SUPERIOR COURT
OF THE
STATE OF DELAWARE

JEROME O. HERLIHY
JUDGE

NEW CASTLE COUNTY
COURT HOUSE
WILMINGTON, DE 19801-3733

Submitted: March 26, 2012
Decided: April 26, 2012

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RE: *Aktar, etux v. Liberty Mutual Fire Insurance Co.*
C.A. No. 11C-01-240-JOH
Motion for Reargument - ***DENIED***

Dear Counsel:

The defendant, Liberty Mutual, has moved for reargument of this Court's bench decision of March 15, 2012, which denied its motion for summary judgment.

Motions for reargument are not vehicles to rehash arguments previously made but are provided to draw the Court's something which could or would change the result.[1] Yet, the defendant's motion does precisely that by rehashing arguments which were made in its written submission and its oral argument.

The defendant cites again *Dunlap v. State Farm and Casualty Co.*,[2] as support for its exhaustion argument. Specifically, the defendant refers to the Supreme Court's language pages 439-440 indicating an insurer such as the defendant in this case is not obligated to pay the plaintiffs until the other insurance coverage has been exhausted by means of a settlement or judgment after a trial. Regrettably for the defendant, this Judge is more than familiar with the *Dunlap* case, as I presided over the trial against the other claimed tortfeasor, namely the DART bus driver who was found not to be negligent.

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[1] *McElroy v. Shell*, 618 A.2d 91 (Del. 1992)(TABLE).

[2] 8778 A.2d 434 (Del. 2005).

Further, this Court is more than familiar with this case as evidenced by its decision in *Aktar, etux v. Liberty Mutual*
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Dunlap v. State Farm Fire and Casualty Co.[3] The facts are too different to ignore between this case and the *Dunlap* case, and it is inapplicable.

Further, if the defendant believes that the driver it is alleging caused the second impact with the plaintiff's vehicle should have been brought into the case, it could have but did not, moved to have that person added as a party to the case or even filed a motion to dismiss for failure to add an indispensable party. It chose, however, to proceed in another way.

The motion for reargument is DENIED. IT IS SO ORDERED.

Sincerely,

/s/ Jerome O. Herlihy

JOH/krb
cc Prothonotary

[3] 955 A.2d 132 (Del. Super. 2008).