In The Superior Court of Pennsylvania

NO. 3438 EDA 2009

ELIZABETH E. SEHL

Appellants

vs.

ELIZABETH NEFF AND STATE FARM MUTUAL INSURANCE COMPANIES

Appellees

AMICUS CURIAE BRIEF SUBMITTED BY THE PENNSYLVANIA DEFENSE INSTITUTE IN SUPPORT OF POSITION OF APPELLEE, ELIZABETH NEFF

APPEAL BY PLAINTIFFS FROM THE ORDER OF THE HONORABLE JACQUELINE F. ALLEN, DATED OCTOBER 22, 2009, GRANTING DEFENDANT, ELIZABETH NEFF'S PRELIMINARY OBJECTIONS TO VENUE AND TRANSFERRING THE CASE TO MONTGOMERY COUNTY IN THE PHILADELPHIA COUNTY COURT OF COMMON PLEAS MAY TERM, 2008 NO. 02487

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STATEMENT OF INTEREST

The Pennsylvania Defense Institute (PDI) is a statewide association of defense counsel and insurance company professionals. Organized over forty (40) years ago in December of 1969, it now boasts a combined membership of approximately 700 lawyers, insurance company professionals, members of self-insurers, and independent adjusters from all across the Commonwealth of Pennsylvania. The members of the PDI come from all across the insurance spectrum, from automobile, land, other property, to casualty insurers. Also a part of the PDI are the attorneys who customarily represent those carriers and their insureds in Pennsylvania civil litigation matters.

The Pennsylvania Defense Institute has a significant interest in this case because its members, as well as the policyholders of the insurance company members, i.e. the Pennsylvania public, may be materially affected by the outcome of this matter which implicates the goals of proper venue in personal injury civil litigation matters. The PDI therefore files this Amicus Curiae (Latin for "a friend of the court") Brief because it believes that there will be broader ramifications, not the least of which would be rampant and unfettered forum shopping by plaintiffs, if the trial court's correct decision in this matter to reject the Plaintiff's improper venue selection is not affirmed.

For these broader policy reasons, and for the more specific substantive reasons stated below, it is respectfully requested that this Court affirm the trial court's October 22, 2009 Order requiring the Plaintiffs to pursue their lawsuit in a proper venue in accordance with the mandates of the Pennsylvania Rules of Civil Procedure.

INCORPORATION

The Pennsylvania Defense Institute incorporates by reference the entire Brief submitted on behalf of the Defendant/Appellee, Elizabeth Neff. Pa. R.A.P. 2137.

STATEMENT OF SCOPE AND STANDARD OF REVIEW

Under the standard of review applicable to this matter, the determination of the trial court on proper venue will not be overturned absent an abuse of discretion. *Masel v. Glassman*, 456 Pa. Super. 41, 45, 689 A.2d 314, 316 (1997). Under Pennsylvania law, a "court abuses its discretion if, in resolving the issue for decision, it misapplies the law, exercises its discretion in a manner lacking reason, or does not follow legal procedure." *Continental Cas. Co. v. Pro Machine*, 916 A.2d 1111, 1115-16 (Pa. Super. 2007).

If any proper basis exists for the trial court's determination on the question of venue presented, the trial court's decision must stand. *Masel*, 456 Pa. Super. at 45, 689 A.2d at 316; *Estate of Werner v. Werner*, 781 A.2d 188, 190 (Pa.Super. 2001). Furthermore, in reviewing a trial court's ruling transferring venue, the appellate court will not disturb the ruling if the decision is reasonable in light of the facts. *Wilson v. Levine*, 963 A.2d 479, 482 (Pa.Super. 2008) *citing Krosnowski v. Ward*, 836 A.2d 143, 146 (Pa.Super. 2003)(*en banc); see also Harris v. Brill*, 844 A.2d 567, 570 (Pa. Super. 2004) *citing Mathues v. Tim-Bar Corp.*, 438 Pa.Super. 231, 234, 652 A.2d 349, 351 (1994).

COUNTER-STATEMENT OF THE CASE

This post-Koken case[1] involves the issue of proper venue for a lawsuit which the Plaintiff filed in Philadelphia County, consisting of negligence claims against the Defendant, Elizabeth Neff, along with separate contractual claims for underinsured motorists (UIM) benefits and bad faith damages against the UIM carrier, State Farm Mutual Automobile Insurance Company ("State Farm"). The issues presented came before the trial court by way of Preliminary Objections filed by the Defendant, Elizabeth Neff, to the Plaintiffs' Complaint asserting that venue was improper in Philadelphia County and requesting that the matter be transferred to a proper venue in accordance with the applicable Pennsylvania Rules of Civil Procedure.

It is undisputed that this matter arises out of a May 23, 2007 motor vehicle accident that occurred in Montgomery County, Pennsylvania. It is also undisputed that the Defendant, Elizabeth Neff, resided in Montgomery County at the time of the accident. There is no allegation that the Defendant was served with original process in this lawsuit in Philadelphia County.

The UIM carrier Defendant, State Farm, is a duly licensed insurance company with offices and/or agents throughout Pennsylvania. There are no applicable or

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[1] It has now been five years since the Pennsylvania Supreme Court handed down its decision in the case of *Insurance Federation of Pennsylvania v. Commonwealth, Department of Insurance (Koken)*, 585 Pa. 477, 889 A.2d 550 (2005), holding that automobile insurance carriers were not required to include arbitration clauses in their policies for the resolution of uninsured and underinsured motorist benefits claims.

After that decision was handed down, many carriers quickly rid their policies of the UM/UIM arbitration clauses, thereby requiring such claims to instead proceed by way of a lawsuit. Those UM/UIM cases now proceeding by lawsuit have come to be commonly known and referred to in Pennsylvania as "Post-Koken" cases.

controlling venue provisions or forum selection clauses in the subject State Farm automobile insurance policy.

It has also been confirmed that the Plaintiffs' Complaint does not allege any joint liability between the UIM carrier Defendant, State Farm, and either Defendant. Yet, it is the Plaintiffs' incorrect position in this matter that venue is proper in Philadelphia County simply because the claims presented have been joined in one lawsuit and State Farm conducts business in every county of the Commonwealth, including Philadelphia County.

After argument on the issues presented, the trial court entered an October 22, 2009 Order granting the Preliminary Objections filed by the Defendant, Elizabeth Neff, and transferring the case and the official record to Montgomery County. On or about November 20, 2009, the Plaintiff filed a Notice of Appeal from the trial Order of Court. Thereafter, on November 15, 2010, Judge Jacqueline Allen of the Philadelphia County Court of Common Pleas issued her Opinion Pursuant to Pa.R.A.P. 1925.

COUNTER-STATEMENT OF QUESTION INVOLVED

WHETHER THE PHILADELPHIA COUNTY COURT OF COMMON PLEAS PROPERLY RULED, WITHIN ITS BROAD DISCRETIONARY POWERS, THAT THE PRELIMINARY OBJECTIONS ASSERTING IMPROPER VENUE FILED BY THE INDIVIDUAL DEFENDANT SHOULD BE SUSTAINED WHERE THE SUBJECT MOTOR VEHICLE ACCIDENT OCCURRED IN MONTGOMERY COUNTY, WHERE THE INDIVIDUAL DEFENDANT RESIDED IN MONTGOMERY COUNTY, WHERE THE INDIVIDUAL DEFENDANT WAS NOT SERVED WITH ORIGINAL PROCESS IN PHILADELPHIA COUNTY AND WHERE THERE IS NO ALLEGATION OF JOINT LIABILITY BETWEEN THE INDIVIDUAL DEFENDANT AND THE INSURANCE COMPANY DEFENDANT.

(ANSWERED IN THE AFFIRMATIVE BY THE COURT BELOW)

SUMMARY OF ARGUMENT

This Post-Koken lawsuit, involving negligence claims against the Defendant, Elizabeth Neff, and contractual claims for underinsured motorist benefits against the insurance company Defendant, without any allegations of joint liability between the two Defendants, arises out of a motor vehicle accident that occurred in Montgomery County. At the time of the accident, the Defendant resided in Montgomery County and there is no allegation that she was served in Philadelphia County. As such, the trial court properly ruled, pursuant to venue Rule 1006(a)(1), that Philadelphia County is not a proper venue for this lawsuit against the individual Defendant.

The Plaintiff's apparent arguments in favor of venue in Philadelphia County based upon the unrelated permissive joinder rules under Pa. R.C.P. 2229 and/or based upon the venue rules under Pa.R.C.P. 2179 and Pa.R.C.P. 1006(c) were properly rejected by the trial court below. The individual Defendant and the insurance company Defendant have not been alleged in the Plaintiff's Complaint to have been jointly liable in this matter so as to afford proper venue status under the exception provided in Pa.R.C.P. 1006(c).

Rather, as determined by the court below, a reading of the venue Rules, compels the conclusion that Philadelphia County is not a proper venue for this Montgomery County car accident matter and that the case was properly transferred to Montgomery County. As noted in greater detail below, affirming the trial court's decision in this regard will also have the wider benefit, outside of this matter, of furthering the goals of judicial economy and cost containment in auto accident litigation matters.

ARGUMENT

A. THE TRIAL COURT PROPERLY SUSTAINED THE PRELIMINARY OBJECTIONS BASED UPON IMPROPER VENUE

1. Preliminary Objections are proper mechanism to challenge an improper venue selection.

The determination of the Preliminary Objections filed by the Defendant, Elizabeth Neff, in this matter, asserting improper venue in Philadelphia County, is governed, in part, by Pa.R.C.P. 1006(a)(1), which provides, in pertinent part, as follows:

> **Rule 1006. Venue. Change of Venue**
>
> (a) Except as otherwise provided by subdivision (b) and (c) of this rule, an action against an individual may be brought in and only in a county in which
>
> (1) the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law....

Pa.R.C.P. 1006(a)(1), 42 Pa.C.S. Under Pa.R.C.P. 1006(a)(1), an individual may be served in any county where the individual is personally present and a copy of original process is handed to the individual, at the individual's residence, or at the individual's office or usual place of business. *Gilfor ex rel. Gilfor v. Altman*, 770 A.2d 341, 345 (Pa.Super. 2001) *citing* Pa.R.C.P. 402, 42 Pa.C.S.

It has been noted that, "[c]learly, in promulgating Rule 1006(a)(1), the intent of the Supreme Court was to prevent forum shopping." *Pasquariello v. Godbout*, 72 Pa. D. & C. 4th 129, 137 (Northampton Co. 2005). While the Pennsylvania Supreme Court has

since noted that forum shopping by plaintiffs is permissible among various venues that are approved by the Rules of Civil Procedure, the Supreme Court does still "disapprove of forum shopping" by plaintiffs in venues that are not deemed to be proper under the Rules of Civil Procedure. *Zappala v. James Lewis Group*, 982 A.2d 512, 520 (Pa. Super. 2009) *quoting Zappala v. Brandolini Prop. Mgmt., Inc.*, 589 Pa. 516, 540, 909 A.2d 1272, 1286 n. 14 (2006).

It is well-settled under Pennsylvania law that a proper method of challenging an improper venue selection in a civil action is by way of Preliminary Objections. Pa.R.C.P. 1006(e), 42 Pa.C.S.; Pa.R.C.P. 1028(a)(1), 42 Pa.C.S.; *PECO Energy Co. v. Philadelphia Suburban Water Co.*, 802 A.2d 666, 668 (Pa. Super. 2002). More specifically, Pa.R.C.P. 1006(e) expressly provides that "[i]mproper venue shall be raised by Preliminary Objections and if not so raised shall be waived." Pa.R.C.P. 1006(e), 42 Pa.C.S. Additionally, Pa.R.C.P. 1028(a)(1) also expressly provides that Preliminary Objections may be filed against improper venue. Pa.R.C.P. 1028(a)(1), 42 Pa.C.S.

It is noted that the absence of any concrete appellate guidance on the novel issue of proper venue presented in this post-Koken combination of tort and contract actions together in one lawsuit has generated venue decisions with differing results from the courts of common pleas around the Commonwealth of Pennsylvania. *See Exhibit "A" attached hereto: Wissinger v. Brady,* No. 3792 – Civil – 2010 (Luz. Co. 2010)(venue held improper in Luzerne County; case transferred to Northumberland County); *Thomas v. Titan Auto Ins., Nationwide Ins. Co., Jones, and Briel*, March Term 2010 No. 03050 (May 10, 2010, Tereshko, J.)(Court granted the Petition to Sever filed by Titan/Nationwide the third party claims from the UIM claims and also granted the request

that the case be therefore transferred to Montgomery County. However, in the court's Rule 1925 Opinion, the trial court clarified that it was only sending the severed negligence claim to Montgomery County and was keeping the UIM claim in Philadelphia County. **Note:** *Thomas* is distinguishable in that the court severed the claims first and then addressed the proper venue issue—in the case at hand the claims remain consolidated and have not been severed); *Campbell v. Kelly and State Farm*, December Term 2009, No. 208 (Phila. Co. March 12, 2010, Overton, J.) (venue held proper in Philadelphia County); *See also Pippett v. Radu and State Farm*, March Term 2010, No. 3305 (Phila. Co. July 14, 2010, Tereshko, J.) (On Motion for Reconsideration, trial court sustained Preliminary Objections of improper venue and ordered matter transferred to Delaware County); *Miscannon v. State Farm, GEICO, and Norris*, June Term 2010, No. 3302 (Phila. Co. Nov. 30, 2010, Rau, J.) (transfer of venue request denied). With no appellate decisions on this particular issue uncovered to date, it appears that this matter comes before the Superior Court as a case of first impression.[2]

2. Plaintiffs' venue selection of Philadelphia County is improper as to the individual defendant and does not otherwise comport with the design of the venue rules.

With a Preliminary Objection asserting improper venue, a trial court is to look at the case by taking a "snap shot" of it at the time it is initiated, and if venue is proper at that time, it remains proper throughout the litigation. *Wilson*, 963 A.2d at 483 (Pa. Super. 2008) *quoting Zappala v. Brandolini Prop. Mgmt., Inc.*, 589 Pa. 516, 909 A.2d at 1281. As set forth by the Pennsylvania Supreme Court in the case of *Commonwealth v. Bethea*, 574 Pa. 100, 114, 828 A.2d 1066, 1074-75 (2003) [other citations omitted]:

[2] The *Wissinger v. Brady*, No. 3792 – Civil – 2010 (Luz. Co. 2010) venue decision has been appealed and, as of the filing of this Brief, is still pending before the Pennsylvania Superior Court under Docket No.1529 MDA 2010.

> Venue relates to the right of a party to have the controversy brought and heard in a particular judicial district. Venue is predominantly a procedural matter, generally prescribed by the rules of this Court. Venue assumes the existence of jurisdiction.

The courts of Pennsylvania have repeatedly held that "....a Plaintiff's choice of venue is not absolute or unassailable." *Jackson v. Laidlaw Transit, Inc. and Laidlaw Transit, Pa., Inc.*, 822 A.2d 56, 57 (Pa. Super. 2003). "[A] Plaintiff generally is given the choice of forum so long as the requirements of personal and subject matter jurisdiction are satisfied." *Deyarmin v. Consolidated Rail Corp.*, 931 A.2d 1, 9 (Pa. Super. 2007) [citations omitted]. However, the presumption in favor of a Plaintiff's choice of forum has no application when the Court is faced with the question of whether the venue is or is not proper in a particular county. *Deyarmin*, 931 A.2d at 10 *citing Kring v. University of Pittsburgh*, 829 A.2d 673, 676 (Pa. Super. 2003), *appeal denied*, 577 Pa. 689, 844 A.2d 553 (2004).

In *Kring*, the Pennsylvania Superior Court explained:

> [Venue] either is or it is not [proper]. In *Caplan v. Keystone Weaving Mills, Inc.*, 431 Pa. 407, 246 A.2d 384, 386 (Pa. 1968), the Pennsylvania Supreme Court stated that when we review a trial court's "order ruling upon the propriety of the venue chosen by the plaintiff.... we recognize no difference procedurally between the claim that the action was instituted before the wrong tribunal and a claim that the action was brought before a court lacking competence to entertain it." If, as decided by the trial court in this case, venue in [a particular county] is improper, then it is of no import that [the Plaintiff] instituted this action in that forum, as the trial court had no jurisdiction to hear the case.

Deyarmin, 931 A.2d at 10 [bracket inserted] *citing Kring*, 829 A.2d at 676; *but see O'Donnell v. McDonough*, 895 A.2d 45, 47 (Pa. Super. 2006) (presumption in favor of Plaintiff's choice of venue considered).

As noted above, with respect to the individual Defendant, Elizabeth Neff, the Pennsylvania Rules of Civil Procedure provide that the possible proper venues for litigation against her would only be in the county where the accident occurred, where she could be served, or in another county only as authorized by law. Pa.R.C.P. 1006(a)(1), 42 Pa.C.S.

It is undisputed that the accident occurred in Montgomery County and that the individual Defendant resided in Montgomery County, Pennsylvania. There is no allegation that the individual Defendant was served with this lawsuit in Philadelphia County. Venue against the individual Defendant in Philadelphia County has not been established to be otherwise authorized by any other law. Accordingly, the trial court correctly concluded that the plaintiff's forum shopping selection of the venue Philadelphia County over Montgomery County in this matter was an improper venue selection under Pa.R.C.P. 1006(a)(1) as it relates to the individual Defendant, Elizabeth Neff.

The Plaintiff's efforts to secure venue in Philadelphia County by way of the joinder of the corporate insurance company Defendant in this matter were properly rejected by the trial court. Pennsylvania Rule of Civil Procedure 1006(b) provides that actions against corporations, such as Defendant State Farm in this matter, "may be brought in and only in the county designated by...Rule 2179." Rule 2179 of the Pennsylvania Rules of Civil Procedure provides, in pertinent part, as follows:

> [A] personal action against a corporation or similar entity may be brought in and only in
>
> (1) the county where its registered office or principal place of business is located;
>
> (2) a county where it regularly conducts business;
>
> (3) the county where the cause of action arose;
>
> (4) a county where a transaction or occurrence took place out of which the cause of action arose, or
>
> (5) a county where the property or part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

Pa.R.C.P. 2179, 42 Pa.C.S.

The Plaintiffs in this matter are apparently incorrectly proceeding under an argument that, since Pa. R.C.P. 2179 mandates that Philadelphia County is a proper venue for the claims asserted against State Farm, Philadelphia County should also a proper venue in this matter for the claims asserted against all of the named Defendants because the Defendants have been permissibly joined in a single lawsuit.

However, Rule 2179 applies only to corporations and other similar entities, and not to individual defendants. *Gilfor ex rel. Gilfor v. Altman*, 770 A.2d 341, 345 (Pa. Super. 2001). Thus, even assuming *arguendo* that venue may be technically proper against Defendant, State Farm, in Philadelphia County under Rule 2179, Philadelphia County is still not a proper venue for the claims against the individual Defendant, Elizabeth Neff, under any venue rule. *Id.* at p. 344. Also, as noted in greater detail below the exception to the venue rules applicable to cases involving claims of joint and several liability amongst multiple defendants is inapplicable to this matter in which joint and several liability has not been, and can not be, alleged.

3. The Philadelphia County Court of Common Pleas acted properly in sustaining the Preliminary Objections and transferring this matter to Montgomery County.

An application of the law on proper venue to the facts at hand confirms that the trial court below did not err in ruling that Philadelphia County is an improper venue and that Montgomery County is a proper venue for this matter. As established above, Montgomery County, and not Philadelphia County, is the proper venue for the claims against the individual Defendant, Elizabeth Neff Although the Defendant UIM carrier, State Farm, conducts business in Philadelphia County, it also regularly conducts business in Montgomery County as well. Thus, under the applicable Rules, only Montgomery County can be a proper venue for all of the named Defendants.

Stated otherwise, besides State Farm's involvement in this matter, there is no other connection whatsoever between this lawsuit and Philadelphia County. To the contrary, the subject motor vehicle accident did not occur in Philadelphia County, but rather occurred in Montgomery County. Furthermore, the individual Defendant did not reside in Philadelphia County at the time of the accident and was not served with original process in Philadelphia County. Based on these circumstances, the trial court properly rejected the Plaintiffs' argument for venue in Philadelphia County on the basis State Farm's "doing business" in Philadelphia County and the claims against State Farm being joined in the same lawsuit with the claims against the individual Defendant, Elizabeth Neff.

Granted, under Pa. R.C.P. 1006(c)(1) "an action to enforce joint and several liability against two or more Defendants...may be brought against all Defendants in any county in which the venue may be laid against any one of the Defendants under the

general rules of subdivision (a) or (b)." Pa.R.C.P. 1006(c)(1), 42 Pa.C.S. However, in this matter, as confirmed by the trial court below, joint and several liability between the individual Defendant and the UIM carrier Defendant has not been (and can not be) alleged by the Plaintiffs in this matter. *See Sehl Trial Court Rule 1925 Opinion* at p. 2. The trial court therefore properly found that the simple fact that State Farm happened to conduct business in Philadelphia County was not sufficient to render Philadelphia County a proper venue for all of the named Defendants under the facts of this Montgomery County car accident case. *See Paradise Streams, Inc. v. Edward Hess Assoc., Inc.*, 33 Pa.D.&C. 3d 472, 474-475 (Northampton Co. 1984)(Venue in a particular county is not proper under Pa.R.C.P. 1006(c) where the defendants that are objecting to venue are not jointly or severally liable with the defendant that conducts business in the county.).

The lower court's decision and rationale in this matter is further supported by the Pennsylvania appellate court decision in the analogous case of *Bogetti v. Pennsylvania, Department of Transportation*, 144 Pa.Cmwlth. 180, 184, 601 A.2d 421, 423 (1991). In *Bogetti*, the injured party plaintiff attemped to secure venue of a Montgomery County car accident matter in the Allegheny County Court of Common Pleas against the Pennsylvania Department of Transportation on the basis of the Department of Transportation having separate local offices located in all of the counties of Pennsylvania.

Although *Bogetti* did not involve construction of the same venue rules at issue in this matter under Pa.R.C.P. 1006 or Pa.R.C.P. 2179, the appellate court conducted a similar analysis under the comparable rules of venue applicable to actions brought against agencies of the Commonwealth of Pennsylvania, i.e. 42 Pa.C.S. §8523(a) ("Actions for

claims against a Commonwealth party may be brought in and only in a county in which the principal or local office of the Commonwealth party is located or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose.").

The Court in *Bogetti* flatly rejected the plaintiff's interpretation of the venue statute as allowing for a claim against the Department of Transportation to be filed in any county of the Commonwealth regardless of where the underlying incident occurred and regardless of the locations of the litigants. The appellate court noted that, to accept the plaintiff's incorrect interpretation of the venue provisions in this regard, would lead to improper forum shopping by Plaintiffs. That improper forum shopping, in turn, would lead to congested county courts in certain areas of the Commonwealth and which would also require citizens of counties to attend jury trials in other counties bearing no relationship to their county of residence. *Bogetti*. 144 Pa.Cmwlth. at 184, 601 A.2d at 423.

The appellate court in *Bogetti* more specifically noted that venue was improper in Allegheny County because the cause of action did not arise in Allegheny County, because no witnesses were located in Allegheny County, and in consideration of the fact that the plaintiffs in that case were from Montgomery County. As such, the Court concluded that "to avoid an absurd and unreasonable result as well as favoring the public interest against a private interest, venue does not properly lie in Allegheny County." *Id.* Accordingly, the appellate court affirmed the order of the trial court granting the preliminary objections and transferring the matter to the proper venue of Montgomery County. *Bogetti,* 144 Pa.Cmwlth. at 184-85, 601 A.2d at 423.

The same rationale applies to this matter and compels the conclusion that the trial court correctly decided that Philadelphia County is not the proper venue for this matter and that this matter should be transferred to Montgomery County. The lower court's decision in this matter should likewise be affirmed "to avoid an absurd and unreasonable result" and to "favor[] the public interest against a private interest." *Bogetti,* 144 Pa.Cmwlth. at 184, 601 A.2d at 423.

Simply put, in determining proper venue for this matter, the trial court did not abuse its broad discretion. Under the venue rules, the only venue that is proper as to all of the Defendants under the circumstances of this case is Montgomery County. Accordingly, there was no misapplication of the law, no exercising of discretion in a manner lacking reason, and no failure to follow legal procedure on the part of the trial court in granting the individual Defendant's preliminary objections on the basis of improper venue and transferring this matter from Philadelphia County to Montgomery County. *See Continental Cas. Co. v. Pro Machine*, 916 A.2d at 1115-16. Since there was a proper basis for the trial court's venue determination in this matter and since the transfer of this litigation to Montgomery County was reasonable in light of the facts presented, it is respectfully asserted that the trial court's decision must stand and should not be disturbed by the Superior Court. *See Masel*, 456 Pa. Super. at 45, 689 A.2d at 316; *Harris*, 844 A.2d at 570.

4. The trial court properly rejected the Plaintiff's reliance on Pa. R.C.P. 2229 as that Rule does not afford proper venue in Philadelphia County.

In her opposition to the Preliminary Objections filed by Defendant, Elizabeth Neff, the Plaintiff appears to confuse the applicable improper venue analysis with the

inapplicable improper joinder of claims analysis. The Defendant's Preliminary Objections challenge only the propriety of venue an issue that does not in any way involve the joinder of claims issue that is governed by Pa. R.C.P. 2229. The Plaintiff's focus on Rule 2229 and the joinder of claims is therefore misplaced and the trial court properly rejected this argument.

Rule 2229 permits consolidation of certain claims against multiple defendants in a single action; it does not in any way establish or identify where venue is proper. Even if claims are appropriately joined in a single action, the selection of a venue for that lawsuit must still separately comply with the mandates of Pennsylvania Rule of Civil Procedure 1006 pertaining to proper venue. None of the cases, orders, or secondary sources cited by Plaintiff pertaining to the inapplicable Pa.R.C.P. 2229 address the question of venue.

Rather, as analyzed above, the lower court properly ruled that venue in this matter is improper in Philadelphia County for the claims pled against Defendant, Elizabeth Neff, particularly where there are no allegations of joint and several liability between Defendant Neff and the insurance company defendant. Where, as here, venue is improper, the trial court was empowered to transfer venue to an appropriate county under Rule 1006(e).

The above analysis establishes that Montgomery County is a proper venue for all of the parties under the applicable Rules pertaining to venue selection. It is therefore again respectfully requested that this Honorable Court find that it was not an abuse of discretion for the trial court to have granted the Preliminary Objections of Defendant, Elizabeth Neff, and transferred this matter to Montgomery County.

B. PUBLIC POLICY CONSIDERATIONS AND POTENTIAL RAMIFICATIONS OF AN UNFETTERED CHOICE OF VENUE FAVOR AN AFFIRMANCE OF THE TRIAL COURT'S DECISION ON PROPER VENUE IN POST-KOKEN CASES

It is also important to emphasize that public policy considerations, and potential ramifications attendant with an unfettered choice of venue by injured parties in Post-Koken cases, all militate in favor of an affirmance of the trial court's decision in this matter. Affirming the trial court's ruling granting the Preliminary Objections in this matter will have the wider benefit outside of this case of serving to promote the purpose of the venue Rules in preventing rampant, unfettered, and improper forum shopping by plaintiffs.

By rejecting the Plaintiffs' contention that Post-Koken motor vehicle accident lawsuits can be filed in any county in the Commonwealth where the defendant insurance carrier conducts business, particularly where no joint and several liability amongst the Defendants is alleged, the Superior Court will ensure that these automobile accident cases are properly litigated in accordance with the purpose and intent of venue rules.

More specifically, affirming the trial court's decision in this matter will ensure that cases will be tried, as intended by the Rules, in a venue having a substantial relationship with the action and which is a convenient location for the disposition of the matter, i.e. the venue where the accident happened, where the individual defendant resides, or where that defendant can be served. More often than not, the venue where the accident happened, where the individual defendant resides, or where that defendant can be served, will also be the same venue where the plaintiff resides and/or where all of the relevant fact witnesses and medical witnesses are located, making that venue even more

proper and convenient (even from the plaintiff's perspective) as the appropriate location for the case to proceed.

Preventing unfettered shopping by the Plaintiffs by affirming the trial court's decision in this matter will also have the added benefit to the Commonwealth's court system by avoiding and preventing congestion in those venues that are considered to be more liberal than others. *See Bogetti*, 144 Pa.Cmwlth. at 184, 601 A.2d at 423 (1991). Furthermore, if these cases are required to be litigated in places where the accident occurred or where the defendants resided or could be served, it would be less likely that citizen litigants of those counties would have to attend depositions and jury trials in other faraway counties that bear no relationship to their resident county. *Id.* Conversely, preventing unfettered shopping for liberal venues by plaintiffs will also prevent citizens of those supposedly liberal venues from having to serve as jurors in a glut of Post-Koken automobile accident cases having little or no connection to that county.

Perhaps most significantly, affirming the trial court's decision will also have the added benefit of creating a precedent that offers certainty to a bench and bar that is starved for appellate guidance on Post-Koken issues, including but not limited to, the issue of proper venue in such cases. With such a decision from the appellate court, the bench and bar will, for the first time, have clear guidance on the proper venue for these types of cases.

Knowing the proper venue for these cases will assist members of the plaintiff bar and the defense bar that handle auto accident matters, as well as the insurance carriers handling these claims, in properly evaluating the cases presented based, in part, upon an understanding of the reputation of the jury pool (liberal, moderate, or conservative) for

the particular venue in which the case must be pursued. Having certainty as to the proper venue of a Post-Koken case, and the knowledge of that venue's reputation in terms of the slant of its jury pool, will assist the parties in their efforts to evaluate and settle the claims presented. Consequently, the goal of cost containment in automobile accident matters, as well as the interest of judicial economy, will also be furthered by the affirmance of the trial court's decision in this matter on the venue issue presented as more cases may be able to be settled before they even enter into costly and time-consuming litigation. *See Generette v. Donegal Mut. Ins. Co.*, 598 Pa. 505, 525, 957 A.2d 1180, 1192 (2008)(one purpose of the Motor Vehicle Financial Responsibility Law is cost containment).

It therefore follows that a reflection upon the above public policy considerations and the benefits to be gained from a proper application of the venue rules in Post-Koken cases also favors an affirmance of the trial court's decision to sustain the Preliminary Objections on the basis of improper venue and to transfer this matter to Montgomery County where the subject car accident occurred. Accordingly, it is respectfully requested that this Honorable Court AFFIRM the trial court's decision in this matter.

CONCLUSION

The Pennsylvania Rules of Civil Procedure applicable to this matter provide that venue in an action against an individual defendant is limited to the county where the loss occurred, the county of the defendant's residence, the county where the defendant is served, or a county as authorized by a particular law. The exception to the Rule applicable to cases involving multiple defendants does not apply in this matter because no joint or several liability has been alleged between the Defendants sued in this matter. Here, the individual tort-based defendant cannot be jointly liable with the corporate contract-based defendant and there is no allegation of joint liability in the Complaint filed in this matter.

Since the lower court therefore correctly ruled that venue is not proper in Philadelphia County under the novel scenario presented in this Post-Koken Montgomery County motor vehicle accident matter having no substantial relationship to Philadelphia County, it is respectfully requested that this Honorable Court AFFIRM the October 22, 2009 Order of the Philadelphia County Court of Common Pleas.

Respectfully Submitted
FOLEY, COGNETTI, COMERFORD,
CIMINI & CUMMINS

DANIEL E. CUMMINS, ESQUIRE
I.D. #71239
Attorney for Amicus
PENNSYLVANIA DEFENSE INSTITUTE

PROOF OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the person and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

SERVICE BY FIRST CLASS MAIL TO ALL, ADDRESSED AS FOLLOWS:

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Respectfully Submitted
FOLEY, COGNETTI, COMERFORD,
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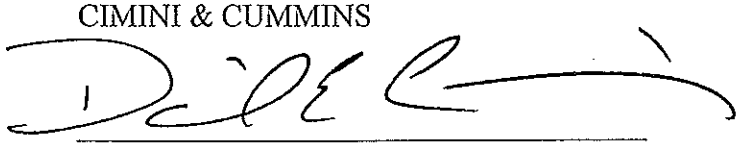

DANIEL E. CUMMINS, ESQUIRE
Pa. I.D. #71239

Counsel for Amicus Curiae,
PENNSYLVANIA DEFENSE INSTITUTE

Date: 2/3/11

EXHIBIT A

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

ELIZABETH E. SEHL Plaintiff V ELIZABETH NEFF and STATE FARM MUTUAL AUTOMOBILE INS. CO. Defendants	MAY TERM, 2009 No.: 02487
SUPERIOR COURT	3438 EDA 2009

ISSUE

Plaintiff Elizabeth Sehl ("Sehl") complains that this court erred in finding in favor of defendant Elizabeth Neff ("Neff") on her preliminary objections alleging improper venue and misjoinder of claims. On October 22, 2009, this court transferred the matter to Montgomery County.

FACTS/PROCEDURAL HISTORY

Sehl was a passenger in a vehicle driven by non-party John J. Joyce. Complaint, ¶ 5. At the time of the incident, both plaintiff and Mr. Joyce maintained automobile insurance policies with the defendant insurer State Farm Mutual Automobile Ins., Co. ("State Farm"). Complaint, ¶¶ 7, 17. The identity of the insurance carrier for Neff was not alleged in the complaint.

According to Sehl's complaint, Neff "failed to stop her vehicle for a stop sign and violently struck the vehicle in which Plaintiff was a passenger" resulting in severe bodily injury. Complaint, ¶ 7. The accident did not occur in Philadelphia County. See Complaint, ¶ 8. With the exception of State Farm, neither Sehl nor Neff resides in Philadelphia County. Complaint, ¶¶ 1-2. There is no allegation that Neff was served in Philadelphia County.

Neff's insurance "liability policy limits are inadequate to compensate Plaintiff[.]" Complaint, § 16. As a result, plaintiff submitted claims to defendant insurer for underinsured motorist benefits under both Sehl's and Mr. Joyce's policies. Complaint, ¶ 18. The claims were subsequently denied. Complaint, ¶ 18.

Sehl commenced this instant action in Philadelphia County on May 19, 2009 against Neff for injury resulting from the accident and State Farm for failure to provide underinsured motorists benefits. Sehl alleged that the State Farm regularly conducts business with Philadelphia County. Complaint, ¶ 4.

On June 18, 2009, Neff filed preliminary objections alleging improper joinder of claims and parties. Pa. R.C.P. §1028(a)(5), §2232(b). Neff also objected to venue. Pa. R.C.P. §1028(a)(1). On October 22, 2009, the court found venue improper as to Neff and transferred the matter to Montgomery County.

DISCUSSION

Presumably, Sehl asserted that venue was proper in Philadelphia County pursuant Pa. R.C.P. § 1006(c). Rule 1006(c) provides, in relevant part, that "an action to enforce a joint or joint and several liability against two or more defendants ... may be brought against all defendants in any county in which the venue may be laid against any one of the defendants ...." However, the case at bar is not an action to enforce a joint or joint and several liability.

Sehl complains that Neff is solely liable for her physical injuries as a result of negligent operation of a motor vehicle. Sehl then complains that State Farm, not in any way responsible for the operation of the individual defendant's vehicle, is liable for failure to pay damages in excess of Neff's insurance policy. These "liabilities" are separate and distinct. Consequently, the provisions of Pa. R.C.P. § 1006(c) are inapplicable and venue as to Neff is improper in Philadelphia County.

CONCLUSION

For the above stated reasons, the court's October 22, 1009 Order sustaining Neff's preliminary objections should be sustained.

BY THE COURT:

November 15, 2010
DATE

ALLEN, J.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

Blizabeth B. Sehl	:	
	:	
v.	:	MAY TERM 2009
	:	
Blizabeth Neff and State Farm Mutual Automobile Insurance Companies	:	No. 2487
	:	
	:	

ORDER

AND NOW, this 22nd day of Oct., 2009, upon consideration of the Preliminary Objections of Defendant, Blizabeth Neff, and all responses thereto, it is ORDERED that the Preliminary Objections are SUSTAINED. Venue in this Court is improper as to defendant Blizabeth Neff.

The Prothonotary is hereby directed to transfer this matter to the Court of Common Pleas, Montgomery County, upon payment of costs by the plaintiff.

BY THE COURT:

Allen, J.

ALLEN,

COPIES SENT PURSUANT TO PA.R.C.P. 236(b) OCT 9 2009 FIRST JUDICIAL DISTRICT OF PA CERT. I.D.:

RECEIVED OCT 16 2009 CIVIL ADMINISTRATION

Sehl Etal Vs Neff Etal-WSTOJ

09050248700025

Case ID: 090502487

10-006102

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NATIONWIDE INSURANCE CO.

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

ALISSA THOMAS; and ROSEMARIE DAEGELE Plaintiffs	:	MARCH TERM, 2010
v.	:	No. 03050
TITAN AUTO INSURANCE; and NATIONWIDE INSURANCE COMPANY; and RAHEEM QUINCY JONES; and JEFFREY BRIEL Defendants	:	DOCKETED MAY 10 2010 F. CLARK DAY FORWARD

ORDER

Now, this 10th day of May, 2010, it is hereby ORDERED that this matter is transferred to Montgomery County with the costs and fees for the transfer to be paid by the plaintiff.

It Is Further ORDERED that the claims asserted in Counts V and VI of the Complaint are severed and will be tried separately.

It Is Further ORDERED that all claims for attorneys fees, interest and costs are stricken.

By the Court:

Teresa Lee
J.

Thomas Etal Vs Titan Au-WSTOJ

10030305000014

Case ID: 100303050
Control No.: 10041738

THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY
IN THE COURT OF COMMON PLEAS

ALISSA THOMAS AND ROSEMARIE DAEGELE	: TRIAL DIVISION- CIVIL
vs.	: MARCH TERM, 2010 : No. 3050
TITAN AUTO INSURANCE, NATIONWIDE INSURANCE COMPANY, RAHEEM QUINCY JONES and JEFFREY BRIEL	: Superior Court Docket No. : 1722 EDA 2010

OPINION

Plaintiffs appeal this Court's Order dated May 10, 2010, granting Defendants Titan Auto Insurance ("Titan") and Nationwide Mutual Insurance Company's ("Nationwide") Preliminary Objections. As a result, the case was severed and the negligence claims against Defendants Jones and Briel were transferred to Montgomery County based upon venue in that County, while the contract claims against Defendants Titan and Nationwide remain in Philadelphia County.

I. BACKGROUND

In March 2008, Plaintiff Alissa Thomas (hereinafter Thomas) was a resident of Pottstown, Pennsylvania, Montgomery County. (Complaint, ¶1). Thomas did not own a motor vehicle nor reside with any relative who owned a motor vehicle. On March 18, 2008, Thomas was a permissive operator of Plaintiff Rosemarie Daegele's (hereinafter Daegele) 1998 Mercury Mountaineer, which was registered to Daegele's residence. (Id.). Daegele is also a resident of Pottstown, Montgomery County. (Defendant Nationwide and Titan's Preliminary Objections, ¶3). Daegele's vehicle was insured by Titan Auto

Insurance, which is an affiliate of Nationwide Mutual Insurance Company (hereinafter Titan and Nationwide). (Complaint, Exhibit A). Daegele's insurance contract was issued and bound by an insurance agent also located in Pottstown, Montgomery County. (Id.). In addition to other policy coverages, Daegele's policy contained a provision for UM in the amount of $25,000/$50,000 for the vehicle that Thomas was driving. (Complaint, ¶ 15) Although Thomas was not the owner of the vehicle, Deagele's policy covered all authorized drivers.

On March 18, 2008, Thomas was operating Daegele's motor vehicle when, at the intersection of York Street and Chestnut Street in Pottstown, Montgomery County, the vehicle driven by Thomas was struck by a vehicle owned by Defendant Jeffrey Briel. (Plaintiff's Complaint, ¶ 9). At that particular time, however, it was believed that Defendant Briel was not the operator of the vehicle, and was unaware of who may have been. (Id. at ¶ 10) Briel specifically denied giving anyone permission to operate his vehicle that day. Following the accident, he reported the car stolen. (Id. at ¶¶ 10-11) It was later determined that the car was driven by Defendant Raheem Quincy Jones. Because the car was allegedly stolen, Briel's insurance carrier denied coverage for the automobile accident. (Id. at ¶ 10)

Thomas was injured and Daegele sustained property damage as a result of the collision. Due to the lack of insurance coverage available to Thomas and Daegele through Defendant Briel's insurance carrier, they pursued an Uninsured Motorist ("UM") claim according to the terms and provisions of Daegele's automobile insurance contract with, Defendant, Titan and Nationwide. (Id. at ¶¶ 13, 15). Despite the UM provision in Daegele's insurance contract allowing for benefits, both Defendants Titan and Nationwide have refused to honor Plaintiffs requests to obtain compensation for Thompson's injuries and Daegele's property damage. (Id. at ¶¶ 21-22, 50-51).

Plaintiffs filed their Complaint on March 8, 2010, alleging multiple counts of negligence on the part of Defendants Briel and Jones and contractual claims against Titan and Nationwide. In Counts I and II, Plaintiffs alleged, *inter alia*, that Defendant Jones and/or Defendant Briel operated a motor vehicle at an excessive rate of speed under the circumstances, failed to keep a proper lookout, disregarded traffic signals and signs, and failed to yield the right of way. (Id. at ¶ 24) Count III alleges negligent entrustment on behalf of Defendant Briel. (Id. at ¶ 42). Count IV asserts a claim for property damage sustained Daegele as a result of the negligence of Jones and Briel.

In addition, the Complaint also contains counts for breach of contract (Counts V and VI) seeking to recover for injuries and damages from Defendants Titan and Nationwide through the UM provision spelled out in Daegele's insurance contract.

Defendants Titan and Nationwide filed Preliminary Objections to the Plaintiffs' Complaint based improper venue and improper joinder of multiple causes of action. (Defendants Titan Auto Insurance and Nationwide Insurance Company's Preliminary Objections, ¶ 8, 14). On the venue issue, it is uncontested that had the contract action against the UM insurer not been joined to the negligence action, venue could not have existed in Philadelphia. The Defendants argue accordingly that Philadelphia County has no connection with the actual claims asserted, and that the matter should instead be transferred to Montgomery County. (Id. at ¶ 8). Additionally, Defendants contend that the joinder of multiple causes of action (contract and negligence) is improper, because the insurance contract claims would unduly prejudice defendants and should therefore be severed from the negligence claims. (Id. at ¶¶ 13-14).

By Order dated May 10, 2010, this Court ordered Counts V and VI be severed and tried separately. As a result, the negligence claims (Counts I through IV) involving Defendants Briel and Jones were transferred to Montgomery County and the contract

claims (Counts V and VI) involving Defendants Titan and Nationwide remained in Philadelphia County.

On June 8, 2010, Plaintiffs appealed the May 10, 2010 Order and filed a Statement of Matters Complained of on Appeal on July 2, 2010 raising the following issues:

1. Whether the Court erred as a matter of law in granting the Defendants Titan Insurance and Nationwide Insurance Company's preliminary objections, severing the contractual claims (Counts V and VI) of the Complaint against Titan and Nationwide in order for these counts to be tried separately, due to the prejudice of having these claims heard in the same action as the negligence claims.

2. Whether the Court, as a result of the severance, erred as a matter of law in transferring the negligence claims (Counts I through IV) of the Complaint of Defendants Briel and Jones to Montgomery County.

(Plaintiff's Concise Statement of Errors Complained of on Appeal, 07/02/10).

II. LEGAL ANAYLSIS

When considering Preliminary Objections, the Court must accept all material facts set forth in the Complaint, as well as all inferences reasonably deducible therefrom, as admitted and true, and decide whether, based upon the facts averred, recovery is impossible as a matter of law. *Wiernik v. PHH U.S. Mortg. Corp.*, 736 A.2d 616 (Pa. Super. Ct. 1999). It remains that preliminary objections should only be sustained in cases that are clear and free from doubt. *Pennsylvania AFL-CIO ex. Re. George v. Com.*, 757 A.2d 917 (Pa. 2000). Furthermore, it should be clear from all the pleaded facts that the pleader will be unable to prove facts sufficient to legally establish a right to relief. *Id.*

This Court will first address severance of the contractual claims (Counts V and VI) of Plaintiffs' Complaint against Titan and Nationwide.

Plaintiff improperly joined the insurance contract claims with the negligence claims to improperly inject the issue of insurance into this case, which is highly prejudicial to Defendants Briel and Jones.

Improper Joinder of Breach of Contract Counts V and VI

In Pennsylvania, a defendant is entitled to raise preliminary objections based on grounds of misjoinder of a cause of action. As per Pa. R.C.P. 213(b), the Court:

> . . . in furtherance of convenience or to avoid prejudice, may, on its own motion or on motion of any party, order a separate trial of any cause of action, claim, or counterclaim, set-off, or cross-suit, or of any separate issue, or of any number of causes of action, claims, counterclaims, set-offs, cross-suit or issues.

Pa. R.C.P. 213(b).

Traditionally, such a determination is based upon a weighing of the procedural convenience of disposing all of the issues in one trial against the prejudice to a party that may result from a joint trial in the particular case. Although the Plaintiffs argue that Pa. R.C.P. 2229(b) permits Titan and Nationwide to be joined as defendants because their claims arise out of the same transaction or occurrence as the other defendants, such is not the case. Counts I through IV of Plaintiffs' Complaint against Defendants Briel and Jones are based in tort, presenting a theory of negligence, while Counts V and VI against Defendants Titan and Nationwide are based in contract and are asking for the fact finder to determine the coverage of Daegele's UM policy that exists between Plaintiffs and the Defendant insurance companies Titan and Nationwide.

Evidence which will establish the duty owed by defendant to the plaintiff in a negligence action is separate and distinct from the evidence which will determine the type of insurance coverage provided to the plaintiff/insured by its insurer. In such a situation joinder is inappropriate. *Garrett Elecs. Corp. v. Kampel Enters. Inc.*, 382 Pa.

Super. 352 , 555 A.2d 216 (1989); *Stokes v. Loyal Order of Moose Lodge # 696*, 502 Pa. 460, 466 A.2d 1341 (1983); *Austin J. Richards, Inc. v. McClafferty*, 371 Pa.Super. 269, 538 A.2d 11 (1988); *Samango v. Pileggi*, 363 Pa.Super. 423, 428, 526 A.2d 417, 420 (1987).

As stated by the aforementioned caselaw, issues of whether a negligence duty is owed and breached by defendants Briel and Jones and whether Plaintiffs are covered under the UM policy of Nationwide and Titan are separate and distinct.

An additional problem in having separate and distinct causes of action proceed together is that Pennsylvania Rule of Evidence 411 strictly forbids the admission of any individual's insurance information at trial. Rule 411 specifically states as follows:

> Evidence that a person was or was not insured against liability is not admissible upon the issue of whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Pa. R.E. 411.

Our Supreme Court has articulated the policy rationale behind this exclusion. In *Price v. Yellow Cab Co. of Philadelphia*, the Court stated that:

> although the technical reason for [the] rule... is that such information is irrelevant, the chief reason is 'the assumption that a knowledge of the fact of insurance against liability will motivate the jury to be reckless in awarding damages to be paid, not by the defendant, but by a supposedly well-pursed and heartless insurance company that has already been paid for taking the risk.'

278 A.2d 161, 166 (Pa. 1971) (citations omitted).

Plaintiffs incorrectly assert that Rule 411 does not apply, stating that there is no need to introduce to a jury evidence of insurance information, or lack thereof, pertaining to Defendants Briel and Jones. (Plaintiff's Memorandum of Law in Support of

Opposition to Defendant's Preliminary Objections, pg. 7). However, it would be impossible for Plaintiff to conduct a trial and ask the jury to make a determination on liability against Defendants Briel and Jones and insurance coverage against Nationwide and Titan without injecting the issue of insurance into the case. Having the contract (UM) claims heard with the negligence claims informs the jury that there Defendants Briel and Jones do not have insurance and creates the potential for the jury to find against Defendants Nationwide and Titan on the UM claim and hold them responsible for any finding of negligence against Briel and Jones creating the potential for a higher jury award.

A degree of unfairness and partiality would potentially be injected into the proceeding, either in favor of the individual Defendants Briel and Jones and against Defendants Titan and Nationwide, or against the Plaintiffs themselves. Plaintiffs have also failed to articulate any "other purpose" as defined by Pa. R.E. 411 to support the admission of such information. Therefore, any evidence regarding insurance is inadmissible.

Aside from the contractual claims being inadmissible under Pa. R.E. 411 because it unnecessarily injects insurance into the case, it is also prohibited under Pa. R.E. 403. According to Pa.R.E. 403, the Court may, on its own, determine that relevant evidence can be excluded "if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." More likely than not, the inclusion of evidence of insurance would "yield minimal, if any probative value in comparison to the potential for undue prejudice." *See Baptiste v. Strobel et al,* August Term, 2009, No. 1580 (C.C.P. Phila. 2009). Our Supreme Court has held that the prejudicial effect that knowledge of the existence of insurance (as well as the amount of

insurance) would have is serious enough to even warrant a mistrial if admitted. *Paxton National Ins. Co. v. Brickajlik*, 522 A.2d 531 (1987).

For reasons stated herein, trial courts have consistently recognized the need to sever UM claims against insurance companies grounded in contract law from negligence claims against individual defendants grounded in tort law. *See, e g Megert v. Stambaugh and Erie Ins. Co., et al.*, No. 2009-S-1416 (C.P. Adams 2010); *Wutz v. Smith & State Farm Ins. Co.*, No. GD07-021766 (C.P. Alleghany 2010); *Dangler v. Robinson and AIU Ins. Co., et al.*, March Term, 2009, No. 4027 (C.C.P. Phila. 2010); *Astillero v. Harris and State Farm Mut. Auto. Ins. Co., et al.*, No. 1580 (C.P. Phila. 2009); *Grove v. Uffelman and Progressive Ins. Co.*, No. 2009-SU-2878-01 (C.P. York 2009); *Weichey v. Marten and Allstate Ins. Co.*, No. A.D. 09-10116 (C.P. Butler 2009), *Michaleski v. Nat'l Indem. Co.*, 2009 Pa. Dist. & Cnty. Dec. LEXIS 147 (2009). This Court concurs that joinder of both the negligence and contract claims brought in the Plaintiffs' Complaint would inject inadmissible and prejudicial issue of insurance at trial. Severance of the issues will ensure that such undue prejudice is avoided and that all Defendants in this present matter are afforded a fair trial.

Venue

In addition to filing preliminary objections based on misjoinder of causes of action, Defendants have also filed preliminary objections on grounds of improper venue pursuant to Pa. R.C.P 1028(a)(1). Whether a specific venue is appropriate depends on the identity of the defendant in question. For example, venue as to a corporation or a similar entity can be determined by examining Pa. R.C.P. 2179. According to Rule 2179(a), venue pertaining to a personal action against a corporation or similar entity is only appropriate in:

> (1) the county where its registered office or principal place of business is located; (2) a county where it regularly conducts business; (3) the county where the cause of action arose; (4) a county where a transaction or occurrence took place out of which the cause of action arose; or (5) a county where the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

Pa. R.C.P. 2179.

Such is not the case; however, when the personal action pertains to an individual defendant as opposed to a corporation. Pursuant to Pa. R.C.P 1006, venue is only proper with respect to an individual where the cause of action arose or where the defendant essentially resides. Rule 1006 states in pertinent part:

> An action against an individual may be brought in and only in a county in which he may be served or in which the cause of the action arose or where a transaction or occurrence took place out of which the cause of action arose.

Pa. R.C.P. 1006.

Accordingly, this Court's Order correctly transferred the action against the individual Defendants Jeffrey Briel and Raheem Quincy Jones to Montgomery County. The accident occurred in Montgomery County, and the Defendants both reside in Montgomery County. Nevertheless, the action against Defendants Titan Insurance and Nationwide Auto Insurance was properly brought in Philadelphia County. Both entities regularly conduct business in, and have principal places of business located in, Philadelphia County. As such, the action with regard to Defendants Titan and Nationwide can properly remain.

III. CONCLUSION

For the foregoing reasons, this Court respectfully requests that its decision to grant Defendants Titan Auto Insurance and Nationwide Insurance Company's Preliminary Objections based on misjoinder of causes of action be AFFIRMED, and that Counts V and VI of the Plaintiffs' Complaint against Defendants Titan and Nationwide be severed and remain in Philadelphia County, while the remaining counts (Counts I through IV) against Defendants Jones and Briel shall be transferred to Montgomery County.

BY THE COURT:

Tereshko

TERESHKO, J.

Sept 15, 2010
DATE

COPIES SENT (FAX)
PURSUANT TO Pa.R.C.P. 236(b)

SEP 16 2010

FIRST JUDICIAL DISTRICT OF PA
USER I.D.:

cc:
Patrick J. Rodden, Esq., for Appellant
Lisa Ondich, Esq., for Appellees Titan and Nationwide
Jeffrey Breil, pro se
Raheem Quincy Jones pro se

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

JAIMELYNNE CAMPBELL	:	December Term, 2009
Plaintiff	:	
v.	:	
SHAWNA KELLY, BRIAN KELLY and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANIES	:	No. 208
Defendants	:	

O R D E R

AND NOW, this 1st day of March, 2010, upon consideration of the Preliminary Objection of Defendants, Shawna Kelly and Brian Kelly, and Plaintiff's opposition thereto, it is hereby ORDERED that the Preliminary Objection is OVERRULED and Defendants are directed to file their Answer within twenty (20) days.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY

COPY

2010 JUN 25 AM 10:53
PROTHONOTARY
LUZERNE COUNTY

DANIELLE RINKER and JOHN RINKER, her husband, Plaintiffs vs. GARY KELLAR and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendants	NO. 11036 OF 2009

ORDER

AND NOW, this 25th day of June, 2010, upon consideration of Defendant Gary Kellar's Preliminary Objections, Briefs in support thereof and in opposition thereto, and oral argument before this Court, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Defendant's Preliminary Objections are OVERRULED.

2. The Prothonotary is directed to enter this Order of record and to mail a copy of the Order to all counsel of record pursuant to Pa.R.C.P. No. 236.

By the Court:

Thomas F. Burke Jr.
P. J.

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

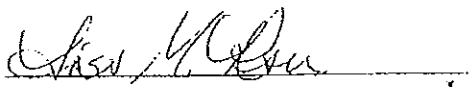
MICHAEL MISCANNON	:	
	:	Term June 2010 No. 003302
and	:	TRIAL BY JURY OF 12 DEMANDED
MEGAN FLOWERS	:	
Plaintiffs	:	AN ASSESSMENT OF DAMAGES HEARING IS REQUIRED
v.	:	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY	:	DOCKETED
and	:	NOV 0 3 2010
GEICO GENERAL INSURANCE COMPANY	:	F. CLARK DAY FORWARD
and	:	
KATELYN M. NORRIS	:	
and	:	
BROOKS NORRIS	:	
Defendants	:	

ORDER

AND NOW, this 2nd day of December, 2010, upon consideration of Plaintiffs' Preliminary Objections to Defendants Katelyn M. Norris and Brooks Norris' September 7, 2010 Purported Preliminary Objections to Plaintiffs' Complaint, and any Answer thereto, it is hereby ORDERED and DECREED that Defendants Katelyn M. Norris and Brooks Norris' September 7, 2010 Purported Preliminary Objections are STRICKEN WITH PREJUDICE and that Defendants Katelyn M. Norris and Brooks

Norris shall file their Answer to Plaintiffs' Complaint within twenty (20) days after notice of this Order.

BY THE COURT:



, J.