

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

KATHLEEN RUGGIERO, : **CIVIL ACTION NO.**
Plaintiff, : **3:11-cv-00760 (AWT)**

VS. :

HARLEYSVILLE PREFERRED
INSURANCE COMPANY, :
Defendant. : **OCTOBER 7, 2014**

RESPONSE TO DEFENDANT’S REPLY TO PLAINTIFF’S
BRIEF RE APPLICABILITY OF ECONOMIC LOSS RULE

I. Introduction

The Plaintiff files this reply in utter exasperation at the latest round of caterwauling and deceptive briefing. For starters, Plaintiff’s Brief regarding the Applicability of the Economic Loss Rule was not a “sur reply” – as postulated by Harleysville. The Plaintiff explained clearly that Harleysville had so misinformed the court that it was not able to adequately address defendant’s previous motion and thus was starting from scratch, with her own motion.

The plaintiff files this Brief regarding the Applicability of the Economic Loss Rule (“ELR”) to give the court a balanced overview in light of the patently misleading motions and reply briefs filed by the defendant, which portray the ELR is an overly mechanical and simplistic manner. The defendant’s analysis both overstates and oversimplifies the ELR. Such broad statements are not accurate.

Harleysville, incapable of being forthright with this Court, has done the very same thing in regard to the scope of Plaintiff’s damages. On July 10, 2014, Plaintiff filed her Brief re Damages for Breach of an Insurance Contract (dkt #152). Harleysville thereafter filed an Objection (dkt #159) and then filed its own motion on July 21, 2014, Motion in Limine with Respect to Plaintiff’s damages (dkt #160) thus starting a new cycle of briefing – in the same fashion as Ms. Ruggiero did with regard to the Economic Loss Rule. The difference is that

Harleysville had no good grounds, or any grounds whatsoever except that Harleysville obviously wanted to have the last word.

This nonsense on the part of Harleysville has to stop. Hopefully, the Court can see through the veneer of deception and disingenuousness by Harleysville and whack Harleysville with a sizable judgment after a bench trial on the merits so that justice, finally, can prevail in this case of an insured who has been financially battered, emotionally bruised, maliciously maligned and defamed by her insurer Harleysville.

That Harleysville recognizes the weakness of its position is evident by the increasing decibels in its latest harangue to the point where it is shrieking. Notably, Harleysville did NOT address any of the major points in Plaintiff's brief. Instead, the Harleysville spouted forth with its familiar litany like a broken record.

II. Harleysville did not reply to any of Plaintiff's substantive arguments

Harleysville did not address the issues raised in plaintiff's brief but dismissed them as irrelevant. The table of contents to plaintiff's Brief is set forth below.

Brief re the Applicability of the Economic Loss Rule* to Ruggiero v. Harleysville

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III. Harleysville did not address Plaintiff's Exhibit List

Harleysville did not address a single case listed on Plaintiff's Exhibit List for the obvious reason that it would weaken Harleysville increasingly untenable position.

Exhibit List

1. Featherston v. Tautel & Sons Consulting (April 17, 2012)
2. Hoydic v. B&E Juices, Inc. (Feb. 27, 2008)
3. New Canaan v. Brooks Labs (Nov. 7, 2007)
4. Diversified Technology Consultants, v. Sentinel Equities (Aug. 11, 2006)
5. Riggs-Brewer Industries v. Shelton Senior Housing (June 6, 2006)
6. Dunleavy v. Paris Ceramics (April 20, 2005)
7. Smith Craft Real Estate Corp. v. Handex (June 25, 2004)
8. "When can a Breach of Contract be a Tort and What Difference Does it Make," *ABA Section of Litigation 2012*
9. Dan B. Dobbs Conference on Economic Tort Law at the University of Arizona College of Law, March 3-4, 2006
10. Arizona Law Review, Volume 48, Issue 4
11. Robert L. Rabin, "Respecting Boundaries and the Economic Loss Rule in Tort," 48 *Ariz. L. Rev.* 857 (2006)
12. Vincent R. Johnson, "The Boundary-Line Function of the Economic Loss Rule," 66 *Wash. & Lee L. Rev.*, 523 (2009)

IV. Plaintiff's claim for Damages for Emotional Distress

In plaintiff's Amended Complaint, filed July 22, 2011 (dkt # 18-1), First Count (Negligence), she claimed the following damages:

15. As a further result of the Defendant, Harleysville's, conduct aforesaid, the Plaintiff **has suffered emotional stress and anxiety** all to her further and continuing loss.

Harleysville is trying every possible machination to have Count One – Negligence, obliterated so that Harleysville will not be liable for fair, just and reasonable damages, as pled by Ms. Ruggiero.

Plaintiff also claims that the damages for emotional for emotional distress are an independent tort, as fully briefed in her initial brief. Once again, damages for emotional – though

very real, are not quantifiable to the same manner as a Proof of Loss due to the fire damage, and accordingly, there was no need to list such non-economic damages on the damages analysis.

The plaintiff's Prayer for Relief in the Amended Complaint is set forth below:

WHEREFORE, the Plaintiff claims:

1. Money damages;
2. Interest on any unpaid sums;
3. Costs; and.
4. Such other relief as the Court may deem appropriate and just.

V. Conclusion

Since this will be a bench trial, Ms. Ruggiero has faith in the common sense of the fact finder, in the same manner as if a jury were to hear the evidence and determine the facts.

Common sense does not take flight when one enters a courtroom. "It is an abiding principle of jurisprudence that common sense does not take flight when one enters a courtroom." State v. Zayas, 195 Conn. 611, 620 (1985).

