

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC.

SUPERIOR COURT

(FILED: August 25, 2016)

MIRANDA STARING, Individually, :  
as the Sole Heir, Legal Beneficiary and :  
Legal Representative of the Estate of :  
Femmetje Staring, and on behalf of the :  
ESTATE of FEMMETJE STARING, :  
*Plaintiffs,* :

V. :

C.A. No. NC-2014-0336

AMERICAN SHIPYARD CO., LLC :  
D/B/A NEWPORT SHIPYARD, LLC; :  
ASC REALTY CO., LLC; :  
U.S. SECURITY ASSOCIATES, INC. :  
D/B/A D.B. KELLY ASSOCIATES; :  
JOSHUA CARLSON; ABC :  
CORPORATIONS and JOHN DOE :  
*Defendants.* :

**DECISION**

**STONE, J.** Presently before the Court is Defendants American Shipyard Co., LLC, d/b/a Newport Shipyard, LLC (Newport Shipyard) and ASC Realty Co., LLC’s (ASC) (collectively, Defendants) Motion for Leave to File a Third Party Complaint Against the Estate of Jennifer Way. The Motion was filed on February 25, 2016, and the Court heard arguments from the parties on May 2, 2016. At the close of the hearing, the Court indicated that it would grant the Defendants’ Motion and that it would issue a written decision. Decision is herein rendered in favor of the Defendants to file a third-party complaint. Jurisdiction in this Court is pursuant to G.L. 1956 § 8-2-14 and Super. R. Civ. P. 14 (Rule 14).

# I

## Facts and Travel

The underlying factual background of this case originates out of a car accident that occurred in the early morning hours of October 5, 2012. Earlier that evening, Jennifer Way (Way), Femmetje Staring (Staring), and Sara Louise Owen (Owen) attended a birthday party at the Fastnet Pub in Newport, Rhode Island. At some point, the trio decided to leave the party and go to the S/V HYPERION. Owen was a crewmember aboard that vessel, and the S/V HYPERION was then docked at the Newport Shipyard.

When they departed, Way was driving the vehicle with Staring and Owen riding along as her passengers. After entering Newport Shipyard, Way missed a right-hand turn that would have taken her to the S/V HYPERION. She then continued down a path that caused her to travel off of the pier at the travel lift and into the harbor. As a result of the crash, all three of the vehicle's occupants perished.

An autopsy was conducted on Way, and it revealed that she was legally intoxicated at the time of the accident. The autopsy report concluded that there was “a large amount of alcohol in the femoral blood and vitreous humor, and this acute intoxication may have played a role in the circumstances of the motor vehicle mishap and subsequent drowning event.”<sup>1</sup> On December 14, 2015, the Estate of Jennifer Way was established. Counsel for the Defendants petitioned to have the Estate of Jennifer Way opened.

The preceding factual background gave rise to several lawsuits. On July 23, 2013, Gregory Way, Diane Way (the Ways), and Shannon T. Breault filed a lawsuit in this Court—

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<sup>1</sup> Although Newport Shipyard and ASC did not attach a copy of the autopsy report to their memorandum as an exhibit, the Court accepts their representations of its contents as true. See Defs.’ Am. Shipyard Co. and ASC Realty Co.’s Mem. in Supp. of its Am. Mot. for Leave to File a Third Party Compl. Against the Estate of Jennifer Way, 2.

NC-2013-0305. Roughly a year later, the instant lawsuit was filed on August 21, 2014 by Miranda Staring and the Estate of Femmetje Staring (collectively, Plaintiffs). Those two suits were consolidated for discovery purposes by Order of this Court on April 16, 2015. Additionally, on September 30, 2015, Owen’s parents, Sarah Margaret Owen and John Norton Owen, as executors of Owen’s Estate and in their individual capacity, filed a civil action against Newport Shipyard and ASC in the United States District Court for the District of Rhode Island.

Defendants filed the present Motion on February 25, 2016, seeking leave to file a third-party complaint against the Estate of Jennifer Way, seeking contribution, indemnity, and forwarding various theories of negligence. Thereafter, on March 8 2016, Plaintiffs filed an objection. The Court held a hearing on the Motion on May 2, 2016. Essentially, the objection pressed by counsel for the Ways in the sister-action was that there was no money in the Estate of Jennifer Way for Defendants to collect on. Therefore, he argued that it would be a nullity or futile for the Court to grant the Defendants’ Motion. Counsel for the Ways also argued that the only reason Defendants sought to add Way’s estate was to open the door to argue comparative negligence to the jury at trial. After hearing arguments from all the parties, the Court indicated that it would issue a written decision on the matter.

## II

### Standard of Review

Pursuant to Rule 14, “the decision as to whether or not to allow a defendant to file a third-party complaint is left to the sound discretion of the trial court.” Wampanoag Grp., LLC v. Iacoi, 68 A.3d 519, 522 (R.I. 2013) (citing Pettella v. Corp Bros., Inc., 107 R.I. 599, 613, 268 A.2d 699, 706 (1970)). In pertinent part, Rule 14 reads as follows:

“At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to

be served upon a person not a party to the action who is or may be liable to the third party plaintiff for all or part of the plaintiff's claim against the third party plaintiff." See Wampanoag Grp., LLC, 68 A.3d at 522.

The Rhode Island Supreme Court has "explicitly acknowledged that 'Rule 14 allows a defendant to bring in a third-party for contribution and/or indemnification.'" Id. at 523 (citing Roberts–Robertson v. Lombardi, 598 A.2d 1380, 1381 (R.I. 1991)).

### III

#### Analysis

Defendants seek permission to file a third-party complaint against the Estate of Jennifer Way for contribution, indemnity, or under various negligence theories. In objection, the Ways state that the Estate of Jennifer Way is insolvent and would not be able to honor any liability incurred as a result of the action. As a result, the Ways insist that it would be fruitless or futile to allow the Defendants leave to file the third-party complaint. However, Defendants maintain that there was an automobile insurance policy in place that could contribute to the Estate of Jennifer Way's possible liability.

Defendants argue that under the plain language of Rule 14, they are entitled to file the third-party complaint because Way was intoxicated at the time of the accident, and therefore, her negligence either caused or contributed to the resulting deaths. They base that argument on the language contained in Way's autopsy report—stating that "acute intoxication may have played a role in the circumstances of the motor vehicle mishap and subsequent drowning." Defendants further rely on Wampanoag Grp., LLC for the proposition that Rule 14 expressly permits them to file the third-party complaint against the Estate of Jennifer Way.

Ultimately, the Court agrees with Defendants. Although the argument submitted by the Ways—that the Estate is insolvent and cannot possibly account for any judgment against it—is

persuasive, the language of Rule 14 is quite clear that a party may file a third-party complaint against “a person not a party to the action who is or may be liable to the third party plaintiff.” Wampanoag Grp., LLC, 68 A.3d at 522 (emphasis supplied); see also Rule 14. Rule 14 does not require that the party be able to actually honor that liability post-judgment, merely that the third-party defendant may be liable. Indeed, the Rhode Island statute providing for contribution sets forth that “[t]he right of contribution exists among joint tortfeasors; provided however, that when there is a disproportion of fault among joint tortfeasors, the relative degree of fault of the joint tortfeasors shall be considered in determining their pro rata shares.” G.L. 1956 § 10-6-3. That section makes no mention of the ability to pay, and therefore, this Court will not read that language into its requirements. See id.

Additionally, Defendants believed that the automobile insurance policy, owned by Way, may cover her liability from the underlying incident. Although the Ways did not agree with that statement—and indeed went so far as to say that the policy would not cover the accident—the Court is satisfied that the Defendants have a reasonable basis for seeking to file the third-party complaint. See Botkin v. Tokio Marine & Nichido Fire Ins. Co., 956 F. Supp. 2d 795, 801 (E.D. Ky. 2013) (quoting Asher v. Unarco Material Handling, Inc., No. 6:06–548–DCR, 2007 WL 3046064, at \*4 (E.D. Ky. Oct. 16, 2007)) (noting that “the exercise of discretion is essentially a process of balancing the prejudices”). This factor then too weighs in favor of the Court granting the Defendants’ Motion.

Therefore, in light of the aforementioned background and the argument of both parties, the Court finds that the Defendants have met their burden to file a third-party complaint pursuant to the plain language of Rule 14. See Wampanoag Grp., LLC, 68 A.3d at 522; see also Greene v. Kitner, 279 F. Supp. 745, 746 (M.D. Pa. 1968) (noting that “ordinarily the motion to bring in a

third-party defendant is granted as a matter of course”). As a result, and in the exercise of its discretion, the Court determines that the balancing of the prejudices weighs in favor of the Defendants and, as such, Defendants’ Motion is hereby granted.

#### **IV**

#### **Conclusion**

Based upon the foregoing, the Court believes that the interests weigh in favor of granting Defendants leave to file the third-party complaint. Therefore, the Defendants’ Motion is granted. Counsel shall confer and submit an appropriate order that is consistent with this Decision.



**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**TITLE OF CASE:** **Miranda Staring, et al. v. American Shipyard Co., LLC  
d/b/a Newport Shipyard, LLC, et al.**

**CASE NO:** **NC-2014-0336**

**COURT:** **Newport County Superior Court**

**DATE DECISION FILED:** **August 25, 2016**

**JUSTICE/MAGISTRATE:** **Stone, J.**

**ATTORNEYS:**

**For Plaintiff:** **Mark B. Decof, Esq.  
Donna M. DiDonato, Esq.  
Keith B. Kyle, Esq.**

**For Defendant:** **Robert E. Collins, Esq.  
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Anthony J. Gianfrancesco, Esq.  
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