

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

---

TRECO, INC., et al.,	:	March Term, 2000
Plaintiffs	:	
	:	No. 1765
v.	:	
	:	Commerce Case Program
WOLF INVESTMENTS CORP., INC., et al.,	:	
Defendants	:	Control No. 121224

---

**MEMORANDUM OPINION**

Third-Party Defendant Security Alarm Monitoring, Inc. (“SAM”) has filed preliminary objections (“Objections”) to the joinder complaint (“Complaint”) of Defendant Wolf Investment Corp., Inc. (“Wolf”). For the reasons set forth in this Opinion, the Court is issuing a contemporaneous order (“Order”) sustaining the Objections in part and overruling the Objections in part.

**BACKGROUND**

Wolf is the owner and operator of several warehouse storage facilities, including a warehouse located at 2615 West Hunting Park Avenue, Philadelphia, Pennsylvania (“Warehouse”). Treco, Inc. (“Treco”) and Fibematics Incorporated (“Fibematics”) contracted with Wolf for storage of non-woven bulk product (“Product”). At some point thereafter, Wolf moved the Product to the Warehouse, where Yeager Industries, Inc., d/b/a Source-Yeager Industries, Inc. (“Yeager”) leased space from Wolf for its high-temperature paint application operations.

On March 17, 1999, a fire broke out in Yeager’s work space and spread to the portion of the Warehouse where the Product was stored. While the Warehouse was equipped with a sprinkler system (“System”), the System had been deactivated prior to the fire, and the Product was damaged.

Based on these events, the Plaintiffs filed a complaint against Wolf and Yeager alleging claims for breach of contract and negligence.

Wolf answered the Plaintiffs' complaint and filed the Complaint against SAM and Fidelity Burglar and Fire Alarm Co., Inc. ("Fidelity"). The Complaint alleges a solitary negligence count against both SAM and Fidelity and contends that the two are jointly and severally responsible for any damage suffered by the Plaintiffs. SAM counters by asserting that certain paragraphs of the Complaint are insufficiently specific, that the precise actions of each Third-Party Defendant are not set forth<sup>1</sup> and that there is no basis for awarding Wolf attorneys' fees.

## DISCUSSION

To determine if a pleading meets Pennsylvania's specificity requirements, a court must ascertain whether the allegations are "sufficiently specific so as to enable [a] defendant to prepare [its] defense." Smith v. Wagner, 403 Pa. Super. 316, 319, 588 A.2d 1308, 1310 (1991) (citation omitted). See also In re The Barnes Found., 443 Pa. Super. 369, 381, 661 A.2d 889, 895 (1995) ("a pleading should . . . fully summariz[e] the material facts, and as a minimum, a pleader must set forth concisely the facts upon which [a] cause of action is based").

When a court is presented with preliminary objections asserting legal insufficiency,

[I]t is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit recovery. If there is any doubt, it should be resolved by the overruling of the demurrer. Put simply, the question presented by demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible.

---

<sup>1</sup> SAM raises this Objection in the form of a challenge to the Complaint's legal sufficiency.

Bailey v. Storlazzi, 729 A.2d 1206, 1211 (Pa. Super. Ct. 1999). For the purposes of reviewing the legal sufficiency of a complaint, “all well-pleaded material, factual averments and all inferences fairly deducible therefrom” are presumed to be true. Tucker v. Philadelphia Daily News, 757 A.2d 938, 941-42 (Pa. Super. Ct. 2000).

**I. Paragraph 8(f) of the Complaint is Inadequately Specific**

Paragraph Eight of the Complaint lists five specific ways in which SAM and Fidelity allegedly were negligent and closes with the assertion that the Third-Party Defendants were “otherwise negligent under the circumstances.” Complaint at ¶ 8(f). SAM claims that this broad allegation is insufficiently specific and must be stricken.

In presenting its argument, SAM relies on Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (1983). There, the plaintiff’s complaint alleged that, in addition to several specific acts of negligence, the defendant had “otherwise fail[ed] to use due care and caution under the circumstances.” 501 Pa. at 310, 461 A.2d at 602. The Pennsylvania Supreme Court concluded that the plaintiff could amend her complaint to assert additional negligence allegations after the statute of limitations had run because the additional allegations merely would “amplify” the catch-all clause’s claims. Id. In dicta, the court stated that any objections to the specificity of the catch-all clause should have been made at the pleadings stage and that the defendant waived its right to object by answering the complaint. 501 Pa. at 311 n.3, 461 A.2d at 602 n.3.

Pennsylvania trial courts routinely rely on Connor to strike portions of complaints that are so general that they could permit a plaintiff to supplement allegations at a later point in time. See, e.g., Clarkson v. Geisinger Med. Clinic, 46 Pa. D. & C.4th 431, 433 (C.P. Montour 2000) (“[a]s a result of

Connor, defendants are properly concerned about unidentified allegations of negligence arising late in the litigation process flowing out of a general allegation of negligence raised early in the process”); Mitchell v. Remsky, 39 Pa. D. & C.4th 122, 125 (C.P. Lackawanna 1998) (general allegations of negligent conduct “represent[] an attempt by the plaintiff to preserve all unpleaded theories of liability against the moving defendants”); Flurer v. Pocono Med. Ctr., 15 Pa. D. & C.4th 645, 671 (C.P. Monroe 1992) (“Pennsylvania courts view this vague and all-inclusive language with disfavor”); Hamilton v. American Cas. Co., 24 Phila. 354, 356 (1992) (“[t]he language in the Plaintiff’s Complaint which ‘reserves the right to include additional claims for himself or his attorney’ does not satisfy the pleading requirements under Rule 1019(a) and is unacceptable pleading in Pennsylvania”).<sup>2</sup>

Wolf counters that “[t]he specific principle set forth in Connor does not apply where, as here, there are proper allegations of negligence supported by specific, albeit not exhaustive, examples.”

Wolf’s Memorandum at I. However, Wolf does not cite case law or any other source to support this theory. As a result, Paragraph 8(f) is insufficiently specific and must be stricken as to SAM.<sup>3</sup>

---

<sup>2</sup> In at least one case, a trial court has held that a defendant’s fears of future amendments that “amplify” general allegations are unfounded because language in American States Insurance Co. v. State Auto Insurance Co., 721 A.2d 56 (Pa. Super. Ct. 1998), limits Connor’s applicability. See Fasula v. Hijazi, 44 Pa. D. & C.4th 553, 565 (C.P. Lackawanna 1999) (“according to the most recent appellate pronouncement, Connor simply states that a defendant may not obtain a compulsory nonsuit if the defendant does not request a more specific pleading . . . and does not obligate a defendant to preemptively object to general averments in order to safeguard against untimely pleadings”). However, no other court has read American States Insurance Co. in this way, and Connor continues to serve as a basis for striking broad catch-all allegations such as the one set forth in Paragraph 8(f) of the Complaint.

<sup>3</sup> When dismissing an action based on a defendant’s preliminary objections, a Pennsylvania court may not sustain the objection as to any additional defendants who have not filed preliminary objections. Galdo v. First Pa. Bank N.A., 250 Pa. Super. 385, 388, 378 A.2d 990, 991 (1977). Because Fidelity has not filed preliminary objections to the Complaint, the Court must strike Paragraph

## II. Paragraphs Ten and Eleven of the Complaint are Adequately Specific

Paragraphs Ten and Eleven of the Complaint read as follows:

10. Without admitting the averments of Plaintiffs' Complaint regarding damages suffered, if it should be shown that any such damages were suffered, negligence of additional defendants, Fidelity and SAM, was the cause of these damages.

11. Defendant, Wolf, believes and therefore avers that, if it is found that Wolf is liable for any damages or losses alleged by plaintiffs, then additional defendants, Fidelity and SAM, are solely liable to plaintiffs and/or liable to plaintiffs, or liable over to defendant, Wolf, via contribution and/or indemnification and/or jointly and severally liable with defendant, Wolf, or indemnification and/or contribution for any damages and/or losses described in Plaintiffs' Complaint.

SAM contends that these paragraphs are insufficiently specific because "[t]he material facts on which these general allegations are based are not stated and in no way apprise defendants of the factual basis for the claims." SAM's Memorandum at 5.

The Court does not agree with SAM's assessment. In Paragraphs Six, Seven and Eight of the Complaint, Wolf sets forth a number of specific ways in which Fidelity and SAM allegedly were negligent. Paragraph Ten merely asserts a causal link between Fidelity and SAM's supposed failure to maintain the System and damage to the Product, while Paragraph Eleven "seeks contribution and/or indemnification from SAM as a consequence of its alleged negligence." Wolf's Memorandum at II. This is sufficiently specific to allow SAM to prepare a defense, and the Objections to Paragraphs Ten and Eleven are overruled.<sup>4</sup>

---

8(f) as it relates to SAM but not as it relates to Fidelity.

<sup>4</sup> The Objections do not assert that Paragraphs Ten and Eleven are conclusions of law or that Wolf's solitary count consists of more than one cause of action, precluding the Court from considering any such possible defects.

### **III. The Allegations Against Each Third-Party Defendant Are Adequately Specific and Legally Sufficient**

While Rule 1020 requires separate counts for each cause of action, “[w]here a plaintiff sues several defendants jointly, alleging liability jointly or in the alternative, separate counts are not required.” Goodrich-Amram 2d § 1020(a):3 (citation omitted). As one of the possible vehicles for liability, the Complaint alleges that Fidelity and SAM are “jointly and severably liable with . . . Wolf” for any damage to the Product. Complaint at ¶ 11. This is because both SAM and Fidelity allegedly were responsible for inspecting, monitoring and maintaining the System and failed to do so. *Id.* at ¶¶ 6-7; Wolf’s Memorandum at III. Consequently, the allegations against each of Fidelity and SAM need not be spelled out individually.

SAM’s reliance on Dibble v. Penn State Geisinger Clinic Inc., 42 Pa. D. & C.4th 225 (C.P. Lackawanna 1999) is misplaced. In Dibble, the plaintiffs leveled collective allegations against several defendants but do not appear to have asserted joint or alternative liability. Here, in contrast, the Complaint explicitly claims that SAM and Fidelity are jointly liable and sets forth the basis for the assertion. As a result, the allegations against SAM are sufficiently specific and legally sufficient, and the Objections asserting otherwise are overruled.

### **IV. Recovery of Attorneys’ Fees**

Under Pennsylvania law, “a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties, or some other established exception.” Snyder v. Snyder, 533 Pa. 203, 212, 620 A.2d 1133, 1138 (1993) (citations omitted).

Wolf claims that it is entitled to attorneys' fees under its "common law indemnification claim." Wolf's Memorandum at Section IV.<sup>5</sup>

The remedy of indemnity is an exception to the rule limiting recoupment of attorneys' fees and allows a party to seek complete restitution from the individual or entity responsible:

Indemnity is a common law remedy which shifts the entire loss from one who has been compelled, by reason of some legal obligation, to pay a judgment occasioned by the initial negligence of another who should bear it . . . . [T]he duty to indemnify will be recognized in cases where the community opinion would consider that in justice the responsibility should rest upon one rather than the other.

Willet v. Pennsylvania Med. Catastrophe Loss Fund, 549 Pa. 613, 621-22, 702 A.2d 850, 854

(1997) (citations and quotations omitted). Where a claim for indemnity is not contract-based, a court must apply principles of equity. Compare Embrey v. Borough of West Mifflin, 257 Pa. Super. 168, 185, 390 A.2d 765, 774 (1978) ("[e]quitable principles are applied" to indemnity claims), and McClure v. Deerland Corp., 401 Pa. Super. 226, 585 A.2d 19 (1991) (treating an indemnity cause of action based on contract indemnification provision as an action at law).<sup>6</sup>

If the allegations in the Complaint are true, as the Court must assume they are, Wolf presents a viable cause of action for indemnity. Indemnity liability can arise where a party responsible for keeping an area safe fails to do so:

Where a person has become liable with another for harm caused to a third person because of his negligent failure to make safe a dangerous condition of land or chattels, which was

---

<sup>5</sup> Considering that the Complaint has only one count, which is labeled as a claim for negligence, the Court is puzzled by Wolf's reference to its common law indemnification claim.

<sup>6</sup> Modern theories of comparative negligence and contribution have not impaired or superseded the common law right to indemnity under Pennsylvania law. Sirianni v. Nugent Bros., 509 Pa. 564, 569-70, 506 A.2d 868, 870-71 (1986).

created by the misconduct of the other or which, as between the two, it was the other's duty to make safe, he is entitled to restitution from the other for expenditures properly made in the discharge of such liability.

Moran v. G. & W.H. Corson, Inc., 402 Pa. Super. 101, 124, 586 A.2d 416, 428 (1991) (quoting Restatement of Restitution § 95 (1936)). Moreover, the right to indemnification includes the right to attorneys' fees:

One who through the tort of another has been required to act in the protection of his interests by bringing or defending an action against a third person is entitled to recover reasonable compensation for the loss of time, attorney fees and other expenditures thereby suffered or incurred in the earlier action.

Vattimo v. Lower Bucks Hosp., Inc., 502 Pa. 241, 249, 465 A.2d 1231, 1235 (1983) (quoting Restatement (Second) of Torts § 914(2) (1979)). See also Fleck v. KDI Sylvan Pools, Inc., 981 F.2d 107, 117 (3rd Cir. 1992) (concluding that, "in an indemnification action under Pennsylvania law, the indemnitee is entitled to attorney's fees and costs incurred in the underlying defense litigation"); In re Dauphin Cty. Asbestos Cases, 1 Pa. D. & C.4th 211, 214 (C.P. Dauphin 1989) ("the common-law right to indemnification . . . grants an indemnitee a right to recover attorneys' fees and costs along with the actual judgment from the indemnitor").

Here, the Complaint alleges SAM was responsible for maintaining the System, and Wolf's obligation to Treco and Fibematics is presumed.<sup>7</sup> Thus, Wolf's allegations support a cause of action for indemnity, including attorneys' fees, and the Objections are overruled.

---

<sup>7</sup> Because the Complaint incorporates the allegations in Treco and Fibematics's complaint, the Court must assume that the allegations therein, including those regarding Wolf's obligations to Treco and Fibematics, are true as well.

## **CONCLUSION**

With the exception of Paragraph 8(f), the Complaint is both legally sufficient and adequately specific. As a result, the Objections are sustained as to Paragraph 8(f) and are overruled as to all other matters.

BY THE COURT:

---

JOHN W. HERRON, J.

Date: February 15, 2001

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

---

TRECO, INC., et al.,	:	March Term, 2000
Plaintiffs	:	
	:	No. 1765
v.	:	
	:	Commerce Case Program
WOLF INVESTMENTS CORP., INC., et al.,	:	
Defendants	:	Control No. 121224

---

**ORDER**

AND NOW, this 15th day of February, 2001, upon consideration of the Preliminary Objections of Third-Party Defendant Security Alarm Monitoring, Inc. to the Joinder Complaint of Defendant Wolf Investment Corp., Inc., and Defendant Wolf's response thereto, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED as follows:

1. The Preliminary Objections to Paragraph 8(f) of the Joinder Complaint are SUSTAINED, and Paragraph 8(f) is STRICKEN as to Defendant Security Alarm Monitoring, Inc. only;
2. The remaining Preliminary Objections are OVERRULED; and
3. Security Alarm Monitoring, Inc. is directed to file an answer within twenty days of the date of entry of this Order.

BY THE COURT:

\_\_\_\_\_  
JOHN W. HERRON, J.