

94 NOV 23 P 4: 09

IN THE SUPERIOR COURT
FOR THE ~~DEPUTY CLERK OF COURT~~
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CESAR C. PASTOR and ELIZABETH)	Civil Action No. 93-1013
W. PASTOR,)	
Plaintiffs,)	
v.)	DECISION AND ORDER
CARLO T. SANCHEZ and)	
IT&E OVERSEAS, INC.,)	
Defendants.)	

This matter came before the Court on July 27, 1994 on the cross-motions of Plaintiffs Cesar and Elizabeth Pastor (hereinafter Cesar and Elizabeth) to add a party pursuant to Rule 21 of the Commonwealth Rules of Civil Procedure, and of Defendant IT&E Overseas, Inc. (IT&E) for partial summary judgment. Defendant Carlo T. Sanchez has joined in IT&E's partial summary judgment motion. The Court, having had the opportunity to hear the parties' oral argument and review their legal memoranda, now renders its decision.

I. FACTS

The motions before the Court stem from an automobile accident which occurred between Cesar and Carlo on August 18, 1993. The

FOR PUBLICATION

1 facts surrounding the accident itself are not included in this
2 Decision as they are not relevant to the motions before the Court.
3 It suffices to say that the 1990 Hyundai driven by Cesar and owned
4 by Elizabeth sustained substantial damage and was not drivable.^{1/}

5 On the day following the accident, Cesar and Elizabeth
6 visited their automobile insurance adjuster, Guam Insurance
7 Adjusters (GIA) and discussed the accident with GIA's claims
8 representative, Ms. Merced M. Borja. According to Ms. Borja, she
9 inspected Elizabeth's damaged Hyundai and offered to either repair
10 the automobile for Elizabeth or pay her the actual ("bluebook")
11 value of a 1990 Hyundai less the amount of the deductible in her
12 insurance policy. See Declaration of Merced M. Borja (July 11,
13 1994).^{2/} The latter offer was presented to Elizabeth in writing
14 in the form of a Loss and Subrogation Receipt ("subrogation
15 agreement") from the underwriter, American Home Assurance Company
16 (AHAC). See Defendant IT&E's Exhibit 1. Ms. Borja claims that
17 Elizabeth refused to sign the subrogation agreement and demanded
18 that the automobile be declared a total loss, that she receive a
19 full pay-off of her automobile loan and a new car to be purchased
20 from her brother-in-law at Triple J Motors. *Id.*

21 Elizabeth denies that she made any such demands. See
22 Declaration of Elizabeth W. Pastor (July 25, 1994). Rather she
23 claims to have inquired about whether she could receive a "loaner"
24 car and whether the proposed repairs to her automobile would be
25 guaranteed. *Id.* According to Elizabeth, Ms. Borja told her that

26
27 ^{1/} The injuries allegedly sustained by Cesar are not
germane to the motions now before the Court.

28 ^{2/} The bluebook value of Elizabeth's car was \$5,900.00 and
her deductible was \$100.00. *Id.*

1 if she chose to have the car repaired, her insurance would provide
2 her with a substitute vehicle until the car repairs were
3 completed, and if she chose to accept the cash payment, she would
4 have use of a substitute car for one day. See Deposition of
5 Elizabeth W. Pastor at 16 (Feb. 22, 1994). However, Ms. Borja
6 told Elizabeth that the repairs would not be guaranteed. *Id.* at
7 15. At the close of their discussion, Elizabeth refused to sign
8 the subrogation agreement from AHAC because she felt pressured and
9 needed time to consult with an attorney. *Id.* at 15-16.

10 On September 2, 1993, after consulting with Attorney Brien S.
11 Nicholas, Elizabeth wrote a letter to IT&E about the accident
12 which included an offer of settlement. *Id.* at 18. One week later,
13 Elizabeth received a correspondence from Mr. Jim Kirby at GIA
14 which reiterated the offer contained in the subrogation agreement
15 Ms. Borja had shown Elizabeth earlier. *Id.* at 19.

16 On September 21, 1994, Elizabeth and Cesar filed suit against
17 Carlo and his employer IT&E. The complaint alleges that Carlo
18 recklessly drove a vehicle owned by IT&E into Elizabeth's
19 automobile causing injury to Cesar and damage to Elizabeth's
20 automobile.^{3/} Among the damages listed in the complaint,
21 Elizabeth seeks the bluebook value (\$5,900.00) of her 1990 Hyundai
22 as compensation for the "damage and loss" of the vehicle, as well
23 as reimbursement for expenses she incurred while securing
24
25

26
27 ^{3/} Cesar and Elizabeth have proceeded on the theory that
28 Carlo and IT&E are jointly and severably liable for their damages
due to the former's alleged reckless driving and the latter's
alleged culpability under the theories of respondeat superior and
negligent entrustment.

1 alternate means of transportation.^{4/} Since September 21, 1994,
2 Cesar and Elizabeth continued to pursue all aspects of this
3 lawsuit. Nevertheless, on February 25, 1994, approximately six
4 months after she had received GIA's offer to repair or reimburse
5 her for her car, Elizabeth finally opted to sign the subrogation
6 agreement, and did receive \$5,800.00 from AHAC which represented
7 the actual value of her car less her deductible.

8 IT&E claims that when Elizabeth signed the subrogation
9 agreement, she assigned and transferred to AHAC all claims and
10 demands against any party arising from the loss or damage to
11 Elizabeth's automobile. As a result, IT&E contends that only AHAC
12 may bring suit for the loss of the 1990 Hyundai; and that
13 Elizabeth no longer has any right to seek redress for property
14 damage or for damages arising from the property loss including her
15 car rental expenses. Accordingly, IT&E has requested the Court to
16 grant a partial summary judgment dismissing Elizabeth's property
17 damage claims. Alternatively, IT&E contends that Elizabeth failed
18 to mitigate her damages (i.e. car rental expenses) by waiting six
19 months to sign the subrogation agreement.

20 Elizabeth has admitted that she signed the subrogation
21 agreement. However, she contends that the assignment of her
22 property damage claim does not estop her from pursuing
23 compensation for property damage from the Defendants. Rather, she
24 asserts that her assignment creates an equitable interest in the
25 insurer, and thus any property damages received as a result of her
26 lawsuit would simply be forwarded to AHAC.

27
28 ^{4/} The Plaintiffs also seek general damages for the alleged
injuries sustained by Cesar, punitive damages, reasonable
attorney's fees and costs.

1 against GIA to the current lawsuit which alleges reckless driving
2 against Carlo and negligent entrustment against IT&E.

3 Rule 21, entitled *Misjoinder* and Non-Joinder of Parties,
4 provides:

5 is-joinder of parties is not ground for dismissal of an
6 action. Parties may be dropped or added by order of the
7 court on motion of any party or of its own initiative at
8 any stage of the action and on such terms as are just.
9 Any claim against a party may be severed and proceeded
10 with separately.

11 Comm. R. Civ. P. 21. Rule 21 "is intended to permit the bringing
12 in of a person, who through inadvertence, mistake or for some
13 other reason, had not been made a party **and whose presence as a**
14 **party is later found necessary or desirable...**". United States v.
15 *Commercial Bank of North America*, 31 F.R.D. 133, 135 (S.D.N.Y.
16 1962) (emphasis added). Cesar's and Elizabeth's sole reason for
17 wanting GIA to be named as a defendant stems from their
18 dissatisfaction with the service they have received from GIA since
19 the car accident between Cesar and Carlo. However, in their
20 Motion to Add Party, Cesar and Elizabeth fail to explain why the
21 addition of GIA is necessary or desirable for the resolution of
22 the claims pending against Carlo and IT&E. Clearly, the
23 allegations of reckless driving and negligent entrustment leveled
24 against Carlo and IT&E can be resolved by this Court without
25 exploring the fiduciary relationship between GIA and Cesar and
26 Elizabeth. Thus, the Court does not consider the addition of GIA
27 desirable.

Although Rule 21 permits the addition of a party at any stage
in action, such a request is typically denied if it will delay the
case or prejudice any parties to the action. 7 WRIGHT & MILLER,
FEDERAL PRACTICE AND PROCEDURE § 1688 (1993). Ultimately, the

1 decision to add a party lies in the discretion of the court.
2 *Intercon Research Assoc., Ltd v. Dresser Indus., Inc.*, 696 F.2d
3 53, 56 (C.A.7th, 1982).

4 The Court agrees with IT&E's claim that the addition of GIA
5 will delay the case and cause them undue prejudice. The issues in
6 Cesar's and Elizabeth's breach of fiduciary duty claim stem from
7 their relationship with their insurer during the months following
8 the car accident. In contrast, the issues in Cesar and
9 Elizabeth's original suit arise from the circumstances surrounding
10 the accident itself. Thus, the claim directed at GIA does not
11 arise from the same facts as the claims in the original suit.

12 Currently, the existing parties have completed extensive
13 discovery concerning the circumstances surrounding the accident
14 and Carlo's employment status at IT&E. The addition of GIA to
15 this action would have the effect of reopening discovery in an
16 area which does not concern either Carlo or IT&E. As a result,
17 IT&E and Carlo would be forced to endure discovery wholly
18 unrelated to the claims against them. In addition, the Court's
19 ultimate determination of the extent of their liability would be
20 delayed. In short, the Court finds that Elizabeth and Cesar's
21 claim against GIA would be better left to a separate lawsuit as
22 its inclusion in the case at bar would cause undue delay and
23 prejudice to IT&E and Carlo. Accordingly, Cesar's and Elizabeth's
24 motion to add GIA as a party is DENIED.

25
26 **B. Summary Judgment Standard**

27 Summary judgment is entered against a party if, viewing the
28 facts in the light most favorable to the non-moving party, the

1 Court finds as a matter of law that the moving party is entitled
2 to the relief requested. *Cabrera v. Heirs of De Castro*, 1 N.M.I.
3 172, 176 (1990). Once the moving party meets its initial burden
4 of showing entitlement to judgment as a matter of law, the burden
5 shifts to the non-moving party⁷ to show a genuine dispute of
6 material fact. *Id.* at 17.

7
8 **C. The Effect of Elizabeth's Loss and Subrogation Receipt**

9 Generally, when an insurance company pays for a loss, the
10 company is subrogated in a corresponding amount to the insured's
11 right of action against the party responsible for the loss.
12 *Richardson v. Providence Washington Ins. Co.*, 237 N.Y.S.2d 893
13 (1963); see APPLEBAUM, *INSURANCE LAW & PRACTICE* § 4051 (1993). Although
14 the principle of subrogation is applied liberally to protect
15 insurers, *Weber v. United Hardware & Implement Mutual Co.*, 31
16 N.W.2d 456, 459 (1948), the existence of subrogation is not
17 automatic and should be determined by Courts on a case by case
18 basis. *Int'l Serv. Ins. Co. v. Home Ins Co.*, 276 F.Supp. 6432
19 (1967).

20 In the case at bar, Elizabeth signed a subrogation agreement
21 which provides that she received \$5,800.00, and in return,
22 assigned all her claims for loss and expense from the accident to
23 AHAC which now is subrogated in the place of Elizabeth for
24 purposes of any claims she has against IT&E or Carlo.^{5/} IT&E

25
26 ^{5/} The document provides:

27 "[Elizabeth] received from American Home Assurance
28 Company Five Thousand Eight Hundred Dollars & 00/100
(\$5,800.00) in full satisfaction, compromise and
discharge of all claims for loss and expense sustained
(continued...)

1 correctly refers to caselaw upholding the principle that they have
2 a right to defend themselves against the real party in interest.
3 *Shambley v. Jobe-Blackley Plumbing and Heating Co.*, 142 S.E.2d
4 18, 20 (1965). IT&E contends that only AHAC may bring suit for
5 the loss of the 1990 Hyundai; and that Elizabeth no longer has any
6 right to seek redress for property damage or for damages arising
7 from the property loss including her car rental expenses because
8 she already assigned her rights to AHAC. IT&E cites several cases
9 for the proposition that when an insurer has paid the full amount
10 of a loss suffered by the insured, the insurer becomes subrogated
11 as the only real party in interest to the full extent of the
12 insured's claim against the party primarily liable for the loss.
13 *Link Aviation v. Downs*, 325 F.2d 613, 614 (D.C. Cir. 1963);
14 *Duboise v. State Farm Mutual Automobile Ins. Co.*, 619 P.2d 1223,
15 1224 (Nev. 1980); *J.C. Livestock Sales, Inc. v. Schoof*, 491 P.2d
16 560, 562 (Kan. 1971); *Ellis Canning Co. v. Int'l Harvester Co.*,
17 255 P.2d 658, 659 (1953).

18 In response, Elizabeth attempts to distinguish her case as
19 one where the insured has only received partial payment of her
20 loss. In partial payment situations, both the insurer and the
21 insured are considered real parties in interest; and the insured

22 _____
23 ^{5/}(...continued)

24 to property insured under [her policy number] by reason
25 of **Collision** loss on **Aug. 18, 1993** which the undersigned
26 hereby assigns and transfers to the said Company each
27 and all claims and demands against any person, persons,
28 corporation or property arising from or connected with
such loss or damage and the said Company is subrogated
in the place of and to the claims and demands of the
undersigned against said person, persons, corporation or
property in the premises to the extent of the amount
above named."

Defendant IT&E's Exhibit 1 (emphasis in original).

1 is actually the proper party to bring the action because she
2 suffered the entire loss, whereas the insurer cannot establish a
3 claim beyond the amount for which it is liable under the policy.
4 *Deemer v. Reichart*, 404 P.2d 174, 178 (Kan. 1965); *Fidelity &*
5 *Deposit Co. of Maryland v. Shawnee State Bank*, 766 P.2d 191 (Kan.
6 App. 1988). In cases where an insured stands to recover damages
7 from a third party which she already received from her insurer,
8 such funds are held in trust for the insurer who retains an
9 equitable interest. *Warren v. Kirwan*, 598 S.W.2d 598, 600-02 (Mo.
10 Ct. App. 1980).

11 Although the Court agrees with the principle that an insured
12 remains the proper party to bring an action in cases where they
13 have only been partially compensated by their insurer, the facts
14 here do not betoken a case of partial payment. Under the terms of
15 the subrogation agreement, Elizabeth signed away all claims
16 arising from or connected with the loss of her vehicle. See
17 Defendant IT&E's Exhibit 1. The car rental expenses she incurred
18 during the months following the accident clearly arose from the
19 loss of her vehicle. The fact that Elizabeth chose to wait
20 several months before signing the subrogation agreement does not
21 dispel the reality that she accepted \$5,800.00 for all claims
22 arising from her loss of property.

23 To be sure, most of the general damages alleged in Cesar's
24 and Elizabeth's complaint were not satisfied by Elizabeth's
25 receipt of \$5,800.00. However, other than the loss of her car and
26 the expense of finding a temporary replacement, the Court finds no
27 allegation of general damages which relate to Elizabeth. The
28 remaining allegations of general damages, including injuries and

1 medical expenses, are singularly associated with Cesar. Thus, GIA
2 has paid Elizabeth in full for the damages she sustained as a
3 result of the car accident. GIA is the only real party in
4 interest to Elizabeth's claims of property loss and the expenses
5 associated with the loss.

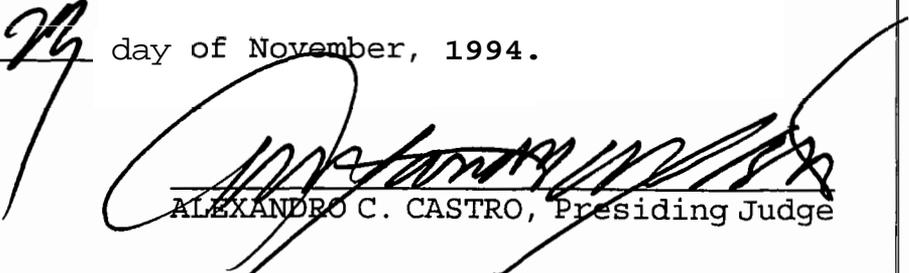
6 Therefore, the Court GRANTS Defendant IT&E and Carlo's motion
7 for partial summary judgment and thereby dismisses the property
8 related portion of this action brought by Elizabeth. Accordingly,
9 Elizabeth no longer is a party to this lawsuit. This decision
10 shall not affect Cesar's prayer for relief from the damages he
11 allegedly incurred during the accident.

12 Further, since Cesar's complaint alleges his loss of use of
13 the vehicle, Cesar may continue to seek recovery for loss of use
14 despite the fact that his wife signed away her rights to AHAC.
15 Although the Court recognizes Cesar's duty to mitigate his
16 damages, such a determination is fact intensive and the
17 Defendant's have failed to satisfy their burden under the summary
18 judgment standard. Finally, Cesar's claim for punitive damages
19 also survives this grant of partial summary judgment.

20
21 **IV. CONCLUSION**

22 For the foregoing reasons, Cesar's and Elizabeth's motion to
23 add GIA as a party in DENIED, and IT&E's and Carlo's motion for
24 partial summary judgment is GRANTED.

25
26 So ORDERED this 29 day of November, 1994.

27
28 
ALEXANDRO C. CASTRO, Presiding Judge