STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: JUNE 8, 2012)

NAYSHA BERRIOS, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BERRIOS	:	
v.	:	**C.A. No. PC 2004-2390**
JEVIC TRANSPORTATION, INC.; CRAIG G. BENFIELD; FIRST STUDENT, INC.; ILBA BERRIOS, ALIAS; SAIA, INC.; SAIA MOTOR FREIGHT LINE, L.L.C., ALIAS; AND NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA	:	

DECISION

GIBNEY, P.J. The instant wrongful death action arises from an automobile accident involving Plaintiff Naysha Berrios ("Plaintiff"), Defendant First Student, Inc. ("First Student"), Defendant Jevic Transportation, Inc. ("Jevic"), Defendant Craig G. Benfield, and various other parties. Today, this Court considers Motions relative to the structure of this litigation. First Student moves to bifurcate and sever the issues in this case into two separate actions: (1) an action addressing liability and damages and (2) a declaratory judgment action regarding the liability limits of an insurance policy that Defendant National Union Fire Insurance Company of Pittsburgh, PA ("National Union") issued to First Student. Jevic also moves to bifurcate and sever the issues into two separate actions: (1) an action addressing liability and damages and (2) a declaratory judgment action regarding the obligation of Defendants Saia, Inc. and/or Saia Motor Freight Line,

LLC (collectively "the Saia Entities") to indemnify Jevic and Benfield.[1] Jurisdiction is pursuant to Super. R. Civ. P. 21 ("Rule 21") and Super. R. Civ. P. 42(b) ("Rule 42(b)"). For the foregoing reasons, this Court grants First Student's and Jevic's requests for bifurcated trial on the insurance, liability and damages, and indemnification issues.

I

Facts and Travel

The instant litigation boasts a long and winding eight year procedural history too complex to recount in full. As such, this Court only relays those facts necessary to the disposition of First Student's and Jevic's Motions.[2]

On the morning of September 5, 2001, a school bus owned by First Student collided with an eighteen wheel tractor-trailer owned by Jevic and operated by Benfield. Plaintiff and Plaintiff's infant daughter, Cassandra Berrios, were passengers on the First Student bus and were injured in the collision. Cassandra ultimately died from her injuries. Plaintiff subsequently filed the instant wrongful death action against First Student, Jevic, Benfield and various other parties.

In December 2009, this Court granted Plaintiff's Motion to Amend her Complaint to add counts against the Saia Entities. Plaintiff alleges that a contract between the Saia Entities and Jevic requires the Saia Entities to assume liability for all of Plaintiff's claims against Jevic and Benfield.

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[1] Benfield and the Saia Entities are parties to Jevic's Motion.

[2] For a fuller account of this case's underlying factual and procedural history, see Berrios v. Jevic Transportation, Inc., C.A. No. PC-2004-2390, 2012 WL 894010 (R.I. Super. Mar. 12, 2012), Berrios v. Jevic Transportation, Inc., C.A. No. PC-2004-2390, 2012 WL 254974 (R.I. Super. Jan. 23, 2012), Berrios v. Jevic Transportation, Inc., C.A. No. PC-2004-2390 (R.I. Super. July 15, 2011), and Berrios v. Jevic Transportation, Inc., C.A. No. PC-2004-2390, 2010 WL 5056132 (R.I. Super. Dec. 6, 2010).

In July 2011, Plaintiff received this Court's permission to amend her Complaint to add a declaratory judgment count against National Union, First Student's primary insurer. Plaintiff subsequently moved for Summary Judgment against National Union and asked this Court to declare that the National Union insurance policy set coverage at $2 million at the time of the automobile accident. This Court concluded that a genuine issue of material fact existed as to the presence of a scrivener's error in the insurance policy that might warrant the policy's reformation due to a mutual mistake of fact. As such, this Court denied Plaintiff's Motion for Summary Judgment. Berrios v. Jevic Transp., Inc., C.A. No. PC-2004-2390, 2012 WL 894010 (R.I. Super. Mar. 12, 2012).

First Student and Jevic filed their Motions to Bifurcate on May 22 and May 30, 2012 respectively. They seek an Order providing for separate trials on (1) liability and damages, (2) the National Union insurance policy limits, and (3) the Saia Entities' obligation to indemnify Jevic and Benfield.

II

Analysis

A

Bifurcation Versus Severance

Both First Student and Jevic move "pursuant to [Rule 42] for an order bifurcating and severing the issues into two separate actions."[3] Their requests suggest confusion regarding claim separation procedure. Accordingly, this Court shall clarify the distinction between bifurcation and severance before deciding which device is the most appropriate claim separation mechanism.

[3] First Student and Jevic each used this phraseology in their respective motions. First Student's Mot. to Bifurcate at 1; Jevic's Mot. to Bifurcate at 1.

The Superior Court Rules of Civil Procedure contemplate two means of separating claims—one within the action itself, the other resulting in a second or new action. Super. R. Civ. P. 21; Super. R. Civ. P. 42(b); see Acevedo-Garcia v. Monroig, 351 F.3d 547, 558 (1st Cir. 2003).[4] Rule 42(b) provides for bifurcation.[5] It authorizes courts to divide a single action into separate trials that remain under the umbrella of the original solitary action. Super. R. Civ. P. 42(b); see 88 C.J.S. Trial § 17 (2001) ("An order for a separate trial keeps the lawsuit intact while enabling the court to hear and decide one or more issues without trying all of the controverted issues at the same hearing."). Conversely, Rule 21 furnishes the mechanism for dividing a case into separate actions also known as severance.[6] Super. R. Civ. P. 21; see 88 C.J.S. Trial § 17 ("A severance occurs when a lawsuit is divided into two or more separate and independent or distinct causes.").

Although seemingly minor, "the distinction between the two rules is jurisdictionally significant . . . ." Gaffney v. Riverboat Servs. of Ind., 451 F.3d 424, 442

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[4] Our Supreme Court has "repeatedly stated that federal-court interpretations of a procedural rule that is substantially similar to one of our own state rules of civil procedure should serve as a guide to the construction of our own rule." See Hall v. Ins. Co. of N. Am., 727 A.2d 667, 669 (R.I. 1999) (citing Smith v. Johns-Manville Corp., 489 A.2d 336, 339 (R.I. 1985)). Thus, this Court shall refer to federal precedent where appropriate. Smith, 489 A.2d at 339.

[5] Rule 42(b) states in pertinent part:

> "[T]he court in furtherance of convenience or to avoid prejudice or when separate trials will be conducive to expedition and economy, may order a separate trial . . . of any claim, cross-claim, counterclaim, or third party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third party claims, or issues." Super. R. Civ. P. 42(b).

[6] Rule 21 provides in pertinent part: "Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately." Super. R. Civ. P. 21.

(7th Cir. 2006). Where a court holds separate trials within a solitary action pursuant to Rule 42(b), no single trial's judgment is final and appealable until all trials within that action reach judgment. Id. at 442 n.18 (citing 4 James Wm. Moore et al., Moore's Federal Practice § 21.06 (2005)). Conversely, a single claim severed out of a suit pursuant to Rule 21 proceeds as an independent action and may result in a final appealable judgment, notwithstanding the existence of unresolved claims in the other action. Id. at 442. Therefore, parties seeking claim separation should be mindful of the differences between bifurcation and severance.[7]

Whether to bifurcate or sever claims, however, is ultimately a case management determination peculiar to this Court's "broad discretion." Mello v. DaLomba, 798 A.2d 405, 408 (R.I. 2002); see Acevedo-Garcia, 315 F.3d at 558. Given this case's long, winding, and often tortured history, interests of justice and judicial economy dictate that separate trials occur within a single action to ensure efficient and consistent administration of this matter. Mello, 798 A.2d at 408. First Student and Jevic, moreover, fail to explain how severance of claims is superior to bifurcation. As such, this Court declines First Student's and Jevic's invitation to sever the insurance and indemnification issues from questions of liability and damages. Id. If this Court is to separate claims, it must do so through bifurcation.

[7] First Student and Jevic are hardly alone in their confusion regarding bifurcation and severance. Courts often use the wrong terminology when addressing these two procedural devices. See Acevedo-Garcia, 351 F.3d at 559 (noting that courts obscure the distinction between bifurcation and severance by speaking of "'separate trial' and 'severance' interchangeably"). This Court is not immune from such errors. Ballew v. Sears, Roebuck & Co., C.A. No. PC-2005-5108, 2006 WL 3436061, *1 (R.I. Super. Nov. 27, 2006) ("Therefore, in the interest of justice and pursuant to Rule 42(b) of the Rhode Island Rules of Civil Procedure, the Court severs Mr. Ballew's claims against Sears . . . ." (emphasis added)).

B

Bifurcation

Rule 42(b) of the Superior Court Rules of Civil Procedure states in pertinent part:

> "[T]he court in furtherance of convenience or to avoid prejudice or when separate trials will be conducive to expedition and economy, may order a separate trial . . . of any claim, cross-claim, counterclaim, or third party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third party claims, or issues." Super. R. Civ. P. 42(b).

Rule 42(b) grants this Court "broad discretion to separate the issues at trial." Mello, 798 A.2d at 408 (citing Diluglio v. Providence Auto Body, Inc., 755 A.2d 757, 776 (R.I. 2000)). In exercising such authority, this Court considers a number of factors: (1) whether bifurcation will avoid prejudice to any party at trial that may occur in the absence of bifurcation; (2) whether bifurcation of the issues for trial will expedite disposition of the case and conserve judicial resources; and (3) whether the issues are essentially independent of each other so that there will be no need to duplicate the presentation of significant areas of the evidence in the bifurcated proceedings. Thorndike v. Daimlerchrysler Corp., 220 F.R.D. 6, 7-8 (D. Me. 2004); see Mello, 798 A.2d at 408 ("The purpose of [Rule 42(b)] is to preserve judicial economy, but this Court approves of bifurcation when to do otherwise may invite confusion or unfair prejudice."). The parties requesting bifurcation bear "the burden of showing it is warranted." Thorndike, 220 F.R.D. at 8.

First Student and Jevic argue that an order to bifurcate this matter into separate trials on the insurance, liability, and indemnification issues would avoid prejudice to the parties and conserve judicial resources. This Court agrees.

1

Prejudice

Disposition of the insurance and indemnification issues through bifurcated proceedings would avoid prejudice to First Student and Jevic. Rhode Island law restricts the admission of evidence of a party's insurance coverage. R.I.R. Evid. 411; Oliveira v. Jacobson, 846 A.2d 822, 828 (R.I. 2004). Evidence of insurance coverage is inadmissible to prove negligence, but may be admissible for other purposes, such as showing witness bias. Oliveira, 846 A.2d at 828. In negligence cases however, courts must take great care in deciding whether to admit coverage evidence for non-negligence purposes because such evidence could prejudice the fact-finder against the insured party. See R.I.R. Evid. 411. In the instant matter, trial of the insurance issue will require the fact-finder to decide whether the terms of the National Union insurance policy resulted from a mutual mistake of fact between National Union and First Student. Resolution of this question necessitates introduction of evidence tying First Student to the National Union insurance policy. Accordingly, this Court would avoid possible prejudice to First Student by separating the insurance issue from questions of liability and damages. Id.; see Mello, 798 A.2d at 408.

The indemnification issue raises somewhat similar concerns. Trial of the indemnification issue involves a determination as to whether Jevic and the Saia Entities agreed that the Saia Entities would assume liability for all of Plaintiff's claims against Jevic and Benfield. Jevic posits that trial of the indemnification issue would require the fact-finder to consider evidence of a guarantor-guarantee relationship between the Saia Entities and Jevic. Evidence of such a relationship, Jevic suggests, could prejudice the

fact-finder against Jevic. Rhode Island law, however, does not single out guarantor-guarantee relationships in the same way that the Rhode Island Rules of Evidence do relationships between insurers and their insureds. Nonetheless, this Court agrees with Jevic that evidence of a guarantor-guarantee relationship between Jevic and the Saia Entities could prejudice the fact-finder to the detriment of Jevic and/or the Saia Entities. Further, simultaneous trial of indemnification and liability matters could confuse the fact-finder. As such, this Court concludes that it could avoid the potential for prejudice or confusion by separating trial of the indemnification issue from questions of liability and damages.[8] See Mello, 798 A.2d at 408.

2

Judicial Economy

Of even greater importance, bifurcation of the insurance and indemnification issues from the trial on liability and damages would substantially serve interests of judicial economy. Prompt resolution of the insurance issue would enable Plaintiff to make an effective demand on National Union in accord with the principles announced in Asermely v. Allstate Insurance Co., 728 A.2d 461, 464 (R.I. 1999). As such, interests of judicial economy favor bifurcation of the insurance issue.

The case for bifurcation of the indemnification issue is equally strong from a judicial resources perspective. The need to resolve the indemnification issue is contingent on the outcome of the trial on liability and damages. A verdict freeing Jevic

[8] This Court is not creating a guarantor-guarantee relationship analogue to Rhode Island Rule of Evidence 411 and nothing in this Decision should be construed as doing so. Rather, this Court simply acknowledges—as part of its bifurcation inquiry—that admission of evidence of a guarantor-guarantee relationship could affect the fact-finder's consideration of Plaintiff's negligence claim to Jevic's detriment. Such potential for prejudice and confusion supports bifurcation of the indemnification issue.

of liability would moot the indemnification issue. It makes little sense therefore to try the indemnification issue in tandem with questions of liability and damages. See Mello, 798 A.2d at 408-09 (holding that trial court did not abuse its discretion in bifurcating the issues of liability and damages because plaintiff's right to be heard on damages "cannot be triggered until he has first established defendants' liability"). The interests of judicial economy therefore are served through bifurcation of the indemnification issue from the liability question. See id.

Finally, this Court observes that the insurance and indemnification issues involve questions of contractual intent and interpretation. Such subjects are entirely distinct from the questions that the fact-finder must resolve in a trial on liability and damages resulting from vehicular accident. Thus, the potential for presentation of substantial amounts of duplicative evidence in the bifurcated proceedings is minimal. Thorndike, 220 F.R.D. at 7-8. Bifurcation of the insurance and indemnification issues would not further exhaust judicial resources. See Mello, 798 A.2d at 408.

3

Summary

After considering this case in light of the bifurcation factors, this Court concludes that an order to bifurcate the insurance and indemnification issues from questions of liability and damages would avoid prejudice to First Student and Jevic, reduce the potential of confusing the fact-finder, and further the interests of judicial economy. Accordingly, this Court grants First Student's request for a bifurcated trial on the insurance issue and Jevic's request for a bifurcated trial on the indemnification issue.

III

Conclusion

This Court shall try the issues of insurance, liability and damages, and indemnification separately. This Court will not sever claims. Unless altered by further Order of this Court, the litigation shall proceed as follows: Trial to determine the presence of a mutual mistake of fact in the National Union insurance policy shall begin October 22, 2012. Trial on questions of liability and damages shall begin November 29, 2012. Trial on the Saia Entities' obligation to indemnify Jevic and Benfield shall begin January 14, 2013. Counsel shall submit an appropriate Order for entry.