maintains she should have been covered by a medical insurance policy issued at the expense of the company to cover him and his family. Blue Ridge filed a demurrer to the stock repurchase claim and a motion to strike the medical expense demand.

Under the employment agreement, Hall was to have 90 days written notice of his discharge. Upon termination Blue Ridge agreed to redeem his stock at 65% of the purchase price, payable within 180 days. Another provision entitled him to fringe benefits equivalent to those enjoyed by the President of the corporation.

The question raised by the demurrer is whether, despite the fact 180 days had not run on December 5, 1983, the date when this action was filed, Hall's claim states a cause of action. We find it does.

In the early case of *Allen v. Colliery Engineers' Co.*, 196 Pa. 512, 518-519, 46 A. 899 (1900), it was said that an employee for a fixed period who was wrongfully discharged could treat the employment contract as existing and sue for benefits as they became due, or sue for breach of the contract at once or at the end of the contract period. In this case, Hall has elected to sue at once.

Furthermore, when one party breaches part of a contract, it cannot later demand compliance by the non-breaching party to other terms of the same contract. *U.S. v. Curtis T. Bedwell & Son, Inc.,* 506 F. Supp. 1324, 1327 (E.D.Pa. 1981). See also Restatement (Second) of Contracts, Sec. 253(2); *Camenisch v. Allen,* 158 Pa. Super. 174, 177 44A.2d 309, 310 (1945). Terminating Hall's employment without giving 90 days notice was a breach of the contract so Hall is not bound by the provisions allowing the company 180 days to repurchase his stock.

The demurrer will be overruled.

The next is a measure of damages question. Hall says his daughter was injured, and since Blue Ridge provided him no medical coverage, Blue Ridge is responsible for the medical expenses. Blue Ridge counters that Hall's claim should be only for the cost of equivalent medical coverage. When there is a breach of contract, the plaintiff in a suit is entitled to recover for the losses sustained in order to be placed in the same position he would have occupied had there been no breach. *Lambert v. Durallium Products Corp.,* 364 Pa. 284, 287, 72 A.2d 66, 67 (1950); *Ready v. Motor Sport, Inc.,* 201 Pa. Super. 528, 531, 193 A.2d 766, 768 (1963).

What the plaintiff is asking for here is consequential damages. Whether Hall is entitled to these damages depends on whether the losses, the cost of medical care for his daughter, were foreseeable by the employer at the time it entered into the contract. *Frank B. Bozzo, Inc. v. Elecric Weld Division of Ft. Pitt Bridge Division of Sprang Industries, Inc.,* 283 Pa. Super. 35, 51, 423 A.2d 702, 709, (1980), affd. 495 Pa. 616, 435 A.2d 176 (1981). See Corpus Juris Secondum, Damages Sec. 24(a) pp. 662-668. This is a jury question, *Bozzo,* Id., at 35, 709.

However, there can be no recovery for damages which by the exercise of reasonable care, Hall could have avoided. *Thompson v. DeLong,* 267 Pa. 212, 217, 110 A.2d 251, 253 (1920). He must mitigate the damages. So if he knew or should have known that his medical policy was not continued, he had a duty to take out a policy, pay the premium and sue for the amount of the premium. Again, this is a jury question.

Finally, however, where both plaintiff and defendant have an equal opportunity to reduce the damages by some act and it is equally reasonable to expect the defendant to minimize the damages, the defendant is in no position to contend that the plaintiff failed to do so. *S. J. Grove & Sons Co. v. Warner Co.,* 576 F.2d 524, 530 (3rd Cir. 1978).

Considering all of the above, the defendant's motion to strike will be denied.

ORDER OF COURT

February 21, 1984, defendant's pretrial motions in the nature of a demurrer and motion to strike are denied.

BRADY V. GOLDEN, C.P. Franklin County Branch, No. A.D. 1983 - 288

Trespass - Separate Counts - Allegation of negligence - Allegation of Injuries - Loss of Earnings

1. Plaintiffs, as husband and wife, are permitted to join their claim, in one action but they must plead their damages in separate counts.

2. An allegation of negligence must contain facts of a breach which gives rise to the injuries sustained.

3. Injuries must be pled so as to appraise defendants of the severity of injuries and the nature of the injuries.

4. Pleading requesting loss of earnings must specify what the salary was before the accident, how the injuries have impaired his ability to work and how much time has been lost.

Bernadette McKeon Hohendel, Esquire, Counsel for Plantiffs

Daniel W. Long, Esquire, Counsel for Defendants

OPINION AND ORDER

EPPINGER, P.J., March 1, 1984:

William and Barbara Brady were injured in an automobile accident when the car in which they were riding was struck by another car driven by Dirk Lynwood Golden when Golden came upon some slushy ice and slid sideways out of his lane and into the Bradys. The Bradys sued Dirk Golden and his mother, Alice, who have filed preliminary objections, including a motion to strike and a motion for a more specific complaint.

The motion to strike will be granted, for the Bradys failed to set forth their separate actions in separate counts. Paragraph 12 of the complaint alleges, in four subsections, injuries the "plaintiff's" jointly have suffered. Plaintiffs, as husband and wife, are permitted to join their claims in one action. Pa. R.C.P. 2228(a). This does not mean that they are not required to plead their damages in separate counts. Pa. R.C.P. 1020(b) states that the cause of action, damages and demand for relief should be plead in separate counts in these cases because the two claims remain distinct cause of action. *Gould v. Nickel,* 268 Pa. Super 183, 185, 407 A.2d 891, 892 (1979). Under Pa. R.C.P. 132, we are required to give effect to both Rule 2228(a) and 1020(b) if possible and this does it.

The defendants correctly contend that the allegations of the complaint are not specific enough. Paragraph 10 avers that Alice Golden, one of the defendants, "was negligent in entrusting her vehicle" to the other defendant but says nothing about the negligence relied upon. A complaint "should describe what happened with sufficient particularity so that defendants may know what they must answer, setting forth the acts or omissions by the defendant." *Price v. Pa. R. R. Co.,* 17 D&C2d 518, 523 (Dauphin 158). Plaintiffs must allege

negligence to establish the duty owed by the defendant to the plaintiffs and the facts of a breach which give rise to the injuries sustained. *Pike County Hotels Corp. v. Kiefer,* 262 Pa. Super. 126, 134, 396 A.2d 677, 681 (1978). Paragraph 10 must be amended to specifically allege in what manner Alice was negligent in entrusting her vehicle to Dirk.

Paragraph 12 likewise lacks specificity. Summerized, it alleges plaintiffs (a) have suffered and will suffer serious physical injuries with resulting continuing problems of various sorts; (b) have been obligated for medical expenses as defined in 40 P.S. Sec. 1009.301(a)(5)(b) amounting to more than $750 and so forth; (c) may be obligated to pay for future medical expenses; and (d) have incurred and may incur additional expenses other than medical expenses.

In paragraph 12 (a) defendants should know at least the severity of the injuries, *Walk v. Russell,* 10 D&C3d 330, 338 (Cumberland 1979), and a medical diagnosis of the nature of the injuries (lacerations, bruises, fractures, etc.) *Petrasko v. Fellin*, 60 Luzerne L.R. 186, 188 (1969). See also *Price,* supra, at 527.

Paragraphs 12(b) and (c) must be amended since the defendants are entitled to know the type and source of the medical treatment and expenses each plantiff has undergone. *Plummer v. Dansky,* 16 D&C3d 734, 739 (Mercer 1980), and the amounts already expended for hospitals, medicines, x-rays, etc. and to whom these amounts have been paid together with the facts relied upon to conclude that similar expenses may be required in the future. *Price,* supra, at 528; *Hinkel v. Beiting,* 69 D&C 129 (Fulton 1949).

In paragraph 12(d) plantiffs claim they may have to expend additional "substantial expenses." Plantiffs are required to amend this portion of the complaint to allege the nature and extent of these additional expenses. *Laursen v. General Hospital of Monroe County,* 259 Pa. Super. 150, 160, 393 A.2d 761 766 (1978).

Paragraph 13 contains an allegation that as a result of the injuries received, William Brady has suffered a loss of earnings in excess of $15,000 and anundetermined loss of earning capacity which will continue indefinitely into the future. This is an insufficient pleading. To recover for loss of earnings and impairment of earning capacity, plantiff must plead how much he lost as a result of the accident. *Theal v. Confer,* 7 D&C3d 614, 619 (Perry 1978), and must specify what his salary was before the accident, how the injuries have impaired his ability to work, and how much time has been lost. *Walk,* supra, at 339.

An allegation that loss of earning capacity will continue in-

definitely into the future does not appraise defendants whether or not the loss is pernanent, nor the facts upon which such a conclusion is based. *Bodes v. Smith,* 28 Som. 41, 47-48 (1972). Plantiffs are required to amend Paragraph 13.

ORDER OF COURT

March 1, 1984, Defendants' Motion to Strike paragraph 12 and the motions for More Specific Pleadings as to paragraphs 10, 12(a) (b) (c) (d) and 13 are granted.

The Plaintiffs are granted 20 days from the date of this Order to file an amended complaint conforming to this Opinion.

COMMONWEALTH V. ZAMIAS, C.P., Franklin County Branch, No. 60-1983

Criminal Law - Summary Conviction - Appeal - Discovery - Number of Citations Issued

1. A request to discover copies of all citations issued during a certain time and at certain places is denied in that no discovery is available in a summary case.

2. Rule 305 of Pa. R.Crim.P. applies only to discovery in court cases.

3. An appeal into Court does not change the nature of a summary case into a Court case.

James M. Schall, District Attorney, Attorney for Commonwealth

Martin Nadorlik, Esquire, Attorney for Defendant

OPINION AND ORDER

EPPINGER, P.J., March 2, 1984:

This appeal from a summary conviction is now before the court and on defendant's request for pretrial discovery. Samuel C. Zamias was arrested for speeding after he was timed from a Pennsylvania State Police aircraft. He now asks the District Attorney to produce, or make available for copying, copies of all citations issued by three State