretation is unnecessary.

However, if the statute is ambiguous, then it is the role of the judiciary to construe it in a manner that is consistent with the legislative intent.

(4) In this instance, whether the statutory language is determined to be unambiguous or ambiguous, the result is the same. Subsection (f) of § 4803 clearly states, "A violation of this section *shall not be considered as evidence* of either comparative or contributory negligence in any civil suit ...." (emphasis added). Contrary to plaintiffs' argument, the words "a violation of this section" do not refer only to a failure to wear a seat belt or a child passenger restraint system, but also to occupancy of the front passenger seat by a child under 12 years of age in a vehicle equipped with a passenger side airbag, as provided in Subsection (c). However, even if the language of the statute were determined to be ambiguous, the legislative intent is clearly stated in the Synopsis to House Amendment No. 1 to House Bill No. 215. It provides in relevant part that:

> **This Act prohibits a child 65 inches or less in height and 12 years of age or younger from occupying the front passenger seat of a motor vehicle equipped with an airbag designed to be a supplementary restraint for an adult occupant. . . . A violation of this Act *cannot be used as evidence of comparative negligence in a civil suit*, or evidence of criminal negligence or recklessness in a criminal proceeding.**

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[1] ***State v. Cooper*, Del. Supr., 575 A.2d 1074, 1075 (1990).**
[2] ***Id.***
[3] **Synopsis to House Amendment No. 1, House Bill No. 215 (June 19, 1997) (emphasis added).**

Clearly, in referring to violations of the Act that are not admissible as evidence in civil actions, the Legislature meant to include not only failure to use child passenger restraint systems or seat belts, but also violations wherein children under 12 years of age occupy the front passenger seat of a vehicle with a passenger side airbag.

(5) Plaintiffs have not shown that the Court "misapprehended the law or facts as would affect the outcome of its decision." Therefore, plaintiffs' motion for reargument is DENIED.

IT IS SO ORDERED this 8th day of January 2001.

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Judge Susan C. Del Pesco

Original to Prothonotary
xc: David Roeberg, Esquire
James J. Haley, Jr., Esquire
Robert J. Leoni, Esquire
Stephen P. Casarino, Esquire

[4] ***E.I. DuPont deNemours & Co. v. Admiral Ins. Co.*, Del. Super., C.A. No. 89C-AU-99, Steele, V.C. (Nov. 17, 1994), 1994 WL 682420 at *7 (citing *Wilshire Restaurant Group, Inc. v. Ramada, Inc.*, Del. Ch., C.A. No. 11506, Jacobs, V.C. (Dec. 19, 1990) Let. Op. at 2).**