TIMOTHY EISWERTH, Plaintiff	:	IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
vs.	:	NO. 00-01884
ERIC M. KLINK, and PAUL MACHENRY AND CO., Defendants	:	CIVIL ACTION - LAW PRELIMINARY OBJECTIONS

Date: June 27, 2001

OPINION and ORDER

BEFORE THE COURT is Defendant's Preliminary Objections to Plaintiff's Complaint.

Facts

On August 5, 1999, Plaintiff was operating a motor vehicle on SR 87 in Sullivan County. Defendant Klink was driving a vehicle belonging to Defendant Paul MacHenry and Co. Plaintiff avers that the vehicle operated by Defendant Klink hit Plaintiff head on in Plaintiff's lane of traffic. As a result of the collision, Plaintiff sustained injuries. On December 6, 2000, Plaintiff filed suit alleging Defendants' negligent actions were the cause of Plaintiff's injuries.[1]

[1] The procedural history is straightforward. Plaintiff filed a Complaint on December 6, 2000. Defendants filed Preliminary Objections on January 4, 2000. On January 25, 2000, Plaintiffs filed an Answer to Defendants' preliminary objections. Defendant MacHenry and Co. originally filed a Complaint in Dauphin County against Plaintiff seeking to recover for damages sustained to MacHenry's vehicle. By stipulation of the parties, the action was transferred to Lycoming County on November 9, 2000 under case #00-01,850. Because the companion case was being tried in Lycoming County, Plaintiff thought it logical to file this suit in Lycoming County.

Discussion

Defendants have objected on the basis of improper venue. In a letter dated March 19, 2001, Defendants' counsel states that after discussing the matter with his clients and opposing counsel, he is conceding venue in Lycoming County.

Defendants also raised objections to Plaintiff's counts of misconduct and emotional distress. In his Brief in Opposition to Preliminary Objections, filed February 6, 2001 at p. 4, Plaintiff agrees that these claims should be stricken.

Defendants' remaining preliminary objections concern the specificity of the allegations contained in the complaint in paragraphs 11(f), 15(f), 12(h) and 16(h).

At risk of stating the obvious, the Court notes that Pennsylvania is a fact-pleading jurisdiction. ***Alpha Tau Omega Fraternity v. University of Pennsylvania***, 464 A.2d 1349 (Pa.Super. 1983). This idea is codified in Pa.R.C.P. 1019(a) which states: "The material facts on which a cause of action or defense is based shall be stated in a concise and summary form." and Pa.R.C.P. 1019(f) provides: "Averments of time, place and items of special damage shall be specifically stated." While these rules establish the broad contours of fact pleading, the issue of how much specificity is necessary to satisfy the requirements of Rule 1019 remains. The framers of the rules and subsequent courts have been savvy enough to recognize that requiring an unreasonable amount of detail would not only render discovery pointless, but would bar an undue number of plaintiffs from bringing suit in the first place. The requirements of Rule 1019 will be satisfied if the "allegations in a pleading contain averments of all facts that plaintiff will eventually have to prove in order to recover, and they are sufficiently specific so as to enable the party served to prepare a defense thereto." ***Com., Dept. of Transp. v. Shipley Humble Oil Co.***, 370 A.2d 438 (Pa.Cmwlth. 1977). Courts, however, will not tolerate

averments that are worded in such a way as to permit new claims being introduced under the aegis that the new claim is merely an amplification of a previously pled claim. ***Conner v. Allegheny General Hosp.***, 461 A.2d 600 (Pa. 1983). The Complaint should detail sufficient facts to put a defendant on notice of the claims of plaintiff so that a meaningful responsive pleading can be filed. Having established the parameters concerning the specificity of the pleadings, the Court now turns to the averments at issue in this case to determine whether or not they are sufficient.

The first claim Defendants object to on the grounds of lack of specificity is that Plaintiff averred in paragraphs 11 and 15 of the Complaint that he ". . . suffered severe, serious, and permanent injuries, including but not limited to the following: a. posterior horn medial meniscus tear; b. lumbar injury; c. cervical injury; d. right arm injury; e. various contusions; and f. other severe injuries, which yet remain to be discovered, some or all of which may be permanent in nature." In paragraphs 12(h) and 16(h) Defendants also object to the assertion Plaintiff has sustained "other damages and future complications caused by the accident, which remain yet to be discovered."

Defendant takes issue with two distinct parts of these claims. The first is that Plaintiff does not specifically allege on what part of the body the meniscus is located or on which side of the body the same is located[2]. Defendant continues that, similarly for the remaining injury averments, Plaintiff has not alleged material facts indicating the nature and extent of such injuries. Defendant points to ***Rhine v. Arnold***, 34 Leh.L.J. 461, (1971), in which Plaintiffs averred injuries to the "back, shoulders, neck, head, knees and diverse other parts of

[2] Meniscus is defined as a fibrous cartilage within a joint especially of the knee. Webster's Ninth New Collegiate Dictionary, 1983.

the body." In ***Rhine***, the Court sustained Defendant's objections stating that the averments are too broad and too general. This Court finds this case distinguishable. The Court notes Plaintiff states he sustained a posterior horn meniscus injury, cervical injury, a right arm injury, and various contusions, although Plaintiff does not allege if it is a right knee or left knee injury. The Court finds this language sufficiently specific to enable Defendant to prepare a responsive pleading in defense. The specific knee injured will be readily identified through discovery.

The Court agrees, however, that the language concerning injuries "which yet remain to be discovered" is objectionable. This vague language leaves the door open for Plaintiffs to introduce new claims under the aegis of amplifying a previously stated averment. The Court will sustain Defendants' objection to this language and will strike paragraphs 11(f) and 15(f). The same applies to the "other damages and future complications" language of paragraphs 12(h) and 16(h). The Court notes that should further injuries or damages caused by the accident be uncovered before the close of discovery, Plaintiff can seek to amend the Complaint.

Defendant also raises an objection on the basis that Plaintiff has claimed numerous injuries but has not identified which ones are permanent. The weight of authority seems to be with the defendants' principle assertion that permanent injuries must be identified. "We have frequently stated that if there is a claim of permanency in any of the injuries complained of, it is necessary to specifically allege which injuries are permanent in nature." ***Louis Farnell v. Keystone Coca-Cola Bottling Co.***, 62 Luz. L. Reg. 117 (1976). "The complaint should state which injuries are permanent." ***Kearns v. Peterson***, 25 D.&C. 213, (C.P. Mercer 1961). The Court, however, will not direct Plaintiff to amend the complaint to state with specificity which injuries are permanent. This is because with paragraphs 11(f) and

15(f) being stricken, the remaining allegation is that all the injuries enumerated in sub-paragraphs "a." through "e." are all alleged to be permanent. Even though it may be nonsensical that some of these (such as contusions) are permanent, nevertheless that is what Plaintiff has alleged. Defendants can appropriately respond in an answer, which contests such permanency.

Finally, Defendants object to Plaintiff's averment in paragraph 16.g. of the Complaint that as a result of the injuries, he is ". . . Unable to perform certain household activities and will be unable to do so in the future." The Court acknowledges that this is a rather broad statement. However, the statement gives Defendants enough notice of the issue to respond to meaningful questions that can be posed during discovery. Consequently Defendants' objection to this averment is overruled.

ORDER

It is ORDERED and DIRECTED as follows:

1. By Stipulation: Defendants' Preliminary Objection to improper venue is withdrawn; Plaintiff's allegations of "misconduct" and "emotional distress" are stricken.

2. Paragraphs 11(f), 15(f), 12(h) and 16(h) are stricken.

3. Defendants' objection that the averment concerning Plaintiff's allegation of being unable to perform "certain household activities" is overruled.

4. Defendants shall plead to the Complaint within twenty days of being given notice of this Order.

BY THE COURT,

William S. Kieser, Judge

cc: Bradley D. Allison, Esquire
401 Allegheny Street, Hollidaysburg, PA 16648-0415
Douglas N. Engleman, Esquire
Judges
Suzanne Lovecchio, Law Clerk
Gary L. Weber, Esquire (Lycoming Reporter)