

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

CRAIG KREMSER and HOLLY KREMSER,	:	
Plaintiffs	:	
	:	
vs.	:	NO. CV-21-0022
	:	
JOSHUA LINDAUER,	:	
Defendant	:	CIVIL ACTION - LAW

OPINION

This matter arises out of a collision between Plaintiff, Craig Kremser, and a vehicle driven by an unnamed third party. It is alleged that, prior to the collision, a piece of cargo being carried in Defendant’s vehicle fell out of the vehicle and onto the road. Plaintiff was struck while he was attempting to remove the cargo from the road. The action was initiated by the filing of a Complaint on January 7, 2021. Defendant filed his Answer to the Complaint with New Matter and Affirmative Defenses on March 3, 2021. Plaintiffs filed Preliminary Objections to Defendant’s New Matter on March 11, 2021,¹ taking issue with several defenses raised by Defendant including those set forth in Paragraphs 15, 18, 19, 22, and 30. In Plaintiffs’ brief, they withdrew their Preliminary Objections to Paragraphs 15, 18, and 19. Therefore, this matter is before the Court on Plaintiffs’ Preliminary Objections to Paragraphs 22 and 30 of Defendant’s New Matter only. Argument was held on April 22, 2021 and the issues are now ripe for decision.

Paragraph 22 of Defendant’s New Matter states that “Plaintiffs’ claims are barred or otherwise limited by the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S. §§ 1701-1799.7” and Paragraph 30 states that

¹ Plaintiff also filed Amended Preliminary Objections on March 22, 2021. However, substantively, the issues raised remained unchanged.

“Defendant reserves the right to raise additional affirmative defenses which may become known during the investigation of this case or throughout the discovery process.”

It is well settled that Pennsylvania is a fact pleading state, meaning that pleadings must put the opponent on notice of the issues. *Lee v. Denner*, 76 Pa.D.&C.4th 181, 187 (C.P. Monroe 2005). Additionally, according to the Rules of Civil Procedure, “the material facts on which a cause of action or defense is based shall be stated in concise and summary form.” Pa.R.C.P. 1019(a) (emphasis added). “The Rules of Civil Procedure are in place to ensure that a new matter not only gives the opposing party notice of any affirmative defenses, but also makes clear the grounds upon which it rests by including a summary of the facts essential to support that defense.” *Lee*, 76 Pa.D.&C.4th at 191 (internal citations omitted). Plaintiffs primarily rely on the *Allen v. Lipson* case, which extends the holding in *Connor v. Allegheny General Hospital*,² and holds that “defendants must plead in their new matter the material facts on which an affirmative defense is based.” *Allen v. Lispon*, 8 Pa.D.&C.4th 390, 394 (C.P. Lycoming 1990).

In Paragraph 22, Defendant cites to the entirety of the Pennsylvania Motor Vehicle Financial Responsibility Law (“PaMVFR”) but goes on in Paragraphs 23 through 29 to set forth specific provision of that law. For example, Defendant asserts that Plaintiffs’ claims are barred or limited by the applicable tort

² *Conner* is the seminal case in which the Pennsylvania Supreme Court held that general allegations in a complaint could allow plaintiffs amend it even after the running of the statute of limitations. *Conner v. Allegheny General Hospital*, 461 A.2d 600 (Pa. 1983). Since then, this has been used by Pennsylvania courts to preclude general allegations in complaints.

threshold³ and that Plaintiffs cannot plead economic damages covered under Section 1722.⁴ Plaintiffs argue that Paragraph 22 should be stricken because it is improper to raise as a defense an entire section of law. Defendant argues that Paragraph 22 is appropriate because he is reserving the right to raise additional defenses until after the investigation is complete. The Court agrees with Plaintiffs. An all-encompassing averment such as Paragraph 22 fails to give Plaintiff any notice of a specific defense or make clear any ground upon which it rests. Just as it is unfair for a Defendant to allow a Plaintiff to include a “catch-all” provision in a complaint, it is equally unfair to Plaintiffs to allow Defendant to cite to an entire law that contains over 90 sections. It would be impossible for Plaintiffs to prepare a response. Therefore, Paragraph 22 of Defendant’s New Matter is stricken and his affirmative defenses relating to the PaMVFRL are limited to those set forth in Paragraphs 23 through 29. Defendant has the option of filing an amendment if new information is discovered.

In Paragraph 30, Defendant “reserves the right to raise additional affirmative defenses which may become known during the investigation of this case or throughout the discovery process.” As Plaintiffs state, this very issue is one that the *Lipson* court sought to avoid, stating that “there is no doubt that boilerplate affirmative defenses could become commonplace and this would greatly increase the plaintiffs’ burden in discovery and the possibility of plaintiffs having to defend a surprise claim at the time of trial.” *Lispon*, 8D.&C.4th at 395. In his response to the Preliminary Objections and during argument, Defendant argued that this reservation is proper because the numerous affirmative defenses

³ Paragraph 23.

listed in Pa.R.C.P. 1030⁵ and 1032⁶ are non-waivable and thus, can be asserted at any time. While this statement is not entirely accurate, the outcome is the same. Assuming Defendant is attempting to preserve all *non-waivable* defenses⁷ in a single averment, the averment is rendered unnecessary and redundant, because such defenses can be raised at any time, whether or no they were pled in New Matter. If, on the other hand, Defendant is attempting to preserve all *waivable* defenses⁸ in a single averment, then the analysis is the same as that above. It would be patently unfair to require Plaintiffs to guess at which of the several waivable defense the Defendant is asserting. For these reasons, Paragraph 30 of Defendant's New Matter is stricken.

⁴ Paragraph 26.

⁵ (a) Except as provided by subdivision (b), all affirmative defenses including but not limited to the defenses of accord and satisfaction, arbitration and award, consent, discharge in bankruptcy, duress, estoppel, failure of consideration, fair comment, fraud, illegality, immunity from suit, impossibility of performance, justification, laches, license, payment, privilege, release, res judicata, statute of frauds, statute of limitations, truth and waiver shall be pleaded in a responsive pleading under the heading "New Matter". A party may set forth as new matter any other material facts which are not merely denials of the averments of the preceding pleading.

(b) The affirmative defenses of assumption of the risk, comparative negligence and contributory negligence need not be pleaded.

Pa.R.C.P. 1030.

⁶ (a) A party waives all defenses and objections which are not presented either by preliminary objection, answer or reply, except a defense which is not required to be pleaded under Rule 1030(b), the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, the objection of failure to state a legal defense to a claim, the defenses of failure to exercise or exhaust a statutory remedy and an adequate remedy at law and any other nonwaivable defense or objection. Pa.R.C.P. 1032(a).

⁷ Such as assumption of the risk and comparative negligence. See Pa.R.C.P. 1030(b).

ORDER

AND NOW, this 30th day of **April, 2021**, upon consideration of Plaintiffs' Preliminary Objections to Defendant's New Matter and Defendant's responses thereto, for the reasons set forth above, Plaintiffs' Preliminary Objections are **SUSTAINED** and Paragraphs 22 and 30 of Defendant's New Matter are hereby **STRICKEN**.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

CC: Magda Patitsas, Esq. – 501 Leeward Lane, Enola, PA 17025
Bret Southard, Esq.
Gary Weber, Esq.
Alexandra Sholley – Judge Tira's Office

⁸ Such as estoppel, release, and statute of limitation. See Pa.R.C.P. 1030(a) and 1032(a).