

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>LINDA STROUSE, executrix to the</b>	:	
<b>ESTATE OF JOE GIRIO, on behalf of</b>	:	
<b>the deceased, JOE GIRIO</b>	:	
<b>Plaintiff</b>	:	
	:	
<b>vs.</b>	:	<b>NO. 20-0877</b>
	:	
<b>UNIV. OF PITTSBURGH MEDICAL</b>	:	
<b>CENTER SUSQUEHANNA,</b>	:	
<b>Defendant</b>	:	<b>Preliminary Objections</b>

**OPINION**

**I. Factual and Procedural History**

This medical malpractice action arises out of an incident that occurred on September 17, 2018. The decedent sustained injury(ies) as a result of a fall that occurred on September 5, 2018. He was admitted to the Defendant hospital where a procedure was performed and he was, at some point, discharged. On September 16, 2018, the decedent was again admitted to the Defendant hospital, complaining of back pain. The following day, September 17, 2018, the decedent fell out of his hospital bed, allegedly sustaining additional injuries.

This action was initiated by the filing of a Writ of Summons on September 4, 2020. The named Defendant is “Univ. of Pittsburgh Medical Center Susquehanna.” After being ruled to file, Plaintiff filed her first Complaint on October 14, 2020. As a result of preliminary objections filed by Defendant, Plaintiff filed her first Amended Complaint on January 20, 2021, which rendered the preliminary objections moot. The Defendant listed in Plaintiff’s first Amended Complaint is “Univ. of Pittsburgh Medical Center Susquehanna, Williamsport Regional Medical Center.”

Defendant filed preliminary objections to Plaintiff's first Amended Complaint on February 2, 2021. Plaintiff filed a second Amended Complaint on March 19, 2021 and named "Univ. of Pittsburgh Medical Center Susquehanna Williamsport, The Williamsport Hospital" as the Defendant. However, Counsel for Defendant argues that the second Amended Complaint does not address the sole preliminary objection raised. Therefore, argument was held on March 23, 2021.

## II. Discussion

Defendant argues that Plaintiff's Complaint should be dismissed as to the originally named Defendant, Univ. of Pittsburgh Medical Center Susquehanna, because the first and second Amended Complaints entirely fail to plead a cause of action against it. "There is no reference to the originally named Defendant in the Amended Complaint and, thus, no facts plead [sic] against it that could form the basis of professional negligence or any other claim." *See Defendant's Brief in Support of the Preliminary Objections at unnumbered page 3.* Additionally, the two separately named Defendants in the first Amended Complaint and second Amended Complaint have not yet been served. Plaintiff states that the hospital she is attempting to sue, located at 700 High Street in Williamsport, is currently registered under several fictitious names. She argues that all three of the Defendants named are really the same, single entity and that a reasonable mistake was made as to the Defendant's correct legal name.

Pennsylvania Rule of Civil Procedure 2177 states that an action shall be prosecuted against a corporation or similar entity in its corporate name.

Pa.R.C.P. 2177. "A corporate name is defined as any name, **real or fictitious**,

under which a corporation or similar entity was organized or conducts business, **whether or not such name has been filed or registered.**" Pa.R.C.P. 2176; *Zercher v. Coca-Cola USA*, 651 A.2d 1133, 1135 (Pa. Super. 1994) (emphasis added).

In this case, the underlying issue is whether the Plaintiff originally identified and sued the wrong Defendant. If Plaintiff has in fact identified the wrong Defendant, she cannot amend the Complaint to add a Defendant if the statute of limitations has already passed. *Ferraro v. McCarthy-Pascuzzo*, 777 A.2d 1128, 1132 (Pa. Super. 2001). However, if this is a case of merely correcting the name of a party who has already been properly sued, as Plaintiff argues, then an amendment should be permitted without consequence. *Zercher*, 651 A.2d at 1135, *citing Wicker v. Esposito*, 457 A.2d 1260 (Pa. 1983).

**a. Statute of Limitations**

The first inquiry, then, is whether the statute of limitations has run in this case. It is well settled that in Pennsylvania, the statute of limitations for a medical malpractice action is two years and that it begins to run as soon as the right to institute and maintain a suit arises. 42 Pa.C.S.A. § 5524; *Pocono Intern. Raceway, Inc. v. Pocono Produce, Inc.*, 468 A.2d 468, 471 (Pa. 1983). Plaintiff's fall, and the incident giving rise to this litigation, occurred on September 17, 2018. Therefore, the statute of limitations ran on September 17, 2020.

**b. Defendant's Identity**

It is undisputed that the Plaintiff must amend the Complaint in order to correctly identify the Defendant against whom she intends to proceed. The issue is whether an amendment to the Complaint would add a new, distinct party to the

litigation or merely correct a party's name who has already been sued and served. Generally, the cases discussing this issue center on Plaintiff naming the Defendant under the wrong designation (i.e. an LLC versus a partnership). However, the rationale is instructive under the facts in this case.

“When the original complaint seeks to impose liability against the assets of a business entity, and the amendment is designed merely to correct the description of the business entity already made a party to the proceedings, the amendment is properly admitted.” *Fretts v. Paretti*, 422 A.2d 881, 883 (Pa. 1980). Courts have also found it important that the Plaintiff had served the original papers at the place and situs of the fall giving rise to the cause of action and that the Defendant did not suffer surprise or prejudice. *Adamo v. Heck's Dept. Store*, 46 Pa.D.&C.3d 325, 329 (C.P. Mercer Nov. 24, 1987). Additionally, when there is proof that a defendant actively conceals its true identity, the Court will allow Plaintiff to amend the complaint after the running of the statute of limitations. *See, i.e., DeRugeriis v. Brener*, 34 A.2d 139 (Pa. Super. 1975); *Lafferty v. Alan Wexler Agency*, 574 A.2d 671 (Pa. Super. 1990).

In the *Zercher* case, the Court found that Plaintiff was unable to amend her complaint after the statute of limitations had run because she attempted to sue an entirely new and distinct business entity for injuries she received as a result of a slip and fall caused by a leaking soda machine. *Zercher*, 651 A.2d at 1135. Along with other Defendants, Plaintiff initially filed suit against the entity she thought was the manufacturer of the machine, “Citco, T.M.,” but subsequently determined that the manufacturer was actually “Stainless Ice-Tainer Company.” *Id.* at 1133. Since Citco, T.M. is a trademark, it is not

amenable to suit. *Id.* at 1135. Additionally, Ice-Tainer, which owned the trademark, merged with Schneider, which then merged with IMI, meaning IMI would be “comprised of assets separate and distinct from Ice-Tainer . . . .” *Id.* As Plaintiff failed to sue the soda machine manufacturer under its corporate name prior the statute of limitations running, she could not amend her complaint. *Id.*

### **c. Analysis**

This action was initiated by the filing of a Writ of Summons, naming one Defendant: Univ. of Pittsburgh Medical Center Susquehanna. The Writ was served on Ken Young at the legal department at the address of 1001 Grampian Boulevard, Williamsport. *See Sheriff’s Return of Service, September 9, 2020.* Plaintiff’s original Complaint lists Defendant’s principal place of business as 700 High Street, Williamsport, PA.

Plaintiff’s first Amended Complaint, which was filed after the statute of limitations had run, also names only one defendant, albeit a different one than its original Complaint: UPMC Susquehanna, Williamsport Regional Medical Center.<sup>1</sup> Again, the principal place of business is listed as 700 High Street, Williamsport. Plaintiff further identifies the Defendant as a “comprehensive provider of health care and healthcare services, professional corporation, professional association, business partnership, business association, joint venture, corporation, and/or other jural entity . . . .” *See First Amended Complaint at Paragraph 2.* Plaintiff goes on to state that the Defendant is “an institutional healthcare provider, healthcare facility, and a comprehensive provider of health care and healthcare services . . . .” *See First Amended Complaint at Paragraph 3.* Plaintiff’s second

Amended Complaint is the same as her first Amended Complaint, with the exception of the Defendant's name. "The University of Pittsburgh Medical Center Susquehanna Williamsport, the Williamsport Hospital" is the named Defendant.

This case is distinguishable from the *Zercher* case. In *Zercher*, the Plaintiff wanted to amend the Complaint to name an entirely different entity as a Defendant. In fact, the Defendant she first attempted to sue was not even legally able to be sued. Here, it is clear that Plaintiff is attempting to sue the hospital located at 700 High Street in Williamsport, the same hospital where decedent's fall occurred. If, for example, Plaintiff first sued the hospital located on East Water Street in Muncy (UPMC Muncy) and later attempted to sue the hospital located on High Street in Williamsport (UPMC Williamsport), it is conceivable that the outcome here would be different. These locations are separate and distinct from one another, likely with different assets. However, that is not the case here.

Plaintiff's Complaint was served at the same location as where the decedent's fall occurred. Plaintiff has identified the Defendant's principal place of business as 700 High Street, Williamsport in all three of her Complaints. The Writ of Summons was served on Ken Young, General Counsel for UPMC Susquehanna. Attorney Bluth, Counsel for Defendant, entered his appearance one day after the Writ was served and admitted during oral argument that if the Defendant was properly named, he would likely enter his appearance on behalf of it as well. Additionally, Defendant has not argued that allowing Plaintiff to amend the Complaint to name the Defendant's correct legal name would cause it prejudice.

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<sup>1</sup> The Court believes this to be a single Defendant because Plaintiff refers to it in the singular

### **III. Conclusion**

The Court finds that Plaintiff is attempting to sue the same Defendant under different names. The issue in this case is merely one of naming the Defendant under its correct legal name. The Court finds that the three Defendants named by Plaintiff are the same entity for the purpose of this litigation. However, Plaintiff is still required to identify the correct name of the hospital she is attempting to sue and assert her claim against that entity. Therefore, Plaintiff may amend her Complaint to do so without consequence.

**ORDER**

**AND NOW**, this 13<sup>th</sup> day of **April, 2021**, for the reasons set forth above, Defendant's Preliminary Objection is **OVERRULED**. Plaintiff shall have twenty (20) days from the date of this Order file an Amended Complaint naming the correct legal entity.

BY THE COURT,

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Hon. Ryan M. Tira, Judge

RMT/ads

CC: Brian Bluth, Esquire  
Christian Lovecchio, Esquire  
Alexandra Sholley – Judge Tira's Office  
Gary Weber, Esq.