

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION - CIVIL**

NATIONWIDE MUTUAL FIRE	:	FEBRUARY TERM, 2021
INSURANCE COMPANY,	:	
	:	
	:	NO. 00490
Plaintiff,	:	
	:	COMMERCE PROGRAM
v.	:	
	:	Control No. 21104993
RRG AUTO WASH, LLC, et al.,	:	
	:	
Defendants.	:	

DOCKETED  
MAR 22 2022  
R. POSTELL  
COMMERCE PROGRAM

**ORDER**

**AND NOW**, this 22<sup>nd</sup> day of March, 2022, upon consideration of plaintiff's Motion for Summary Judgment, the responses thereto, and all other matters of record, and in accord with the Opinion issued simultaneously, it is **ORDERED** that said Motion is **GRANTED**, and plaintiff is not obligated to defend or indemnify Robert R. Greene, individually and/or trading or doing business as RRG Auto Wash, LLC, for the claims asserted in the underlying civil action, Tammy Fischer v. Robert R. Greene et al., December Term, 2019, No. 04024 stemming from the injuries sustained by Tammy Fischer on January 14, 2018.

**BY THE COURT**

  
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**RAMY I. DJERASSI, J.**

210200490-Nationwide Mutual Fire Insurance Company Vs Rrg Au



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	:	
Defendants.	:	

**OPINION**

Nominal defendant Tammy Fischer was badly burned by a propane heater on January 14, 2018, at the offices of defendant RRG Auto Wash, LLC d/b/a Winning Edge Car Wash (“RRG”), which is run by defendant Robert R. Greene. At the time of the accident, plaintiff Nationwide Mutual Fire Insurance Company (“Nationwide”), insured RRG d/b/a Winning Edge Car Wash under a Premier Businessowners Policy (the “Policy”).

Ms. Fischer previously made a claim for Workers’ Compensation benefits against RRG, which RRG contested. RRG apparently did not carry Workers Compensation insurance. Ms. Fischer’s claim was granted by Workers’ Compensation Judge Sandra Craig on or about February 1, 2021, and Ms. Fischer is apparently receiving benefits from the Uninsured Employer Guaranty Fund. Ms. Fischer also filed a negligence and strict products liability action against RRG, Robert R. Greene, and various other entities allegedly connected with the propane heater (the “Underlying Action”). That action is still pending.

Nationwide subsequently filed this action seeking a declaration that it has no duty to defend or indemnify RRG and Mr. Greene in the Underlying Action, and it has now filed a

Motion for Summary Judgment with respect to its declaratory judgment claims. The Policy provides as follows:

2. This insurance, including any duty we have to defend “suits” does not apply to . . . (e.) “Bodily injury to (1) An “employee” of the insured arising out of and in the course of: (a) Employment by the insured; or (b) Performing duties related to the conduct of the insured’s business;<sup>1</sup>

\* \* \*

“Employee” includes a “leased worker”. “Employee” does not include a “temporary worker”.

\* \* \*

“Temporary worker” means a person who is furnished to you to substitute for a permanent “employee” on leave or to meet seasonal or short-term workload conditions.<sup>2</sup>

Neither Ms. Fischer nor RRG has produced any evidence that Ms. Fischer “was furnished to” RRG by another person or entity, such as a temporary employment agency. Instead, the evidence proffered here and in the Workers’ Compensation proceeding shows that she was previously a full-time employee of RRG, she was terminated, but she was called back to work part-time at RRG by Mr. Greene. Therefore, she does not fit the Policy’s limited definition of a “Temporary worker,” and she is not excepted from the Policy’s exclusion against coverage for bodily injury to “Employees.”

As argued by Ms. Fischer’s counsel in opposition to the Nationwide’s Motion: “An employee is ‘someone who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.’”<sup>3</sup> The Workers’ Compensation Judge found “that at the time of [Ms.

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<sup>1</sup> Policy attached to Motion for Summary Judgment (“MSJ”) as Ex. H, p. 3-4 of 23.

<sup>2</sup> *Id.*, p. 20 of 23.

<sup>3</sup> Memorandum of Law in Opposition to Motion to Summary Judgement, p. 13 (citing Black’s Law Dictionary (11<sup>th</sup> ed. 2019)).

Fischer's] injury on January 14, 2018, she was an employee of RRG Auto Wash, LLC [because Ms. Fischer] credibly testified that Mr. Greene gave her her schedule and told her what to do at work.”<sup>4</sup>

Judge Craig also found that “[Ms. Fisher] credibly testified that in December 2017 and January 2018, she was paid \$10.00/hour and worked six to eight hours per day on Saturdays and Sundays and the occasional Friday[,]” and as a result, Judge Craig ordered RRG “to pay [her] benefits at the compensation rate of \$344.21 from January 14, 2018 ongoing[.]”<sup>5</sup>

Since Ms. Fischer proved that she was an “employee” entitled to lost wages under the Workers’ Compensation statute, she is collaterally estopped from now claiming that she is not also an “employee” under the terms of the Policy here. Collateral estoppel is applicable when:

- (1) An issue decided in a prior action is identical to one presented in a later action;
- (2) The prior action resulted in a final judgment on the merits;
- (3) The party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action; and
- (4) The party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action.<sup>6</sup>

The issue here, whether Ms. Fischer was an employee of RRG at the time of her accident, is the identical issue decided in the Workers’ Compensation action, which resulted in a final judgment that no party appealed. Ms. Fischer, RRG, and Mr. Greene were all parties to the Workers’ Compensation proceeding, and they all had a full and fair

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<sup>4</sup> MSJ, Ex. F. p. 15.

<sup>5</sup> *Id.*, pp. 18-19.

<sup>6</sup> Frederick v. Action Tire Co., 744 A.2d 762, 767 (Pa. Super. 1999) (“The fact remains that Pennsylvania appellate courts have consistently held findings in workers' compensation cases may bar relitigation of identical issues in collateral civil actions, even third party tort actions.”)

opportunity to, and did actively, litigate that issue of her employee status in the Workers' Compensation proceeding.

### **CONCLUSION**

For all the foregoing reasons, Nationwide's Motion for Summary Judgment is granted, and it need not defend nor indemnify RRG or Mr. Greene under the Policy in the Underlying Action.

**BY THE COURT**

  
**RAMY I. DJERASSI, J.**