

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

CAROLYN W. LYONS,	:	CIVIL ACTION
as Executrix for the Estate of	:	
John F. Lyons,	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al.,	:	
Defendants	:	NO. 98-2662
Newcomer, J.		November , 1998

M E M O R A N D U M

Presently before the Court are the following Motions and the responses thereto:

(1) Defendants City of Philadelphia, Mary Rose Loney, Lynn McDevitt, Bohdan Korzeniowski, Lawrence Kelly, Mark Liciadello and John Doe City 1 through N's Motion to Dismiss Pursuant to F.R.C.P. 12(b)(6) and 12(b)(2) ("City defendants' Motion"); and

(2) The Motion to Dismiss the Amended Complaint of Plaintiff Pursuant to F.R.C.P. 12(b)(6) of Defendants, Parkway Corporation, Parkway Garage, Inc., Ernest Roy and Michael Bassett ("Parkway defendants' Motion").

For the reasons that follow, the City defendants' Motion will be granted in part and denied in part, and the Parkway defendants' Motion will be denied.

A. Background¹

¹ The facts are taken from plaintiff's Amended Complaint.

Plaintiff, the executrix of her late husband John F. Lyons' estate, brings the instant action against the City of Philadelphia, various City employees, Parkway Corporation, Parkway Garage, Inc., and Parkway employees for damages arising from a fatal heart attack suffered by Mr. Lyons while in the taxi holding lot at the Philadelphia International Airport. According to plaintiff, Mr. Lyons, a cab driver, was standing next to his taxi in the taxi holding lot on May 23, 1996 when he suffered a heart attack and fell to the ground. Several other drivers immediately came to Mr. Lyons' assistance. One ran to the Parkway employees' booth at the holding lot and told defendant Michael Bassett, a Parkway employee, to call for an ambulance. This occurred approximately at 2:28 p.m. According to plaintiff, however, medics were not summoned until between 2:45 p.m. and 2:48 p.m. and were not dispatched to the taxi holding lot until 2:48 p.m. The medics arrived at 2:52 p.m., restored Mr. Lyon's heartbeat, and transported him to a hospital. However, due to the prolonged deprivation of oxygen to his brain, Mr. Lyons died on June 2, 1996 as a result of brain damage. Plaintiff alleges that Mr. Lyons would have survived but for the delay in the arrival of the medics.

According to plaintiff, the City of Philadelphia, with the exception of the airport, is serviced by a comprehensive 911 emergency communications system which can be accessed by any ordinary telephone. The airport, however, is an enclave with its own emergency communications system, accessed by a 3111 emergency

number, which includes a communications room manned twenty-four hours per day, a dedicated fire engine company, and its own medical response service. According to plaintiff, if defendant Bassett had immediately contacted the 3111 emergency communications operator, an ambulance would have reached Mr. Lyons within approximately four minutes. However, as of May 23, 1996, Bassett, the holding lot attendant, was equipped only with a walkie-talkie which was not capable of accessing any emergency communication system. Furthermore, seven other Parkway employees had access to the same communication channel; thus defendant Bassett could not access the channel until it was clear. Plaintiff further claims that it took five to seven minutes for anyone to answer defendant Bassett on the walkie-talkie. There is some discrepancy whether, upon contacting the Parkway office at the airport via his walkie-talkie, Bassett only stated that the assistance of a manager was needed at the holding lot, or whether he informed his manager, defendant Ernest Roy, to call airport police or rescue. In any event, in response to Bassett's communication, defendant Roy went to the holding lot from another location in the airport. According to plaintiff, however, no Parkway employee actually called emergency services. Plaintiff instead claims that the emergency call which finally resulted in the arrival of the medics followed a circuitous route: a 911 call from a public phone booth to downtown Philadelphia, a call from downtown to airport police, a call from airport police to the airport communications center, a call for airport emergency code

by the communications center, a call to airport first responders from the code, and finally the responders' arrival at the scene.

According to plaintiff, in 1992 the Philadelphia International Airport implemented a transportation plan which, inter alia, required that all taxicabs wait in a holding lot before being dispatched to the terminal to pick up passengers. As of December 24, 1993, the City and Parkway intended to install emergency telephone service at the taxi holding lot. However, on May 1, 1994, after the City, through the Department of Aviation, began to charge cab drivers a \$1.50 fee for picking up passengers at the airport, the cab drivers protested against this new policy by boycotting the airport and holding a strike. Mr. Lyons was apparently a vocal supporter of these protests. According to plaintiff, on May 24, 1994, the City decided to reverse or indefinitely defer the decision to install emergency telephone services in the taxi holding lot. Thus emergency telephone service was not installed in the taxi holding lot. Plaintiff also alleges that in May of 1994 a communications manager for the City recommended installing a cell phone to temporarily cover for the need for emergency telephone service, but that neither the City nor Parkway installed a cell phone in the holding lot.

Plaintiff brings the following claims against the City of Philadelphia and its employees: (1) a First Amendment claim under 42 U.S.C. § 1983 for retaliation against the taxi drivers, including Mr. Lyons, for the exercise of their First Amendment rights to rally and protest, by withholding emergency telephone

service from the taxi holding lot; (2) a Fourteenth Amendment equal protection claim under 42 U.S.C. § 1983 for intentional discrimination against the taxi drivers on the basis of race and/or alienage by withholding emergency telephone service from the taxi holding lot while providing the same service to every other area of the airport; (3) a Title VI claim under 42 U.S.C. § 2000d for discriminating against taxi drivers, who are allegedly primarily ethnic minorities, under a program or activity receiving federal financial assistance; and (4) a state law claim for negligence for the City's alleged breach of its duty as a landlord and as one in a special relationship with Mr. Lyons, to design and construct a holding lot free of defect. Plaintiff also brings a state law claim of negligence against the Parkway defendants on the grounds that Mr. Lyons, having paid \$1.50 to enter the holding lot, was a business invitee, and that the Parkway defendants breached their duty to him by failing to provide for any means of communication to quickly summon emergency medical assistance, and failing to select and train Parkway employees to respond appropriately to a medical emergency. All defendants now move to dismiss plaintiff's Amended Complaint.

B. Motion to Dismiss Standard

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a court should dismiss a claim for failure to state a cause of action only if it appears to a certainty that no relief could be granted under any set of facts which could be proved. Hishon v.

King & Spalding, 467 U.S. 69, 73 (1984). Because granting such a motion results in a determination on the merits at such an early stage of a plaintiff's case, the district court "must take all the well pleaded allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 664-65 (3d Cir. 1988) (quoting Estate of Bailey by Oare v. County of York, 768 F.2d 503, 506 (3d Cir. 1985)). In the case of § 1983 actions the Court has imposed the additional pleading requirement that the "complaint contain a modicum of factual specificity, identifying the particular conduct of defendants that is alleged to have harmed the plaintiffs." Id. at 666 (quoting Ross v. Meagan, 638 F.2d 646, 650 (3d Cir. 1981)).

C. Discussion

1. Claims against City Defendants

a. Title VI

The City defendants claim that plaintiff cannot state a claim against the City and its employees under Title VI because the City and its employees do not come under the scope of Title VI. Under Title VI of the Civil Rights Act of 1964, "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. §

2000d. Thus under Title VI, as under other analogous statutes, "the recipient's acceptance of the funds triggers coverage under the nondiscrimination provision." United States Dep't of Transp. v. Paralyzed Veterans of Am., 477 U.S. 597, 605 (1986) (discussing § 504 of the Rehabilitation Act of 1973 and noting that "Title VI is the congressional model for subsequently enacted statutes prohibiting discrimination in federally assisted programs or activities"). The Supreme Court has recognized that private persons have an implied right of action for monetary damages under Title VI. See Consolidated Rail Corp. v. Darrone, 465 U.S. 624, 630 & n.9 (1984).

In the instant case, plaintiff has pled that the City received federal funding for the design, construction, and operation of the airport. Thus, under the statute, if the City received federal funds for the airport, then the City is bound by the antidiscrimination provision of Title VI, and it may not discriminate against persons on the basis of race, color, or national origin, in running the airport. Although plaintiff's allegations of discrimination based upon race or alienage are sparse, and the factual pleadings appear to point toward retaliatory conduct based upon the taxi drivers' boycott and strike rather than racially-motivated intentional discrimination, the Court finds that for purposes of the instant Motion, plaintiff has sufficiently stated a claim under Title VI against

the City.² The Court is unpersuaded by the cases cited by defendants to support their argument that the City cannot be held liable under Title VI. Instead, the Court finds that the expanded definition of "program or activity" under 42 U.S.C. § 2000d-4a is easily broad enough to include the City of Philadelphia if indeed the City received federal funds for building and/or operating the airport, particularly where by statute, 52 Pa. Cons. Stat. Ann. § 16257, plaintiff cannot sue the airport or department of aviation as a separate entity distinct from the City. See also Burks v. City of Philadelphia, 950 F. Supp. 678, 682 (E.D. Pa. 1997) (finding that the City comes within the ambit of Title VI's antidiscrimination provision).

However, the Court agrees with defendants that the individual defendants are not properly named defendants with respect to plaintiff's Title VI claim. A Title VI cause of action must be asserted against the entity receiving the federal funds, and not against individuals. See Buchanan v. City of Bolivar, 99 F.3d 1352, 1356 (6th Cir. 1996) ("Plaintiff's claim also fails because she asserts her claim against Lawson and Weaver and not against the school, the entity allegedly receiving the financial assistance."). Accordingly, plaintiff's Title VI

² On a motion for summary judgment, plaintiff's allegations of racially-motivated intentional discrimination, in the form of purposefully withholding emergency telephone service from the taxi holding lot because of the taxi drivers' race or alienage, can be better tested.

claim is dismissed as to the individual City defendants but remains as to the City.

b. § 1983 Equal Protection

The City defendants also advance several arguments attacking plaintiff's claim for violation of her constitutional right to equal protection under § 1983. Plaintiff's Amended Complaint alleges that the City's decision to provide emergency telephone service to all areas of the airport except the taxi holding lot was discriminatory on the basis of race and/or alienage and denied Mr. Lyons equal protection of the law. To bring a successful claim under 42 U.S.C. § 1983 for a denial of equal protection, plaintiff must prove the existence of purposeful discrimination. Keenan v. City of Philadelphia, 983 F.2d 459, 465 (3d Cir. 1992). He must demonstrate that he received different treatment from that received by other individuals similarly situated. Id.

Defendants first argue that the applicable statute of limitations has run on plaintiff's § 1983 claim. In actions under 42 U.S.C. § 1983, federal courts apply the state's statute of limitations for personal injury. Sameric Corp. of Delaware, Inc. v. City of Philadelphia, 142 F.2d 582, 599 (3d Cir. 1998). Thus, because Pennsylvania's statute of limitations for personal injury is two years, plaintiff's equal protection claim is subject to a two-year statute of limitations. Id. A § 1983 cause of action accrues when the plaintiff knew or should have

known of the injury upon which his action is based. Id. Although a statute of limitations argument is not inappropriate to a motion to dismiss, as plaintiff baldly suggests, nevertheless in this instance the Court finds that a determination as to the statute of limitations cannot be made at this juncture. Based upon the pleadings, and with no other evidence before it, the Court cannot determine when the plaintiff knew or should have known of the alleged discriminatory decision to withhold emergency telephone services from the taxi holding lot. This issue is better reserved for a motion for summary judgment.

Defendant next argues that plaintiff's allegations fail to state an equal protection claim. In her Amended Complaint, plaintiff claims that in providing services, in this case, emergency telephone services, the City discriminated against cab drivers by treating them differently from the rest of the airport population in failing to provide emergency telephone services to the cab drivers while providing the same service to the rest of the airport population. Plaintiff claims that this distinction cannot pass the rational basis test. In the alternative, plaintiff claims that protected racial minorities comprise the majority of the taxi driver population, that the decision to provide emergency telephone services to the rest of the airport population except for the cab drivers was based upon impermissible racial motivations, as well as retaliatory motivations, and that therefore the different treatment in this

case cannot pass the strict scrutiny test. Again, despite the sparseness of plaintiff's allegations with respect to intentional racial discrimination, the Court finds that for purposes of the instant Motion plaintiff's pleadings are sufficient to withstand dismissal in that if proven true, they would sufficiently make out a claim for the denial of equal protection. As stated before, such allegations of intentional racial discrimination will be better tested on a summary judgment motion.

Likewise, with respect to defendant's argument that plaintiff, as a member of an unprotected class, lacks standing to bring this suit, the Court finds that defendants' arguments are more appropriately addressed in a summary judgment motion. In Sullivan v. Little Hunting Park, Inc., 396 U.S. 229 (1969), a neighborhood cooperation expelled a white property owner who had attempted to lease his home to a black man. The Supreme Court held that the white owner had standing to sue under 42 U.S.C. § 1982, and observed that at times a white plaintiff is "the only effective adversary." Id. at 237. The Court emphasized that allowing the punishment to stand against the white owner would perpetuate the harmful effects of the restrictive covenant. Id.; see also Maynard v. City of San Jose, 37 F.3d 1396, 1403 (9th Cir. 1994) (finding that a white plaintiff had standing under § 1982 where he was pursuing the suit on his own behalf on his own right to be free from retaliation and alleged injuries that were personal to him).

According to the allegations in plaintiff's Amended Complaint, the City intentionally chose to withhold emergency telephone services from the cab drivers, not only in retaliation for the boycott and strike, but because of racially-motivated discrimination toward the minorities who allegedly comprise the majority of the cab drivers. Taking these pleadings as true, as the Court must, Mr. Lyons' association with the minority group that was discriminated against would confer standing as the instant action is brought on Mr. Lyons' own behalf for injuries that are personal to him. Thus, for purposes of the instant Motion, the Court finds that plaintiff's pleadings are sufficient as to standing.

c. § 1983 First Amendment

With respect to plaintiff's First Amendment retaliation claim under § 1983, the City defendants argue that plaintiff's pleadings fail to support a causal link between the protected speech engaged in by Mr. Lyons and other cab drivers and the alleged retaliatory decision to withhold emergency telephone service. "[A]n individual has a viable claim against the government when he is able to prove that the government took action against him in retaliation for his exercise of First Amendment rights." Anderson v. Davila, 125 F.3d 148, 160 (3d Cir. 1997). Again, defendants' argument is inappropriate to the instant Motion as the Amended Complaint adequately pleads both retaliatory motive and a causal link between Mr. Lyons' First Amendment activity and the resulting decision of the City not to

install emergency telephone services in the taxi holding lot. As stated before, defendants' arguments are more appropriately addressed in a summary judgment motion. Accordingly, this claim remains.

d. Negligence

Finally, the City defendants move to dismiss plaintiff's state law negligence claim as barred by the Political Subdivision Tort Claims Act, 42 Pa. Cons. Stat. Ann. § 8541 et seq. Under that statute, "[e]xcept as provided in this subchapter, no local agency shall be liable for damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person." 42 Pa. Cons. Stat. Ann. § 8541. In response, plaintiff argues that her claim falls into two separate exceptions to the Tort Claims Act. In the first instance, plaintiff claims that her claim can be construed as one for deliberate, willful misconduct. Under § 8550, the immunity provision does not apply if the injury caused by the local agency or employee constitutes "a crime, actual fraud, actual malice or willful misconduct." 42 Pa. Cons. Stat. Ann. § 8550. For purposes of the statute, "willful misconduct" has the same meaning as "intentional tort." Delate v. Kollé, 667 A.2d 1218, 1221 (Pa. Commw. Ct. 1995). "The governmental employee must desire to bring about the result that followed his conduct or be aware that it was substantially certain to follow." Kuzel v. Krause, 658 A.2d 856, 859 (Pa. Commw. Ct. 1995).

Plaintiff now argues that her allegations make out an intentional tort. Plaintiff does not, however, and indeed cannot, point to what intentional tort her allegations make out. The intentional acts alleged by plaintiff--that the City defendants intentionally did not install emergency telephone service in retaliation for the boycott and strike that Mr. Lyons participated in, and/or in order to discriminate against cab drivers because of their race or alienage--make out claims for constitutional deprivations, as this Court has found, but do not make out an intentional tort. Furthermore, nowhere has plaintiff pled that the defendants desired to bring about the injuries suffered by Mr. Lyons, or were aware that such an incident was substantially certain to follow. Accordingly, the Court finds that plaintiff's Amended Complaint does not sufficiently allege facts that would allow her state law claim to fall within the "willful misconduct" exception to the governmental immunity defense.

In the alternative, plaintiff argues that her negligence claim falls under § 8542(b)(3)'s exception in that she has alleged a common law negligence claim, and the injury was caused by the negligent acts of the defendants with respect to the care, custody, or control of real property in the City's possession. See 42 Pa. Cons. Stat. Ann. 8542(a) & (b)(3). Section 8542(b)(3) is "a narrow exception to a general legislative grant of immunity" and is to be construed "to impose liability only for negligence which makes government-owned

property unsafe for the activities for which it is regularly used, for which it is intended to be used, or for which it may be reasonably foreseen to be used." Vann v. Board of Educ. of the School Dist. Of Phila., 464 A.2d 684, 686 (Pa. Commw. Ct. 1983). Indeed, "it is settled that . . . liability is predicated upon proof that a 'condition of government realty itself, deriving, originating from, or having the realty as its source,' caused the plaintiff's injuries." Leonard v. Fox Chapel Area School Dist., 674 A.2d 767, 769 (Pa. Commw. Ct. 1996) (quoting Finn v. City of Philadelphia, 664 A.2d 1342, 1346 (Pa. 1995)). "As such, liability will not be imposed under the real property exception for injuries caused by the negligent failure of a government entity to remove a foreign substance from realty." Id.

In view of the well-settled case law, the Court is well satisfied that plaintiff's Amended Complaint fails to state a negligence cause of action which can defeat defendants' claim to governmental immunity. Despite plaintiff's attempt to reference "real property" language, e.g., "the City's Airport telephone communications system uses conduits and cables" (see Am. Compl. at ¶79.), the pleadings do not and cannot allege that a condition of the realty caused the injuries in this case. If even failure to remove ice and snow do not give rise to negligence that is exempted from the grant of immunity, then a fortiori, the failure to install telephones cannot fall under the real property exception to governmental immunity. Accordingly, the City

defendants' Motion will be granted with respect to plaintiff's state law claims.

2. Personal Jurisdiction as to Defendant Mary Loney

Defendant Mary Loney is the City's former Director of Aviation and currently the City of Chicago's Commissioner of Aviation for O'Hare International Airport. Defendant challenges this Court's exercise of personal jurisdiction over Ms. Loney under Rule 12(b)(2). Federal Rule of Civil Procedure 4(e) gives the federal district courts personal jurisdiction over non-resident defendants to the extent permissible under the state law of the jurisdiction where the court sits. See Fed. R. Civ. P. 4(e); Grand Entertainment Group v. Star Media Sale, 988 F.2d 476, 481 (3d Cir. 1993). Pennsylvania's long-arm statute in turn permits the exercise of jurisdiction "to the fullest extent allowed under the Constitution of the United States and [jurisdiction] may be based on the most minimum contact with [the state] allowed under the Constitution." 42 Pa. Cons. Stat. Ann. § 5322(b). Thus Pennsylvania's long arm statute reaches as far as the Due Process Clause of the Fourteenth Amendment permits. Grand Entertainment, 988 F.2d at 481. In this context, the first inquiry is whether defendant Loney had minimum contacts with Pennsylvania such that she "should reasonably anticipate being haled into court there." Id. The crux of the inquiry is whether the defendant "purposely established" minimum contacts with the forum state. Id. If such minimum contacts are present, then the court must inquire as to whether the court's exercise of personal

jurisdiction over Ms. Loney "accords with the notions of fair play and substantial justice." Id.

In the instant case, this Court is amply satisfied that this Court's exercise of personal jurisdiction over Ms. Loney is proper. Ms. Loney admits that she was once the Director of Aviation with the City of Philadelphia, in particular during the time that the alleged acts of discrimination and retaliation took place. The Court is satisfied that Ms. Loney, though presently a non-resident, had sufficient contacts with Pennsylvania that she should reasonably anticipate being haled into court here, and indeed that she purposely established her contacts with Pennsylvania. In view of these facts, the Court is also satisfied that exercising jurisdiction over Ms. Loney's person comports with notions of fair play and substantial justice. If indeed plaintiff can prove her allegations of racial discrimination and retaliation based upon the cab drivers' exercise of First Amendment rights, and prove Ms. Loney's involvement in such discrimination and/or retaliation, then certainly the notions of fair play and substantial justice demand that she be amenable to suit in the jurisdiction where she allegedly engaged in such acts. Accordingly, defendants' Motion will be denied to this extent.

3. Claims against Parkway Defendants

In addition to her claims against the City defendants, plaintiff also brings two claims against the Parkway defendants: (1) a claim for negligence in designing, constructing, and

operating the taxi holding lot in failing to install either hardwired or cell emergency telephone service; and (2) a claim for negligence in selecting and training Parkway employees who failed to respond appropriately to Mr. Lyons' medical emergency. The Parkway defendants move to dismiss plaintiff's Amended Complaint as to the claims asserted against them, arguing that plaintiff has failed to state a cause of action for negligence because defendants owed no duty to Mr. Lyons with respect to the installation of a telephone. Defendants also argue that plaintiff's claim for negligent selection and training of Parkway employees is barred because she pled this claim for the first time in her Amended Complaint after the statute of limitations had run. Finally, defendants argue that plaintiff has not adequately pled a claim for punitive damages.

a. Negligence: Existence of a Duty of Care

In the first instance, defendants argue that plaintiff has failed to state a cause of action for negligence because defendants did not owe Mr. Lyons a duty to install a telephone for emergency purposes or to otherwise aid him. In order to prevail on a cause of action in negligence under Pennsylvania law, a plaintiff must establish the following: (1) a duty recognized by law requiring the defendant to conform to a certain standard of conduct; (2) a failure to conform to that standard; (3) a causal connection between the conduct and the resulting injury; and (4) actual damages. Kleinknecht v. Gettysburg College, 989 F.2d 1360, 1366 (3d Cir. 1993); Morena v. South

Hills Health Sys., 462 A.2d 680, 684 n.5 (Pa. 1983). "Whether defendant owes a duty of care to a plaintiff is a question of law." Kleinknecht, 989 F.2d at 1366. "Duty, in any given situation, is predicated on the relationship existing between the parties at the relevant time" Morena, 462 A.2d at 684.

In the instant case, although plaintiff has pled two separate causes of action for negligence, the underlying negligence is best understood as one act (or omission), that is, the alleged failure to provide prompt medical assistance to Mr. Lyons because Parkway did not have adequate telephone service at the lot and because Parkway employees did not respond appropriately to the medical emergency.³ Under § 314A of Restatement (Second) of Torts, certain "special" relationships give rise to a duty to aid or protect. This duty includes the duty to take reasonable action "to protect against unreasonable risk of physical harm" and "to give [] first aid after [] know[ing] or [having] reason to know that [one is] ill or injured." Restatement (Second) of Torts § 314A(1)(a) & (b). Among others who have a duty of care based upon a special relationship, "[a] possessor of land who holds it open to the

³ To state, instead, that defendants negligently designed and constructed the holding lot by failing to install a phone approaches the core alleged act or omission from a rather oblique angle, unnecessarily confusing the issues of duty, special relationship, and foreseeability. Accordingly, the Court reads plaintiff's Amended Complaint as alleging a failure to respond promptly and adequately to Mr. Lyons' medical emergency.

public is under a similar duty to members of the public who enter in response to his invitation." Id. at § 314A(3).

Although the taxi holding lot was not held open to the entire public, it was held open to the taxi driving public, and for a fee of \$1.50, taxi drivers could enter onto defendants' land. This Court is satisfied that for purposes of the instant Motion, plaintiff's Amended Complaint adequately sets forth facts showing that Mr. Lyons, a member of the taxi driving public, entered the holding lot, which defendants held open to the taxi driving public, in response to the defendants' invitation. Accordingly, plaintiff's Amended Complaint adequately pleads a "special" relationship between the Parkway defendants and Mr. Lyons.⁴

However, to say that defendants in this case owed a duty of care to Mr. Lyons does not end the inquiry as this merely "define[s] the class of persons to whom the duty extends, without determining the nature of the duty or demands it makes on the [defendants]." Kleinknecht, 989 F.2d at 1369. To this extent, the Court must engage in a foreseeability analysis with respect to the duty that defendants owed to Mr. Lyons. See id. (noting

⁴ The Court agrees with plaintiff that this case appears similar to the scenario set forth in illustration 5 to § 314A wherein a patron attending a play in defendant's theater suffers a heart attack and asks for help. If defendant's employees do nothing to obtain medical assistance or to remove the patron to a place where it can be obtained, and as a result, the patron's illness is aggravated in a manner which reasonably prompt medical attention would have avoided, then defendant is liable for the aggravation of the illness.

that foreseeability is a legal requirement). "The type of foreseeability that determines a duty of care, as opposed to proximate cause, is not dependent on the foreseeability of a specific event." Id. Instead, in the context of a duty analysis, foreseeability means "the likelihood of the occurrence of a general type of risk rather than the likelihood of the occurrence of the precise chain of events leading to the injury." Id. "Only when even the general likelihood of some broadly definable class of events, of which the particular event that caused the plaintiff's injury is a subclass, is unforeseeable can a court hold as a matter of law that the defendant did not have a duty to the plaintiff to guard against that broad general class of risks within which the particular harm the plaintiff suffered befell." Id. Furthermore, "[i]f a duty is to be imposed, the foreseeable risk of harm must be unreasonable." Id. Using the classic risk-utility analysis, the Court must "balance[] the risk, in light of the social value of the interest threatened, and the probability and extent of the harm, against the value of the interest which the actor is seeking to protect, and the expedience of the course pursued." Id. at 1369-70.

In view of these principles of law, this Court is satisfied that for purposes of the instant Motion plaintiff's Amended Complaint sufficiently states a cause of action for negligence. Plaintiff has pled that emergencies have occurred at the holding lot previously and has also pled a number of different health and physical factors that allegedly make

emergencies requiring immediate emergency response quite foreseeable. The proper time to test plaintiff's pleadings is in an appropriate summary judgment motion whereby the Court can engage in a foreseeability and risk-utility analysis using the evidence presented by the parties. At this juncture, however, on the pleadings, the Court is satisfied that plaintiff's claim states a cause of action for negligence. Accordingly, defendants' Motion will be denied with respect to plaintiff's negligence claim.

b. Amended Complaint: Statute of Limitations

The Parkway defendants also move to dismiss plaintiff's negligent selection and hiring claim, arguing that it is barred by the statute of limitations because plaintiff pled this claim for the first time in her Amended Complaint which was filed after the limitations period had run. Plaintiff correctly points out, however, that under Fed. R. Civ. P. 15(c), an amended pleading relates back to the date of the original pleading when, inter alia, "the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." Fed. R. Civ. P. 15(c)(2). Plaintiff's negligence claim arises from the same conduct set forth in her original complaint, thus her amended pleading relates back to the date of her original pleading, and the statute of limitations does not bar this claim. Furthermore, as a federal rule is directly on point, the Court must apply the federal rule over the state rule. See Hanna v.

Plumer, 380 U.S. 460, 471 (1965) (noting that when federal rule directly governs particular situation, federal diversity court is required to apply federal rule unless its application violates the Rules Enabling Act).

c. Punitive Damages

Finally, with respect to the Parkway defendants' argument that plaintiff has not set forth a claim for punitive damages, the Court finds the argument to be meritless. The Court agrees with plaintiff that ¶ 86 of her Amended Complaint sufficiently pleads the reckless indifference standard for punitive damages to survive the instant Motion. Accordingly, defendants' Motion will be denied in its entirety.

D. Conclusion

In conclusion, the City defendants' Motion to Dismiss will be granted in part and denied in part for the aforementioned reasons. The Motion will be granted as to plaintiff's state law claims against all City defendants as well as plaintiff's Title VI claim against the individual City defendants. The Motion will be denied as to all other claims. The Parkway defendants' Motion to Dismiss will be denied.

An appropriate Order follows.

Clarence C. Newcomer, J.

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

CAROLYN W. LYONS,	:	CIVIL ACTION
as Executrix for the Estate of	:	
John F. Lyons,	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al.,	:	
Defendants	:	NO. 98-2662

O R D E R

AND NOW, this day of November, 1998, it is hereby ORDERED as follows:

(1) Defendants City of Philadelphia, Mary Rose Loney, Lynn McDevitt, Bohdan Korzeniowski, Lawrence Kelly, Mark Liciadello and John Doe City 1 through N's Motion to Dismiss Pursuant to F.R.C.P. 12(b)(6) and 12(b)(2) is hereby GRANTED in part and DENIED in part. The Motion is GRANTED as to plaintiff's state law claims against all City defendants and as to plaintiff's Title VI claims against the individual City defendants. The Motion is DENIED as to all other claims. It is further ORDERED that plaintiff's state law claims are hereby DISMISSED in their entirety and that plaintiff's Title VI claim is hereby DISMISSED as against the individual City defendants.

(2) The Motion to Dismiss the Amended Complaint of Plaintiff Pursuant to F.R.C.P. 12(b)(6) of Defendants, Parkway Corporation, Parkway Garage, Inc., Ernest Roy and Michael Bassett is hereby DENIED.

AND IT IS SO ORDERED.

Clarence C. Newcomer, J.