

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. GEOFFREY J. O'CONNELL

Justice

TRIAL/IAS, PART 6
NASSAU COUNTY

VANLINER INSURANCE COMPANY a/s/o
PADDED WAGON, INC. And THE PADDED
WAGON, INC.,

Plaintiff(s),

INDEX No. 26158/98

-against-

MOTION DATE: N/A

ROSEANN STRAITZ, AIDEN DOWLING &
AINE K. DOWLING,

Defendant(s).

This property damage action arises out of an automobile accident on June 6, 1998. Edward Dowling, President of Padded Wagon, Inc., had just taken delivery of a new Jaguar of which Padded Wagon was the titled owner and was driving back to New Jersey on the Long Island Expressway. Defendant Aiden Dowling had accompanied his brother, Edward Dowling, and was driving home a Jeep owned by Aine Dowling, Edward's wife, in which the brothers had travelled to pick up the Jaguar. Because Aiden Dowling was unfamiliar with the roads, he was following Edward. Traveling on the Long Island Expressway behind the Dowlings was a vehicle driven by Defendant Roseann Straitz. Traffic on the expressway was stop and go and there occurred a three car collision involving the two Dowling vehicles and the Straitz vehicle.

Plaintiff Vanliner Insurance Company insured the Jaguar and paid to have it repaired as a result of which they became subrogated to Padded Wagon's claim. It commenced this action which was tried before a jury on March 18 and 19 of 2004. The jury found Defendant Straitz 70% responsible and the vehicle driven by Aiden Dowling 30% responsible. It assessed damages at \$18,315 for the cost of repair and \$1,999 for the diminution in value resulting the fact that the Jaguar had been in an accident.

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Proposed judgments were submitted by Plaintiff Vanliner Insurance and Defendant Straitz. Among the problems with the proposed judgments was a discrepancy in the amount of \$500. Suspecting that the discrepancy was due to the underlying insurance policy deductible, the Court invited the parties to stipulate as follows:

- “1. Plaintiff Vanliner may enter judgment in accordance with the percentages of fault found by the jury in the amount of \$17,815.82 ($\$18,315.82 - \$500 = \$17,815.82^1$) with interest on \$14,677.30 from June 30, 1998; with interest on \$1,124.12 from July 30, 1998 and with interest on \$2,014.40 from August 31, 1998.
2. Plaintiff The Padded Wagon, Inc. may enter judgment in accordance with the percentages of fault found by the jury in the amount of \$2,499.00 (\$1,999 representing the loss in value plus \$500 for the deductible) with interest from August 19, 1998 (Date of trade-in).”

Plaintiff Vanliner Insurance, Plaintiff The Padded Wagon and Defendant Straitz have all agreed to the entry of a judgment as indicated.

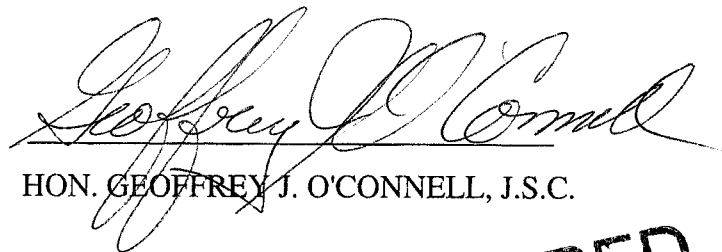
Peter Agulnick on behalf of Defendants Aine Dowling and Aiden Dowling has indicated that he “essentially” agrees to the proposed stipulation. However, he asserts that there was an outstanding unresolved oral motion to dismiss the claims against his clients. To the extent that any such claim has not been waived by inaction since the verdict was rendered it is denied. Mr. Agulnick also argues that because the action brought by The Padded Wagon did not name his clients as defendants, The Padded Wagon should not be entitled to enter judgment against them. It is to be noted that Edward Dowling is President of The Padded Wagon and Aine Dowling and Aiden Dowling are his wife and brother respectively. The total judgment in favor of The Padded Wagon will be \$2,499.00 with interest from August 19, 1998. Thirty percent of that figure, which would be the share attributable to Aine Dowling and Aiden Dowling, would be \$749.70 plus interest. If Defendants Aine Dowling and Aiden Dowling wish to contest this issue they may make a formal motion when the judgment directed to be submitted below is submitted.

¹ The Court’s letter of September 23, 2004 included a typographical error giving as follows:
 $\$18,315.82 - \$500 = \$17,315.82.$

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Plaintiffs Vanliner Insurance and The Padded Wagon shall submit judgments on notice in conformity with the jury's verdict and the stipulation set forth above within thirty days of receiving a copy of this order.
It is, SO ORDERED.

Dated: Dec 14, 2004



HON. GEOFFREY J. O'CONNELL, J.S.C.

ENTERED
DEC 22 2004
MAHARAJA COUNTY
COUNTY CLERK'S OFFICE