

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

GREAT AMERICAN INSURANCE	:	
COMPANY OF AMERICA a/s/o	:	
PRO TRANS LOGISTICS,	:	
Plaintiff	:	
	:	
vs.	:	No. 11-0492
	:	
WERNER ENTERPRISES, INC.,	:	
Defendant	:	
	:	
vs.	:	
	:	
PIOTR M. OBARA, DANIEL O. AMAYA,	:	
RONALD P. URICH, PRO TRANS	:	
LOGISTICS, PB TRUCKING, INC.,	:	
and KANDEL TRANSPORT, INC.,	:	
Additional Defendants	:	

Karl R. Hildabrand, Esquire	Counsel for Plaintiff
Michael T. Traxler, Esquire	Counsel for Defendant
Matthew T. Pisano, Esquire	Counsel for Additional
	Defendants Urich &
	Kandel Transport, Inc.
Karl R. Hildabrand, Esquire	Counsel for Additional
	Defendants OBARA & Pro
	Trans Logistics

MEMORANDUM OPINION

Matika, J. - October , 2013

Before the Court are two joint motions for summary judgment filed by Additional Defendants Pro Trans Logistics and Piotr M. Obara, and also by Kandel Transport, Inc., and Ronald P. Urich to Defendant's joinder complaint. After consideration of the

briefs in support of and in opposition to said motions, Additional Defendants' motions are **GRANTED**.¹

FACTUAL AND PROCEDURAL BACKGROUND

This matter arises from a multi-vehicle, tractor-trailer accident that occurred on Interstate 80 in Kidder Township on March 2, 2009. On that date, Keith Sherman, an employee of Defendant Werner Enterprises, (hereinafter "Werner"), was the operator of a 2006 Kenworth tractor owned by Werner. Being driven in front of Keith Sherman was a 2006 Volvo tractor owned by Plaintiff Great American Company of America, (hereinafter "Great American"). Great American, in its complaint, alleges Keith Sherman, while acting within the course and scope of his employment with Werner, lost control of the tractor-trailer and proceeded to travel onto the median barrier area and then back onto the road where he, Keith Sherman, collided with Great American's tractor.

As a result, on March 1, 2011, Great American instituted this action against Werner under the theory of respondeat superior and sought recovery for certain property damages.

In response to the complaint, Werner, on May 6, 2011, filed a praecipe for the issuance of a writ to join Additional Defendants, with the joinder complaint being filed on August 4,

¹ The content of both joint motions are identical and raise the same legal issues. Therefore, the Court will address both motions in this one opinion.

2011. The joinder complaint alleged liability from six additional defendants, those being: Pro Trans Logistics, Piotr M. Obara,² Kandel Transport, Inc., Ronald P. Urich,³ PB Trucking, Inc., and Daniel O. Amaya.⁴

Werner, in its joinder complaint alleges that on the day of the accident all parties involved in this matter were traveling westbound on Interstate 80, with said road being covered by snow. Additional Defendant Amaya, while operating a 1999 Volvo tractor, was traveling in the left-hand lane and attempted to pass Additional Defendant Urich who was driving a 2006 Freightliner tractor in the right lane. It is claimed by Werner that as Amaya attempted to pass Urich, Amaya collided with the side of Urich's tractor, the result of such collision caused Amaya's tractor to spin so that the vehicle was facing east in the westbound lane while still continuing to travel in the westbound direction.

Keith Sherman, operating the tractor owned by Werner, was traveling behind both Amaya and Urich, and in an attempt to avoid colliding with either Amaya or Urich took evasive action,

² It is alleged that Additional Defendant Piotr M. Obara is an employee of Additional Defendant, Pro Trans Logistics.

³ Werner asserts that at the time of the accident Additional Defendant Urich was employed by and acting within the scope of his employment with Additional Defendant Kandel Transport, Inc.

⁴ Additional Defendant Amaya is an employee of Additional Defendant PB Trucking, Inc. and was acting within the scope of his employment at the time of the collision.

but in the process of doing so struck the tractor-trailer behind him, which was being operated by Additional Defendant Obara.

In the joinder complaint, Werner asserts two counts against each Additional Defendant respectively. For relevancy of the motions before the Court, only counts III and V will be addressed in this opinion. Count III is a claim for damages asserted against Additional Defendants Pro Trans Logistics and Obara, rooted upon the cause of action of negligence and vicarious liability. Count V mirrors that of count III save for the fact that this count is brought against Additional Defendants Kandel Transport, Inc. and Urich.

Additional Defendants, Pro Trans Logistics, Obara, Kandel Transport, Inc., and Urich have filed identical motions for summary judgment relative to the respective count asserted against them. After Werner filed responsive briefs to the motions and oral arguments having been held on said motions, the matter is now ripe for disposition.

DISCUSSION

Additional Defendants, in the motions before the Court, argue that counts III and V of the joinder complaint should be dismissed for two reasons: 1) such claims are barred by the applicable statute of limitations; and 2) Werner does not have standing to bring forth these specific causes of action. For

the reasons stated below, Additional Defendants' motions are granted.

A trial court may grant a motion for summary judgment whenever there are no genuine issues of material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report. Pa.R.C.P. 1035.2. In response, the non-moving party must demonstrate that there is a genuine issue for trial and cannot rest upon the mere allegations and denials of his pleadings. *Phaff v. Gerner*, 303 A.2d 826, 829 (Pa. 1973); *Davis v. Resources for Human Development, Inc.*, 770 A.2d 353, 357 (Pa. Super. Ct. 2001). The non-moving party must adduce sufficient evidence on an issue essential to its case and on which it bears the burden of proof such that a jury could return a verdict favorable to the non-moving party. Pa.R.C.P. 1035.3.

In granting a motion for summary judgment the trial court must decide "whether the admissible evidence in the record, in whatever form, from whatever source, considered in the light most favorable to the [non-moving party] to the motion, fails to establish a prima facie case or defense" to allow the case to continue to trial. *Liles v. Balmer*, 567 A.2d 691, 692 (Pa. Super. Ct. 1989). Thus, a court may grant summary judgment based upon an evidentiary record that either shows the material

facts are undisputed, or contains insufficient evidence of facts to make out a prima facie cause of action or defense. *Basile v. H & R Block, Inc.*, 777 A.2d 95, 100 (Pa. Super. Ct. 2001).

Pursuant to Pennsylvania Rule of Civil Procedure 1035.2, if a defendant is the moving party, the defendant "may make the showing necessary to support the entrance of summary judgment by pointing to materials which indicate that the plaintiff is unable to satisfy an element of his cause of action." *Rauch v. Mike-Mayer*, 783 A.2d 815, 824 (Pa. Super. Ct. 2001) (citing Pa.R.C.P. 1035.2(2)).

Werner claims that as a result of the accident, it suffered certain property damage, was required to make worker's compensation payments, and was also required to engage the services of, and expend monies for, an independent adjustment company to investigate the accident. Werner asserts some of these damages on behalf of Keith Sherman who was an employee of Werner at the time of the collision. Therefore, some of Werner's claims for damages against the Additional Defendants are grounded in the equitable doctrine of subrogation.

A subrogation claim is the "'substitution of one [entity] in the place of another with reference to a lawful claim, demand, or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its

rights, remedies or securities.'" *Molitoris v. Woods*, 618 A.2d 985, 989 (Pa. Super. Ct. 1992) (quoting BLACK'S LAW DICTIONARY 1279 (5th ed. 1979)). As the Superior Court so properly stated in *Daley-Sand v. West American Ins. Co.*, 564 A.2d 965 (Pa. Super. Ct. 1989):

When an insurer pays a claim under a policy, it is actually paying the debt of the tortfeasor. The insurer is only secondarily liable; it is the tortfeasor who is primarily liable. Once the insurer has paid a claim to the insured, it may then stand in the shoes of the insured and assert the insured's rights against the tortfeasor. The right to stand in the insured's shoes and to collect from the tortfeasor once it has paid the insured an amount representing the tortfeasor's debt is called the insurer's right to subrogation.

Id. at 969. Accordingly, the equitable doctrine of subrogation situates the subrogee in the precise position of the one to whose rights and disabilities he is subrogated. *Fell v. Johnston*, 36 A.2d 227, 229 (Pa. Super. Ct. 1944). As a result, an employer's statutory right to subrogation in worker's compensation is absolute and can be abrogated only by choice. *Winfrey v. Philadelphia Electric Co.*, 554 A.2d 485, 487 (Pa. 1989).

Notwithstanding such, the subrogee is subject to all defenses that can be raised against the subrogor. *Republic Ins. Co. v. Paul Davis Systems of Pittsburgh South, Inc.*, 635 A.2d 1056, 1057 (Pa. Super. Ct. 1993) *rev'd on other rounds*, 670 A.2d

614 (Pa. 1995). Consequently, a tortfeasor is permitted to raise the affirmative defense of statute of limitations as it relates to a subrogee's claim for damages. See, *Torres v. Pennsylvania Financial Responsibility Assigned Claims Plan*, 645 A.2d 1322 (Pa. Super. Ct. 1994). Accordingly, the Additional Defendants have raised such affirmative defense in their respective summary judgment motions.

The first issue the Court is faced with is to determine the applicable statute of limitations governing Werner's cause of action. Additional Defendants argue to the Court that since most of the damages Werner claims are property damages resulting from alleged negligence acts, such claims must be brought forth within two (2) years from the date of the accident. See, 42 Pa.C.S.A. § 5524.⁵ More specifically, Additional Defendants contend Werner's claims for damages as it relates to tractor-trailer and cargo damage, worker's compensation indemnity and medical payments, and worker's compensation expenses are barred

⁵ 42 Pa.C.S.A. § 5524 reads in relevant part:

The following actions and proceedings must be commenced within two years:

(3) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof.

(7) Any other action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conduct or any other action or proceeding sounding in trespass, including deceit or fraud, except an action or proceeding subject to another limitation specified in this subchapter.

since such claims were not brought forth within the requisite time allowable.

In determining which statute of limitations governs one's case, the court must look at the underlying cause of action. See, *Insurance Co. of North America v. Carnahan*, 284 A.2d 728 (Pa. 1971) (Pennsylvania Supreme Court ruled that a subrogee's right to the action did not accrue when the arbitrator found liability, but rather the date of the injury); see also, *Holloran v. Larrieu*, 637 A.2d 317 (Pa. Super. Ct. 1994) (Superior Court held that where an intervenor sought to intervene to enforce its subrogation rights, timeliness of the petition to intervene is measured by the statute of limitations as it accrued against subrogors since intervenors stand in subrogors' shoes for subrogation purposes.)

The rationale for such a rule is founded within the concept of subrogation: the subrogee possesses no greater right than that of the subrogor which includes the timeliness to institute such action. Quoting the Honorable President Judge Rice of the Superior Court who stated: "[t]he general rule is that the claimant must take steps to enforce his right of subrogation within the period prescribed as a limitation to the enforcement of simple contracts, for this merely equitable right will not be

enforced at the expense of a legal one." *Hutcheson v. Reash*, 15 Pa.Super. 96, 100 (1900).

Therefore, since Werner's claim for property damages are based upon the negligent acts of the Additional Defendants, the two-year statute of limitations governs this action. Consequently, Werner had two years from the date of the accident to commence its claim or claims against the Additional Defendants.

As stated previously, this action revolves around a collision that occurred on March 2, 2009. Thus Werner had until March 2, 2011 to take the necessary steps to preserve its right to a subrogation claim. However, not until May 6, 2011, two months after the applicable statute of limitations ran, did Werner take the affirmative steps necessary to preserve its claim for subrogation.

Werner, in its defense, argues to the Court that it was precluded from exercising its right to subrogation due to Great American commencing this action the day prior the statute of limitations running, in addition to its former employee's, Keith Sherman, actions. As counsel for Additional Defendants Kandel Transport, Inc. and Urich appropriately cited, the Superior Court in *Harmer v. Husley*, 467 A.2d 867 (Pa. Super. Ct. 1983), dealt with the identical argument as the one proffered by Werner

and determined such argument to be "patently meritless." *Id.* at 869. In *Harmer*, the Appellate Court upheld the trial court's grant of plaintiff's Motion for Judgment on the Pleadings to defendant's counterclaim where defendant's counterclaim was asserted after the statute of limitations had expired. *Id.* at 868. The Superior Court, in rejecting defendant's argument that he was hindered and prejudice to bring forth his counterclaim within the applicable statute of limitations due to plaintiff's late filing of his complaint, reasoned that defendant was entitled to the same two-year period to assert his claim as plaintiff was. *Id.* at 868-69.

Applying the same rationale to the case before the Court, Werner could have asserted his claim for damages against the Additional Defendants regardless of when Great American decided to institute its action against Werner. The fact that Werner failed to take such affirmative action is only to its detriment as Werner's counterclaim was not dependent upon Great American asserting its claim. Accordingly, this Court finds Werner's argument that it could not proceed on its subrogation claim because of Great American's late filing of this action to be without merit. Therefore, Werner's claims for damages as it relates to the tractor-trailer and cargo damage, worker's compensation indemnity and medical payments, and worker's

compensation expenses are barred pursuant to the statute of limitations.

Notwithstanding the fact that the statute of limitations bars Werner's claim for worker's compensation indemnity and medical payments, and worker's compensation expenses, these claims would also be barred on the basis that Werner, in its own name, has no standing to seek such damages.

As provided for by the Legislature of this Commonwealth, the Worker's Compensation Act grants an employer the right of subrogation against an alleged third-party tortfeasor for injuries to an employee of employer; thus, the right of subrogation is the exclusive remedy by which an employer, or his insurer, may recover sums it paid in workmen's compensation benefits to injured employee. 77 P.S. § 671; *Socha v. Metz*, 123 A.2d 837, 839-40 (Pa. 1956). For that reason, an employer's or insurer's right to enforce its subrogation rights against an alleged third-party tortfeasor potentially liable for employee's injuries must proceed in an action brought forth on behalf of the employee in order to ascertain the liability of a third-party to the employee. *Reliance Ins. Co. v. Richmond Machine Co.*, 455 A.2d 686, 690 (Pa. Super. Ct. 1983).

In *Moltz, to Use of Royal Indemnity Co. v. Sherwood Bros. Inc.*, 176 A. 842 (Pa. Super. Ct. 1935), the Superior Court dismissed an employer's subrogation claim where the injured

employee failed to bring an action against the alleged tortfeasor within the applicable statute of limitations time period. *Id.* at 843. The *Moltz* Court reasoned that an "employer's right of subrogation must be worked out through an action brought in the name of the injured employee, either by joining the employer as a party plaintiff, or as a use plaintiff." *Id.* (citing *Gentile v. Philadelphia & R. Ry. Co.*, 118 A. 223 (Pa. 1922); *Mayhugh v. Somerset Telephone Co.*, 109 A. 213 (Pa. 1920)).

In the case at bar, there is no indication or reference that Werner's former employee, Keith Sherman, has instituted an action within the applicable statute of limitations period against any of the Additional Defendants for the injuries he sustained on March 2, 2009. In fact, in the deposition of Keith Sherman, which was attached to the joint summary judgment motion filed by Additional Defendants' Pro Trans Logistics and Obara, Keith Sherman states he has never brought an action to recover damages against any Additional Defendant. *See*, Sherman Dep. 69:14 - 70:23, Sept. 20, 2012. Moreover, the subrogation claims brought forth by Werner are not asserted on behalf of its former employee Keith Sherman. Consequently, Werner does not have any standing to seek recuperation from any Additional Defendant for money it, Werner, paid to Keith Sherman on his workman's compensation claim.

Lastly, Werner seeks to recover expenses paid to an independent adjustment company for its investigation of the collision that occurred on March 2, 2009. As stated formerly and reiterated now, because subrogation is based upon an equitable doctrine and a subrogee stands in the same position as the subrogor, a subrogee is limited to recover only the amount received by the subrogor relative to the claim paid by the subrogee. *Allstate Ins. Co. v. Clarke*, 527 A.2d 1021, 1024 (Pa. Super. Ct. 1987); *Torres*, 645 A.2d at 1323. Werner's claim seeking recovery of the expense it paid to an independent adjustment company is not a loss its former employee Keith Sherman could recover nor is it an expense paid on behalf of Keith Sherman as it relates to his worker's compensation claim. Therefore, Werner is prohibited from seeking such damage in a subrogation claim, in addition to such claim being barred by the statute of limitations for the reasons stated above.

Accordingly, for all the reasons stated above, the Court enters the following order:

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PIOTR M. OBARA, DANIEL O. AMAYA,	:	
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Additional Defendants	:	

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	Defendants Urich &
	Kandel Transport, Inc.
Karl R. Hildabrand, Esquire	Counsel for Additional
	Defendants OBARA & Pro
	Trans Logistics

ORDER OF COURT

AND NOW, to wit, this _____ day of October, 2013, upon consideration of the joint Motion for Summary Judgment filed by Additional Defendants Pro Trans Logistics and Piotr M. Obara, the brief of counsel, Defendant's response thereto, and after oral argument thereon, and in accordance with the Court's Memorandum Opinion of this same date, it is hereby **ORDERED and DECREED** that these Additional Defendants' Motion for Summary

Judgment is **GRANTED** and Count III of the Joinder Complaint is **DISMISSED with PREJUDICE**.

It is **FURTHER ORDERED and DECREED** that based upon the joint Motion for Summary Judgment filed by Additional Defendants Kandel Transport, Inc. and Urich, the brief lodged in support thereof, Defendant's response and brief thereto, and after oral argument thereon, said Motion for Summary Judgment is **GRANTED** and Count V of the Joinder Complaint is **DISMISSED with PREJUDICE**.

BY THE COURT:

Joseph J. Matika, Judge