IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ROBERT T. WRIGHT and YVONNE C. WRIGHT, Plaintiff, vs. MASSARO CORPORATION, et al., Defendants. vs. STEEL SUPPLY & ENGINEERING CO., Additional Defendant, vs. CENTURY STEEL ERECTORS COMPANY, Additional Defendant.	:	NO. CV-2024-00232 CIVIL ACTION - LAW Preliminary Objections filed by Century

OPINION AND ORDER

The matter captioned above was transferred to this Court from the Court of Common Pleas of Philadelphia County. The Court conducted a status conference on September 3, 2024, for the purpose of developing a Scheduling Order. During that status conference, counsel called to the Court's attention that three (3) sets of preliminary objections filed in Philadelphia County have long lingered, and that those preliminary objections have delayed progress in the matter. For that reason, the Court has elected to resolve all three (3) preliminary objections, before proceeding with a Scheduling Order.

I. BACKGROUND

This matter was commenced by Complaint filed October 27, 2022, by Robert T. Wright and Yvonne C. Wright (hereinafter "Plaintiffs") in the Court of Common Pleas of Philadelphia County, alleging personal injuries sustained by Robert in a construction accident which occurred in Lycoming County on October 27, 2020. A Joinder Complaint was filed on March 14, 2023, against Steel Supply & Engineering Company (hereinafter "Steel Supply") by WG Yates & Sons Construction Company, Yates Construction LLC,

Massaro Corporation, Massaro Construction Management Services LLC, Yates-Massaro Joint Venture, Yates Construction of Florida LLC, Yates Services LLC, Yates Engineers LLC, The Yates Companies Inc., and Yates Construction and Yates Construction Company Inc. (hereinafter collectively as "Yates-Massaro"). Another Joinder Complaint was filed on April 4, 2023, by Steel Supply against Century Steel Erectors Company (hereinafter "Century"). The Joinder Complaint alleges one (1) count of Breach of Contract for Defense and Indemnification, contending that a) Century had a duty to provide Defense to Steel Supply and failed to provide that defense, b) Century had a duty to indemnify Steel Supply and failed to indemnify, and c) Century has waived any protection under the Workers' Compensation Act.

Plaintiffs filed an Amended Complaint on April 13, 2023, alleging four (4) counts of negligence, one (1) count of strict liability, and one (1) count of lost consortium. Nucor Corporation and Nucor Building Systems Sales Corporation (hereinafter "Nucor Defendants") filed Preliminary Objections to the Amended Complaint on May 3, 2023. Yates-Massaro also filed Preliminary Objections to the Amended Complaint on May 3, 2023. Century filed Preliminary Objections on May 8, 2023, to the Joinder Complaint by Steel Supply.

In the Preliminary Objections filed by Century on May 8, 2024, Century notes that Steel Supply has asserted the indemnification provisions in the subcontract between Steel Supply and Century—under 10.1 "Indemnification" and 10.2 "Coordination with Worker's Compensation"—to claim that the subcontract constituted a waiver of any Workers' Compensation Immunity afforded to Century by the Workers' Compensation Act, and therefore Century can be joined as an Additional Defendant, can be required to defend and indemnify Steel Supply, and is solely liable to Plaintiffs. Century's Preliminary Objections at ¶¶ 3–6.

Century contends, however, that under 42 Pa.C.S. § 5524, there is a two (2) year statute of limitations on negligence claims, that the Plaintiffs' negligence claim in above-captioned case ran on October 27, 2022, "approximately five months prior to [Steel Supply's] filing of its Joinder Complaint on April 4, 2023," that "a party cannot be joined

as an additional defendant in action for the tort on an allegation that he is alone liable to the plaintiff" if the statute of limitations has run, and that "even assuming there was a valid waiver of worker's compensation immunity in this case…," any waiver under the Workers' Compensation Act "does not restore negligence claims asserted by a Plaintiff, and it does not restore typical contribution or indemnity claims." Century's Preliminary Objections at ¶¶ 10-12. Therefore, Century asserts that Steel Supply's Joinder Complaint "fails to state a legal cause of action upon which relief can be granted." *Id.* at ¶ 13.

Further, Century contends that the indemnification provisions lack the specificity required to constitute a waiver of the protections provided by Workers' Compensation Act, and thus Count I of Steel Supply's Joinder Complaint should be stricken.

II. QUESTIONS PRESENTED

A. WHETHER THE FACT THAT STEEL SUPPLY'S JOINDER COMPLAINT WAS FILED AFTER THE EXPIRATION OF THE STATUTE OF LIMITATION ON PLAINTIFFS' CLAIM IS FATAL TO THE JOINDER COMPLAINT.

B. WHETHER THE INDEMNIFICATION PROVISIONS IN THE SUBCONTRACT BETWEEN CENTURY AND STEEL SUPPLY ARE SUFFICIENTLY SPECIFIC TO INCLUDE A CLAIM OF NEGLIGENCE BY CENTURY'S EMPLOYEES.

III. BRIEF ANSWERS

A. THE FACT THAT STEEL SUPPLY'S JOINDER COMPLAINT WAS FILED AFTER THE EXPIRATION OF THE STATUTE OF LIMITATION ON PLAINTIFFS' CLAIM IS NOT FATAL TO THE JOINDER COMPLAINT, TO THE EXTENT THAT THE JOINDER SEEKS ONLY JUDGMENT THAT CENTURY IS LIABLE OVER TO STEEL SUPPLY, OR JOINTLY LIABLE.

B. THE INDEMNIFICATION PROVISIONS IN THE SUBCONTRACT BETWEEN CENTURY AND STEEL SUPPLY ARE SUFFICIENTLY SPECIFIC TO INCLUDE A CLAIM OF NEGLIGENCE BY CENTURY'S EMPLOYEES.

IV. DISCUSSION

The settled law of this Commonwealth is that preliminary objections in the nature of a demurrer are not favored:

> A demurrer can only be sustained where the complaint is clearly insufficient to establish the pleader's right to

> relief. *Firing v. Kephart,* 466 Pa. 560, 353 A.2d 833 (1976). For the purpose of testing the legal sufficiency of the challenged pleading a preliminary objection in the nature of a demurrer admits as true all well-pleaded, material, relevant facts, *Savitz v. Weinstein,* 395 Pa. 173, 149 A.2d 110 (1959); *March v. Banus,* 395 Pa. 629, 151 A.2d 612 (1959), and every inference fairly deducible from those facts, *Hoffman v. Misericordia Hospital of Philadelphia,* 439 Pa. 501, 267 A.2d 867 (1970); *Troop v. Franklin Savings Trust,* 291 Pa. 18, 139 A. 492 (1927). The pleader's conclusions or averments of law are not considered to be admitted as true by a demurrer. *Savitz v. Weinstein, supra.*
>
> Since the sustaining of a demurrer results in a denial of the pleader's claim or a dismissal of his suit, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted. *Schott v. Westinghouse Electric Corp.,* 436 Pa. 279, 259 A.2d 443 (1969); *Botwinick v. Credit Exchange, Inc.,* 419 Pa. 65, 213 A.2d 349 (1965); *Savitz v. Weinstein, supra; London v. Kingsley,* 368 Pa. 109, 81 A.2d 870 (1951); *Waldman v. Shoemaker,* 367 Pa. 587, 80 A.2d 776 (1951). If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected. *Packler v. State Employment Retirement Board,* 470 Pa. 368, 371, 368 A.2d 673, 675 (1977); *see also Schott v. Westinghouse Electric Corp., supra,* 436 Pa. at 291, 259 A.2d at 449.

Mudd v. Hoffman Homes for Youth, Inc., 543 A.2d 1092, 1093–94 (Pa. Super. Ct. 1988)(quoting *County of Allegheny v. Commonwealth,* 490 A.2d 402, 408 (Pa. 1985)).

A. THE FACT THAT STEEL SUPPLY'S JOINDER COMPLAINT WAS FILED AFTER THE EXPIRATION OF THE STATUTE OF LIMITATION ON PLAINTIFFS' CLAIM IS NOT FATAL TO THE JOINDER COMPLAINT, TO THE EXTENT THAT THE JOINDER SEEKS ONLY JUDGMENT THAT CENTURY IS LIABLE OVER TO STEEL SUPPLY, OR JOINTLY LIABLE.

It is the settled law of this Commonwealth that a joinder complaint filed after the expiration of the statute of limitation applicable to the plaintiff may not assert that the additional defendant is alone liable to the plaintiff, but may seek judgment for liability

over, or joint liability. *Kitchen v. Borough of Grampian*, 219 A.2d 686, 686 (Pa. 1966). Thus, to the extent that Steel Supply's Joinder Complaint seeks judgment that Century is alone liable, the Preliminary Objections will be granted. To the extent that Steel Supply seeks only liability over or joint liability, they will not.

B. THE INDEMNIFICATION PROVISIONS IN THE SUBCONTRACT BETWEEN CENTURY AND STEEL SUPPLY ARE SUFFICIENTLY SPECIFIC TO INCLUDE A CLAIM OF NEGLIGENCE BY CENTURY'S EMPLOYEES.

Pennsylvania's Workers' Compensation Act provides the following:

> (a) The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employes, his legal representative, husband or wife, parents, dependents, next of kin or anyone otherwise entitled to damages in any action at law or otherwise on account of any injury or death as defined in section 301(c)(1) and (2) or occupational disease as defined in section 108.
> (b) In the event injury or death to an employe is caused by a third party, then such employe, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to receive damages by reason thereof, may bring their action at law against such third party, but the employer, his insurance carrier, their servants and agents, employes, representatives acting on their behalf or at their request shall not be liable to a third party for damages, contribution, or indemnity in any action at law, or otherwise, unless liability for such damages, contributions or indemnity shall be expressly provided for in a written contract entered into by the party alleged to be liable prior to the date of the occurrence which gave rise to the action.

77 Pa. Stat. § 481 (footnotes omitted).

Our Superior Court has concluded that general indemnity provisions in a written contract are inadequate to remove the bar to recovery created by Workers' Compensation Act, but that a very clear intent to do so will be enforced:

> When interpreting a contract, "the court's paramount goal is to ascertain and give effect to the intent of the parties as reasonably manifested by the language of their written agreement." *Halpin v. LaSalle University*, 432 Pa.Super.

> 476, 481, 639 A.2d 37, 39 (1994), appeal denied, 542 Pa. 670, 668 A.2d 1133 (1995)….
> "[A] court may not disregard a provision in a contract if a reasonable meaning may be ascertained therefrom." *Marcinak v. Southeastern Greene School District*, 375 Pa.Super. 486, 491, 544 A.2d 1025, 1027 (1988). "[I]n construing a contract, each and every part of it must be taken into consideration and given effect, if possible, and the intention of the parties must be ascertained from the entire instrument." *Id*. "[T]he intention of the parties is paramount and the court will adopt an interpretation which under all circumstances ascribes the most reasonable, probable, and natural conduct of the parties, bearing in mind the objects manifestly to be accomplished." *Village Beer & Beverage, Inc. v. Vernon D. Cox, Inc.*, 327 Pa.Super. 99, 107, 475 A.2d 117, 121 (1984).
> ….
> General indemnity language is insufficient to remove the bar to recovery created by the exclusivity provision of the Workmen's Compensation Act, 77 P.S. § 481(b). *Bester v. Essex Crane Rental Corporation*, 422 Pa.Super. 178, 184, 619 A.2d 304, 307 (1993), *appeal denied*, 539 Pa. 641, 651 A.2d 530 (1994). The intent to indemnify against claims by employees of the alleged indemnitor must clearly appear from the terms of the agreement. *Id.* at 185, 619 A.2d at 307.
> ….
> A contract of indemnity for injuries arising from negligence should not be construed to indemnify against the negligence of the indemnitee unless such intent is expressed in unequivocal terms in the indemnity contract. *Ruzzi v. Butler Petroleum Company*, 527 Pa. 1, 588 A.2d 1 (1991); *Hackman v. Moyer Packing*, 423 Pa.Super. 378, 621 A.2d 166 (1993); *Perry v. Payne*, 217 Pa. 252, 66 A. 553 (1907).

Bethlehem Steel Corp. v. MATX, Inc., 703 A.2d 39, 42-43 (Pa. Super. Ct. 1997); *see, e.g., Hackman v. Moyer Packing*, 621 A.2d 166, 168 (Pa. Super. Ct. 1993)(noting that "[A]n indemnity agreement would not be enforced in employee actions against third parties unless the employer's agreement to indemnify the third party was made to apply specifically to claims by its employees. In the absence of specific language, the Court held, an employer's waiver of the immunity granted to the employer by the Workmen's Compensation Act would not be inferred.")(citing *Bester v. Essex Crane Rental Corp.*, 619 A.2d 304 (Pa. Super. Ct. 1993)).

In *Hackman*, the indemnification agreement at issue stated that “[Currie] ... agrees to indemnify, save and hold harmless Moyer Packing Company, its subsidiaries, affiliates, their directors, officers, agents, workmen, servants or employees, against any and all claim or claims brought by the agents, workmen, servants or employees of [Currie] for any alleged negligence or condition, caused or created, [in] whole or in part, by Moyer Packing Company.” 621 A.2d at 168. The *Hackman* Court reasoned that “[b]y this language Currie specifically agreed to indemnify Moyer for liability arising from harm suffered by Currie's employees while working on Moyer's premises, even though Moyer may have been negligent in causing or contributing to the employees' injuries. As such, the requirements for waiver under the Workmen's Compensation Act have been met. The trial court did not err in concluding that the indemnity agreement was enforceable against Currie.” *Id.*

Here, the indemnity provisions between Century and Steel Supply read as follows:

> 10.1 **<u>Indemnification</u>**
> To the extent of its fault/negligence, and to the fullest extent permitted by law, Subcontractor shall indemnify, hold harmless and defend [Steel Supply]…from and against all claims, losses, costs, damages, liabilities and expenses…arising out of or resulting from: (i) a breach of or default by Subcontractor, its employees, agents, and subcontractors of this Subcontract Agreement or any other Contract Document; (ii) any injury or damage sustained to any person or property from Subcontractor’s performance or lack of performance of its duties and obligations under this Subcontract Agreement or any other Contract Document. Nothing contained herein shall require Subcontractor to indemnify [Steel Supply] against claims caused by the sole negligence of sole misconduct of [Steel Supply] or any other contractor, including GC on this project.
>
> 10.2 **<u>Coordination With Worker’s Compensation</u>**
> Subcontractor’s obligations to indemnify, hold harmless and defend [Steel Supply] shall not be affected, limited or diminished in any way by any statutory or other legislative immunity which Subcontractor may be entitled from suits by its own employees, or from limitations of liability or recovery under workers’ compensation, disability, employee benefit or similar laws, or by the amount or type of damages.

Steel Supply's Response in Opposition to Century's Preliminary Objections at Exhibit D.

While the general indemnity language contained in 10.1 is clearly inadequate to constitute a waiver of the application of the Workers' Compensation Act, a proper interpretation of the contract, in line with *Bethlehem Steel Corporation* and *Hackman*, requires that the Court attempt to read 10.1 and 10.2 in harmony. It is impossible for this Court to interpret the language of 10.2—"Subcontractor's obligations to indemnify…shall not be affected, limited or diminished in any way by any statutory or other legislative immunity which Subcontractor may be entitled from suits by its own employees…"—aptly titled "Coordination With Worker's Compensation," without reaching the conclusion that the parties intended the indemnification agreement set forth in 10.1 to reach claims of negligence by Century employees. For that reason, the Court finds that "the most reasonable, probable, and natural conduct of the parties, bearing in mind the objects manifestly to be accomplished" is that 10.1 and 10.2 together evince an enforceable indemnity agreement against Century. Steel Supply's Response in Opposition to Century's Preliminary Objections at Exhibit D; 703 A.2d at 42 (quoting *Vill. Beer & Beverage, Inc. v. Vernon D. Cox & Co.*, 475 A.2d 117, 121 (Pa. Super. Ct. 1984)).

ORDER

AND NOW, this 23rd day of October, 2024, upon consideration of the Preliminary Objections (filed by Century Steel Erectors Company on May 8, 2023), it is hereby **ORDERED** and **DIRECTED** as follows:

A. To the extent that Steel Supply's Joinder Complaint seeks judgment that Century is alone liable to the Plaintiffs, the Preliminary Objections filed by Century on May 8, 2024, are granted, that the relief sought by Steel Supply's Joinder Complaint will be limited to a claim for liability over, or joint liability.

B. The remainder of the relief sought in the Preliminary Objections filed by Century on May 8, 2024, is **DENIED** for the reasons set forth herein.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

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