

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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TAMEKA CALEB, an Incapacitated Person,	:	CIVIL ACTION
by BRENDA CALEB,	:	
	:	
Plaintiff,	:	
	:	
v.	:	NO. 01-351
	:	
CRST, INC.,	:	
	:	
Defendant.	:	

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MEMORANDUM

ROBERT F. KELLY, J.

APRIL 30, 2001

Before this Court is the Motion to Dismiss Plaintiff's Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) filed by Defendant CRST, Inc. ("CRST"). Brenda Caleb is the appointed primary guardian for Plaintiff Tameka Caleb, an incapacitated person. Brenda Caleb brings this action on behalf of Tameka Caleb, alleging that CRST's failure to preserve the trailer, rear under-ride protection bar ("ICC bar"), and component parts involved in a motor vehicle accident was the direct and proximate result of CRST's intentional, reckless, negligent and/or other liability producing conduct, causing Tameka Caleb economic harm. For the reasons that follow, the Motion to Dismiss is granted.

**I. BACKGROUND**

Tameka Caleb was seriously injured in a motor vehicle accident on September 23, 1996. (Pl.'s Mem. Law Opp'n Def.'s

Mot. Dismiss at 1.) Tameka Caleb struck the rear of a parked trailer owned by CRST and manufactured by Strick Corporation ("Strick"). (Id.) In August 1998, Tameka Caleb filed suit in the Court of Common Pleas of Philadelphia County ("Court of Common Pleas") against CRST for negligence and against Strick for negligence and product liability/strict liability ("underlying action"). (Id.) Strick's Answer to the Amended Complaint included a cross-claim against CRST seeking contribution and indemnification from CRST and asserting CRST destroyed the ICC bar and prejudiced Strick's ability to defend the product liability claim. (Id. at 2.)

On July 24, 2000, the Court of Common Pleas granted CRST's Motion for Summary Judgment.<sup>1</sup> (Id.) As a result, CRST was dismissed as a defendant in Tameka Caleb's underlying action. (Id.) However, by an August 30, 2000 Order, the Court of Common Pleas granted Strick's Motion for Reconsideration and reinstated CRST as a defendant in Strick's cross-claim for contribution and indemnification. (Id.) In November 2000, the underlying action went to trial and a jury verdict was entered in favor of the defendants. (Id.) During that trial, on November 15, 2000, Tameka Caleb filed a Writ of Summons which commenced the instant action against CRST. (Id.) The Complaint in this instant action

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<sup>1</sup> In its Motion to Dismiss, CRST states the Order granting summary judgment in its favor was dated July 14, 2000. (Def.'s Mot. Dismiss Pl.'s Compl. at 1.)

was filed in the Court of Common Pleas in the November Term 2000. (Id.) The instant action is premised on Tameka Caleb's claim that she suffered economic harm because "[a]s a direct result of defendant CRST's spoliation of evidence, [her] ability to prove a product liability action against Strick Corporation and a negligence action against defendant CRST was significantly impaired." (Compl., ¶ 16.) In January 2001, CRST removed the case to this Court. (Id.)

## II. STANDARD OF REVIEW <sup>2</sup>

A motion to dismiss, pursuant to Fed. R. Civ. P. 12(b) (6), tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A court must determine whether the party making the claim would be entitled to relief under any set of facts that could be established in support of his or her claim. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)(citing Conley, 355 U.S. at 45-46); see also Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). In

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<sup>2</sup> This Court will not grant Tameka Caleb's request to convert CRST's Motion to Dismiss into a Motion for Summary Judgment. In order "[t]o decide a motion to dismiss, courts generally consider only the allegations contained in the complaint, exhibits attached to the complaint and matters of public record.'" Karl v. Donaldson, Lufkin & Jenrette Sec. Corp., 78 F. Supp.2d 393, 395 n.4 (E.D. Pa. Dec. 23, 1999)(quoting Pension Ben. Guar. Corp. v. White Consol. Ind., 998 F.2d 1192, 1196 (3d Cir. 1993)). In ruling upon this Motion, this Court restricted its consideration to only those matters alleged in the Complaint and matters of public record (i.e., the judgments and Orders entered in the underlying action).

considering a Motion to Dismiss, all allegations in the complaint must be accepted as true and viewed in the light most favorable to the non-moving party. Rocks v. City of Phila., 868 F.2d 644, 645 (3d Cir. 1989)(citations omitted).

### III. DISCUSSION

In its Motion to Dismiss, CRST argues that Tameka Caleb's instant action must be dismissed because it is time-barred by the applicable Pennsylvania statute of limitations, 42 Pa. C.S.A. section 5524.<sup>3</sup> (Def.'s Mot. Dismiss Pl.'s Compl., ¶ 10.) Relying on 42 Pa. C.S.A. section 5524, CRST argues that Tameka Caleb's action involves claims arising out of the September 23, 1996 accident and CRST's conduct occurring on September 24, 1996, and that such claims are required to be brought within two years, or by September 24, 1998. (Def.'s Mem. Law Supp. Mot. Dismiss at 5.) Thus, CRST argues that because Tameka Caleb's Complaint was filed on November 17, 2000, it is accordingly time-barred. (Id.) Tameka Caleb agrees that "[t]he

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<sup>3</sup> According to 42 Pa. C.S.A. section 5524(7) the following actions and proceedings must be commenced within two years:

Any other action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conduct or any other action or proceeding sounding in trespass, including deceit or fraud, except an action or proceeding subject to another limitation specified in this subchapter.

42 Pa. C.S.A. § 5524(7)(West 2000).

statute of limitations applicable to this matter is 42 Pa. C.S.A. Section 5524 ('Two year limitation')." (Pl.'s Mem. Law Opp'n Def.'s Mot. Dismiss at 11.) However, Tameka Caleb argues that the statute of limitations was tolled because she was unable to discover CRST's tortious conduct until November 2000, therefore, her filing of the instant action was well within the statutory time period. (Id.)

Pennsylvania's statute of limitations applies to this case because "[a] federal court exercising diversity jurisdiction must apply the state substantive law, which includes statutes of limitations." Dean v. Wonsil, No. 99-4043, 2000 WL 1839737, at \*2 (E.D. Pa. Dec. 13, 2000)(citing Ciccarelli v. Carey Canadian Mines, Ltd., 757 F.2d 548, 552 (3d Cir. 1985)). Under Pennsylvania law, the applicable statute of limitations for actions of fraud, negligence and otherwise tortious conduct is 42 Pa. C.S.A. section 5524, which administers a two year limitation period.<sup>4</sup> Id.(citing 42 Pa. C.S.A. § 5524) "The two (2) year

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<sup>4</sup> Although, Tameka Caleb's Complaint fails to label the only Count it contains against CRST, the Court infers from the allegations contained in Count I that Tameka Caleb is asserting that CRST engaged in negligent, intentional, and/or reckless conduct which caused her economic harm. See Compl. Even though Tameka Caleb fails to use the word fraud in her Complaint, the language in both her Complaint and Replies to Defendant's Motion to Dismiss imply that she is alleging fraud against CRST. Id.; Pl.'s Answer Def.'s Mot. Dismiss at 7. The Court views Tameka Caleb's cause of action to include fraud, even though fraud must be plead with specificity. Parker Hannifin Corp. v. Bradshaw, No. 91-1251, 1993 WL 4375, at \*1 (E.D. Pa. Jan. 5, 1993)(quoting FED. R. CIV. P. 9(b)); see also PA. R. CIV. P. 1019(b). As such,

period begins to run as soon as the party 'possess[es] sufficient critical facts to put him on notice that a wrong has been committed and that he need investigate to determine whether he is entitled to redress.[']" Id. (quoting Haggart v. Cho, 703 A.2d 522, 526 (Pa. Super. 1997)(quoting Zeleznik v. United States, 770 F.2d 20, 23 (3d Cir. 1985)(citation omitted)). It is incumbent upon the claimant to use "'all reasonable diligence to be properly informed of the facts and circumstances' upon which a potential claim may be based and is expected to bring the claim within the statutory period." Id. (quoting Haggart, 703 A.2d at 526).

In Pennsylvania, there is an exception to the statute of limitations which is commonly known as the "discovery rule." Id. "The 'discovery rule' prevents the statute of limitations from running when the plaintiff could not have discovered an injury or its cause despite exercising reasonable diligence." Id. (citing Haggart, 703 A.2d at 526)(quoting Pocono Int'l Raceway v. Pocono Produce, Inc., 468 A.2d 468, 471 (Pa. 1983) (citation omitted)). The definition of reasonable diligence is "'[a] fair, proper and due degree of care and acting, measured with reference to the particular circumstances; such diligence, care or attention as might be expected from a man of ordinary prudence and activity.'" Am. Indep. Ins. Co. v. Lederman, No.

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the Court's analysis of CRST's Motion to Dismiss includes fraud.

97-4153, 2000 WL 1209371, at \*12 (E.D. Pa. Aug. 25, 2000)(quoting Beauty Time, Inc. v. VU Skin Sys., Inc., 118 F.3d 140, 144 (3d Cir. 1997)(citation omitted)). The discovery rule "applies only to those situations where the nature of the injury itself is such that no amount of vigilance will enable the plaintiff to detect injury." Id. at \*12 (quoting Haggart, 703 A.2d at 529)(citations omitted)). If the discovery rule applies to an action, the statutory period of limitations "commences when 'the plaintiff knew or reasonably should have known (1) that he has been injured, and (2) that his injury has been caused by another party's conduct.'" Dean, 2000 WL 1839737, at \*2 (quoting Haggart, 703 A.2d at 525)(quoting Redenz by Redenz v. Rosenberg, 520 A.2d 883, 885 (Pa. Super. 1987)).

Without explicitly referring to the discovery rule, Tameka Caleb argues that the statute of limitations has been tolled in this action because she was unable to discover CRST's allegedly tortious conduct until November 2000, the time of trial in the underlying action. (Pl.'s Mem. Law Opp'n Def.'s Mot. Dismiss at 11.) She argues that it was not until the time of trial that "the defendant's [CRST'S] active concealment of its conduct" was discovered. (Pl.'s Answer Def.'s Mot. Dismiss, ¶¶ 35, 36.) Tameka Caleb contends that the instant action is not time-barred because she immediately filed a Writ of Summons as soon as she discovered CRST's allegedly tortious conduct,

therefore, she is well within the statutorily prescribed time limit. (Id.)

First, the underlying action by Tameka Caleb arises out of a motor vehicle accident that occurred on September 23, 1996, which directly involved the trailer, ICC bar and its component parts at issue in the instant action. (Pl.'s Mem. Law Opp'n Def.'s Mot. Dismiss at 1.) In her Complaint in the instant action, Tameka Caleb alleges that "[u]pon impact, the trailer's underride guard broke away from the trailer allowing Ms. Caleb's vehicle to underride the overhanging rear of the trailer." (Compl., ¶ 9.) As a result of the collision and the ICC bar's alleged failure to prevent underride of the trailer, Tameka Caleb suffered serious and permanent brain damage. (Id. ¶ 10.) As evidenced by the nature of the motor vehicle accident and the severity of Tameka Caleb's injuries, the trailer, ICC bar and its component parts were crucial elements to the underlying action.

Specifically, the underlying action involves a product liability action against Strick pertaining to the trailer, ICC bar, and its component parts at issue in this case. In fact, the Amended Complaint in the underlying action ("Amended Complaint") directly includes allegations concerning the condition, design and manufacture of the trailer, ICC bar, and component parts. See Def.'s Mem. Law Supp. Mot. Dismiss, Ex. B. Count III of the Amended Complaint, entitled "Strict Liability," alleges that

Strick was liable to Tameka Caleb because it "manufactured, sold and maintained a product in a dangerous and defective condition, said product being the aforementioned trailer and under-ride protection bar at the rear." (Id., ¶ 22(a).) Count IV, entitled "Negligence," alleges that Strick was also liable because of its negligent, careless and/or reckless design of the ICC bar on the trailer involved in the accident. (Id., ¶ 25.) Thus, in the underlying action, Tameka Caleb's claims against Strick rely directly upon the condition, design and manufacture of the ICC bar and its attachment to the trailer involved in the motor vehicle accident.

The underlying action also dealt directly with CRST's repair of the trailer and disposal of the ICC bar and its component parts. In her Answer to Defendant's Motion to Dismiss, Tameka Caleb states that "[t]he condition of the ICC bar/bumper at the time of the accident, and CRST's spoliation of the evidence, were the subject of motions before the trial court." (Pl.'s Answer Def.'s Mot. Dismiss, ¶ 6.) However, not only did Tameka Caleb's underlying action directly rely on the condition of the trailer, the ICC bar and its component parts, but Strick filed a cross-claim in that action against CRST alleging spoliation of the aforementioned. (Pl.'s Mem Law Opp'n Def.'s Mot. Dismiss, Ex. A) Further, Strick's Answer to the Amended Complaint in the underlying action alleged that "CRST may be

legally responsible for the spoliation of the trailer or component parts of the trailer described in the Complaint.”

(Id., ¶¶ 55, 56.) Tameka Caleb acknowledges that Strick’s cross-claim included the “allegation that CRST was guilty of spoliation of evidence based upon CRST’s destruction of the ICC bar.”

(Pl.’s Answer Def.’s Mot. Dismiss, ¶ 24.) Thus, both the underlying action and Strick’s cross-claim against CRST negate Tameka Caleb’s argument that she was unaware of CRST’s allegedly tortious conduct and its injurious effect until November 2000, the time of trial in the underlying action.

As a result of the pivotal role that the trailer, ICC bar and its component parts played in Tameka Caleb’s underlying action, the Court finds that she possessed sufficient critical facts to be put on notice that CRST’s repair of the trailer and disposal of the ICC bar and its component parts were injurious to her underlying action.<sup>5</sup> At the very least, Tameka Caleb’s

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<sup>5</sup> The Supreme Court of Pennsylvania has stated:

Whether the statute has run on a claim is usually a question of law for the trial judge, but where the issue involves a factual determination, the determination is for the jury. Specifically, the point at which the complaining party should reasonably be aware that he has suffered an injury is generally an issue of fact to be determined by the jury; only where the facts are so clear that reasonable minds cannot differ may the commencement of the limitations period be determined as a matter of law.

reliance on the trailer, ICC bar and its component parts in her underlying action put her on notice that she should investigate and discover whether CRST's actions caused her injury and whether she was entitled to redress as a result. Although Tameka Caleb argues that she was unable to bring the instant action because CRST's concealment of its conduct was unknown until trial, this does not negate the fact that she was on notice of a possible claim against CRST for its conduct regarding the trailer, ICC bar and its component parts as of August 1998. Once on notice, it was Tameka Caleb's responsibility to use all reasonable diligence to be appropriately informed of the facts and circumstances upon which she may have a potential claim. Consequently, if Tameka Caleb had used reasonable diligence in the underlying action, she would have discovered her potential claim against CRST regarding its actions involving the trailer, ICC bar and its component parts. Thus, the two year statutory period of limitations began to run upon the filing of the underlying action in August 1998. Because Tameka Caleb filed the instant action in November 2000, the statute of limitations has expired and her instant action is accordingly time-barred. As a result, Defendant's Motion to

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Am. Indep. Ins. Co. v. Lederman, No. 97-4153, 2000 WL 1209371, \*13 (E.D. Pa. Aug. 25, 2000)(quoting Hayward v. Med. Ctr. of Beaver County, 608 A.2d 1040, 1043 (Pa. 1992)). In this case, the Court has determined that August 1998 is the point at which Tameka Caleb should have been reasonably aware that she suffered an injury because the facts are so clear that reasonable minds cannot differ as to that date. (Id.)



