



conducted his business at the premises. Id. at ¶ 18.

Rader asserted several counts against Travelers, but Rader's only remaining counts against Travelers are the count for breach of fiduciary duty and good faith (Count I) and the count for statutory bad faith, pursuant to 42 Pa. C.S.A. § 8371, (Count III). See Rader v. Travelers Indemnity Co. of Illinois, March 2000, No. 1199, slip op. at 2-4 (C.P. Phila. Sept. 25, 2000)(Herron, J.) (hereinafter "Rader I"). Rader's claims against Travelers arise from the insurance policy it had with Travelers, policy no. 1-680-369R693-7-TIL-98, which purportedly insured plaintiff *inter alia* for its building on the premises, its business property, business income, business interruption losses and damages caused by fire damage. Compl. at ¶ 20. The gravamen of these claims is that Travelers' agents represented and assured Rader that his claims would be processed without the need for Rader to be independently represented, that Rader relied upon the agents' advice, that Travelers knew of this reliance, but that Travelers failed to advise Rader of his claims for benefits under the insurance policy and failed to make timely payments of benefits, as well as acting in "bad faith" in failing to make rental payments despite knowledge that the landlord intended to evict Rader. Id. at ¶¶ 26-28, 32-34, 41, 47.

Rader also asserted several causes of action against the Strine defendants, but only Count VII under the UTP/CPL remains, where the other counts were barred by the doctrine of res judicata pursuant to a confessed judgment action. See Rader v. Travelers Indemnity Co. of Illinois, March 2000, No. 1199, slip op. at 8 (C.P. Phila. Oct. 25, 2001)(Herron, J.) (hereinafter "Rader II"). The gravamen of the remaining claim against the Strine defendants arises from their alleged failure to repair or rebuild the premises despite alleged representations by William B. Strine and in breach of the obligations under the lease. Compl. at ¶¶ 11-13, 56-71.

The Strine defendants filed an Answer with New Matter, asserting a cross-claim against Travelers, pursuant to Rule 2252 (d) of the Pennsylvania Rules of Civil Procedure. The only allegations asserted by the Strine defendants against Travelers are stated as follows:

105. Answering defendant avers by way of further defense that if plaintiff sustained injuries or damages as alleged in plaintiff's complaint, all of which injuries and damages are specifically denied, then said injuries or damages were not the result of any acts and/or omissions on the part of answering defendant, but rather, defendant, [Travelers] is primarily liable for any damages which may have been suffered by plaintiff which are subsequently established at the time of trial.
106. If as a result of the matter alleged in plaintiffs' complaint and the answers thereto, answering defendant may be held liable for all or part of such injuries or damages as plaintiff may have suffered and which may be subsequently established at the time of trial, then defendant, [Travelers] as the party primarily liable for such injuries or damages is liable to [the Strine defendants], by way of contribution and/or indemnification for all such injuries or damages as they may suffer and they therefore assert in this action his right to such indemnification and/or contribution.

Strine Defendants' Answer with New Matter, ¶¶ 105-106. Travelers denies these allegations as conclusions of law. Travelers' Reply, ¶¶ 105-106.

### **LEGAL STANDARD**

Rule 1034 of the Pennsylvania Rules of Civil Procedure ["Pa.R.C.P."] provides that "[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings." Pa.R.C.P. 1034(a). On a motion for judgment on the pleadings, which is similar to a demurrer, the court accepts as true all well-pleaded facts of the non-moving party, but only those facts specifically admitted by the nonmoving party may be considered against him. Mellon Bank v. National Union Ins. Company of Pittsburgh, 2001 WL 79985, at \*2 (Pa.Super.Ct. Jan. 31, 2001).

However, “neither party will be deemed to have admitted conclusions of law.” Id. See also, Flamer v. New Jersey Transit Corp., 414 Pa.Super. 350, 355, 607 A.2d 260, 262 (1992)(“While a trial court cannot accept the conclusions of law of either party when ruling on a motion for judgment on the pleadings, it is certainly free to reach those same conclusions independently.”)(citations omitted).

In ruling on a motion for judgment on the pleadings, the court should confine itself to the pleadings, such as the complaint, answer, reply to new matter and any documents or exhibits properly attached to them. Kelly v. Nationwide Ins. Co., 414 Pa.Super. 6, 10, 606 A.2d 470, 471 (1992). See also, Kotvosky v. Ski Liberty Operating Corp., 412 Pa.Super. 442, 445, 603 A.2d 663, 664 (1992). Such a motion may only be granted in cases where no material facts are at issue and the law is so clear that a trial would be a fruitless exercise. Ridge v. State Employees Retirement Board, 690 A.2d 1312, 1314 n.5 (Pa.Comm. Ct. 1997)(citations omitted).

## **DISCUSSION**

In Travelers’ present Motion, it asserts that Rader’s allegations against it are separate and distinct from his allegations against the Strine defendants and that the alleged liabilities of itself and the Strine defendants do not arise out of the same transactions or occurrences. Motion, ¶¶ 4, 15. The Strine defendants, in turn, assert that Rader’s claim against themselves is “a direct result of Travelers’ failure to make timely payments under its policy of insurance” and that the alleged liabilities do arise out of the same set of transactions and/or occurrences since these liabilities arise out of Travelers’ alleged failure to honor its obligations with Rader under Rader’ insurance policy. Strine Defendants’ Answer to the Motion, ¶¶ 4, 15.

This court now holds that the Strine defendants’ cross-claim against Travelers is improper because

the alleged liabilities involve separate and distinct causes of action where the liability against the Strine defendants arises out of the lease and William B. Strine's alleged misrepresentations to repair and replace the building, while Travelers' alleged liability arises out of its insurance policy with Rader and its failure to make timely payments of benefits.

Rule 2252 of the Pennsylvania Rules of Civil Procedure governs the defendant's right to join an additional party or to file a cross-claim against an additional defendant. The rule states, in relevant part, that:

(a) Except as provided by Rule 1706.1, any defendant or additional defendant may join as an additional defendant any person, whether or not a party to the action, who may be

- (1) solely liable on the plaintiff's cause of action, or
- (2) liable over to the joining party on the plaintiff's cause of action, or
- (3) jointly or severally liable with the joining party on the plaintiff's cause of action, or
- (4) liable to the joining party on any cause of action arising out of the transaction or occurrence or series of transactions or occurrences upon which the plaintiff's cause of action is based.

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(d) If the person sought to be joined is a party, the joining party shall, without moving for severance or the filing of a praecipe for a writ or a complaint, assert in the answer as new matter that such party is alone liable to the plaintiff or liable over to the joining party or joining party or jointly or severally liable to the plaintiff or liable to the joining party directly setting forth the ground therefor. The case shall proceed thereafter as if such party had been joined by a writ or a complaint.

Pa.R.C.P. 2252. The rule "is broadly construed to effectuate the purpose of avoiding multiple lawsuits by settling, in one action, all claims arising from transactions or occurrences which gave rise to the plaintiff's complaint." Goodman v. Kotzen, 436 Pa.Super. 71, 78, 647, A.2d 247, 250 (1994)(citing Olson v. Grutza, 428 Pa.Super. 378, 389, 631 A.2d 191, 196-97 (1993)).

Further, where the joining defendant alleges that the additional defendant was (1) alone liable to the plaintiff; (2) jointly or severally liable with the joining defendant, i.e., for contribution; or (3) liable over to the joining defendant by way of indemnification, pursuant to Rule 2252(a)(1)-(3), the right to join an additional defendant on any of these grounds is limited by the rule that “liability must be premised upon the same cause of action alleged by the plaintiff in his or her complaint.” Gordon v. Sokolow, 434 Pa.Super. 208, 214, 642 A.2d 1096, 1099 (1994)(citations omitted). The phrase “cause of action” has been broadly construed to mean the harm of which the plaintiff complains. Garrett Elecs. Corp. v. Kampel Enterprises, Inc., 382 Pa.Super. 352, 354, 555 A.2d 216, 217 (1989). However, the Pennsylvania Supreme Court only required that the “additional defendant’s liability [be] related to the original claim which plaintiff asserts against the original defendant.” Somers v. Gross, 393 Pa.Super. 509, 514, 574 A.2d 1056, 1058 (1990)(quoting Incollingo v. Ewing, 444 Pa. 263, 290, 282 A.2d 206, 220 (1971)). Nonetheless, joinder is not permissible “where allegations contained in the original complaint and allegations contained in the joinder complaint relate to different harms to be proven with different evidence as to different occurrences happening at different times.” Gordon, 434 Pa.Super. at 215, 642 A.2d at 1100. The same rule would apply to cross-claims because they fall under subsection (d) of Rule 2252.

In Garrett Elecs., which is factually analogous to the present case, the lessee had commenced an action against its lessors to recover for property damaged and business losses sustained when the roof collapsed on the demised premises. Id. at 353, 555 A.2d at 216. The lessee had originally filed a separate action against its insurer; a suit which was settled without payment of any money. Id. at 353, 555 A.2d at 217. Then, with the lessee’s approval, its insurance company and broker were joined as additional defendants in the action against the lessors. Id. at 353, 555 A.2d at 216. The insurance company filed

preliminary objections, seeking dismissal of the joinder complaint, which the trial court sustained. *Id.* The Pennsylvania Superior Court affirmed the dismissal of the defendants’ joinder complaint against the insurance company, finding that the alleged breach of the duty of the insurance company was different in kind and in time from the alleged breach of the duty of the defendant lessors. 382 Pa.Super. at 355, 555 A.2d at 217-18. The court had determined that “[t]he plaintiff-lessee’s action against its lessors had been based upon the alleged negligence in the maintenance of the demised property, [while] [t]he defendant-lessors sought to force the plaintiff to litigate in the same action the insurance coverage issue.” *Id.* at 355, 555 A.2d at 217. The insurance coverage issue was deemed distinct from the maintenance of the premises by the landlord. *Id.*

Here, the remaining claim against the Strine defendants, i.e., the UTP/CPL claim, arises from the alleged obligation in the lease to repair and/or rebuild the building after the fire, as well as William B. Strine’s alleged misrepresentations that the Strine defendants would rebuild and cooperate in the rebuilding of the premises. Compl., ¶¶ 68-71.<sup>1</sup> Additionally, Rader’s remaining claims against Travelers arises from its obligations under the insurance policy and its agents’ alleged representations to Rader. Though Rader’s claims do derive from the same nuclei of facts, i.e., the occurrence of the fire to plaintiff’s premises, this

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<sup>1</sup>It is not apparent to the court how Rader’s UTP/CPL claim against the Strine defendants asserts a misrepresentation on a personal services contract since it involves a commercial lease. *See* 73 P.S. § 201-9.2 (providing for a private right of action for “[a]ny person who purchases or leases good or services **primarily for personal, family or household purposes.**”)(emphasis added); *Cumberland Valley School Dist. v. Hall-Kimbrell Envntl. Servs., Inc.*, 433 Pa.Super. 38, 42-43, 639 A.2d 1199, 1201-02 (1994)(holding that school district may not maintain a private right of action on behalf of its taxpayers and students and that the school district’s purchase of asbestos abatement services was not primarily for personal, family or household purposes under the UTP/CPL). However, the merit of that claim is not before this court in the present motion and this issue has not been raised by any party.

similarity does not mean that the Strine defendants' cross-claim against Travelers is proper. Rather, like Garrett Elecs., the duties of the Strine defendants are distinct from the duties of Travelers and the causes of action are also separate and distinct. The court finds that the Strine defendants' cross-claim against Travelers is improper. Therefore, Travelers' Motion is granted.

### **CONCLUSION**

For the reasons set forth above, this court is granting Travelers' Motion for Judgment on the Pleadings and dismissing the Strine defendants' cross-claim against Travelers. A contemporaneous Order, consistent with this Opinion, will issue.

**BY THE COURT,**

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**JOHN W. HERRON, J.**

**Dated:** January 17, 2002

