

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>ALLIANZ INSURANCE COMPANY,</b>	:	<b>CIVIL ACTION</b>
<b>Subrogee of MERCEDES BENZ CREDIT</b>	:	
<b>CORP.,</b>	:	
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>PENNSYLVANIA ORTHOPEDIC</b>	:	
<b>ASSOCIATES, INC. and ANTHONY J.</b>	:	
<b>BALSAMO, M.D.,</b>	:	
	:	
<b>Defendants.</b>	:	<b>NO. 96-7470</b>

**MEMORANDUM - ORDER**

**AND NOW**, this 14th day of August, 1998, upon consideration of the motion of defendants Pennsylvania Orthopedic Associates, Inc. and Anthony J. Balsamo, M.D. for reconsideration of the Order of this Court dated July 14, 1998 granting summary judgment to the plaintiff on the issue of liability<sup>1</sup> (Document No. 41), the response of plaintiff Allianz Insurance Company, Subrogee of Mercedes Benz Credit Corporation (Document No. 44), and the response of the defendants,<sup>2</sup> (Document No. 45), having found that concluded that:

1. The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. Therefore, such motion must rely on at least one of three grounds: (1) an intervening change in controlling law, (2) the availability of new

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<sup>1</sup> The Order of this Court dated July 14, 1998 was entered on the docket on July 15, 1998 (Document No. 39). The motion for reconsideration was filed on August 3, 1998. Under Local Rule of Civil Procedure 7.1(g) motions for reconsideration shall be served and filed within ten days after the entry of the order concerned. Excluding intervening Saturdays, Sundays, and legal holidays pursuant to Local Rule 6(a), the ten day period for filing a motion for reconsideration expired on July 29, 1998. As the motion was not filed until August 3, 1998, the defendants failed to file a timely motion for reconsideration.

<sup>2</sup> Local Rule of Civil Procedure 7.1(c) allows the filing of a response to a motion. "The Court may require or permit further briefs if appropriate." L.R. Civ. P. 7.1(c). Because no leave of court was obtained by defendants, their "response" was filed in violation of this rule.

evidence not previously available, or (3) need to correct a clear error of law to prevent manifest injustice. See Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985), cert. denied, 476 U.S. 1171 (1986); Reich v. Compton, 834 F. Supp. 753, 755 (E.D. Pa. 1993), aff'd in part and rev'd in part on other grounds, No. 93-2019, 1995 WL 329911 (3d Cir. June 5, 1995);

2. The defendants have ignored this standard for a motion for reconsideration, for their motion is premised on none of the above three grounds. With the exception of one brief reference to an argument already presented by the defendants in their original response to the motion for summary judgment, the motion for reconsideration introduces wholly new legal arguments, none of which were presented in their original response to the motion for summary judgment, their answer to the plaintiff's complaint, or their affirmative defenses. Despite the defendants' failure to present these arguments in their response to the motion for summary judgment, the Court will address them here in the interest of thoroughness;
3. The defendants argue that this Court's grant of summary judgment was improper because genuine issues of material fact exist regarding the following issues: (1) whether the plaintiff was required as a condition precedent to the defendants' liability under the lease agreement to first collect its damages from the defendants' insurance carrier, (2) whether the salvage value of the car decreased after it was dismantled in connection with another lawsuit, artificially increasing the damages owed by the defendants,<sup>3</sup> and (3) whether the

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<sup>3</sup> The defendants do not elaborate on this argument in their supporting memorandum, largely because, this Court suspects, it is a rehashing of their argument in their original response to the motion for summary judgment. For the same reasons as given in the July 14, 1998 Order of this Court, I conclude that this does not raise a genuine issue of material fact as to the liability of the defendants. Any issue that this raises regarding the damages owed by the defendants may be presented by the defendants in the trial on damages, as indicated in the July 14, 1998 Order of this Court.

- parties intended the lease agreement to benefit a third party insurance carrier;
4. I conclude that there is no provision of the lease agreement that supports the defendants' first argument that the defendants are relieved from liability under the lease agreement because the plaintiff failed to collect damages from the defendants' insurance carrier before seeking damages against the defendants. To the extent that there exist any issues as to the amount of insurance proceeds received by any party in connection with this accident and consequent damage to the car, these may be resolved in the trial on damages, which was granted as part of this Court's Order of July 14, 1998;
  5. As for the defendants' third argument, the defendants cite to the Pennsylvania Motor Vehicle Sales Finance Act, 69 P.S. § 614 ("MVSFA"), and Genesis Leasing Co., Inc. v. Minchhoff, 462 A.2d 274 (Pa. Super. Ct. 1983) for the proposition that because Allianz is not a registered sales finance company and because there is a genuine issue of material fact as to whether the agreement between the parties was a lease agreement or an installment sales contract, both of which could affect the defendants' liability, the motion for reconsideration must be granted. The defendants present no evidence other than their bare allegation that Allianz is not a registered sales finance company in violation of the MVSFA, nor evidence other than their bare allegation that the agreement was not a lease agreement, to which the MVSFA does not apply. See id. at 277. Thus, I conclude that the defendants have not presented a genuine issue of material fact as to their liability, and they are not entitled to reconsideration on this ground;
  6. The defendants either rehashed old arguments or made wholly new and unfounded arguments to this Court in their motion for reconsideration. This attempt at a second bite of the apple is an abuse of the mechanism of reconsideration, and the Court is

disappointed by the consequent waste of valuable judicial resources;  
it is according hereby **ORDERED** that the motion is **DENIED**. **IT IS FURTHER ORDERED**  
that the informal request for oral argument in the defendants' cover letter to their motion for  
reconsideration is **DENIED**.

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**LOWELL A. REED, JR., J.**