NOTICE

To all Subscribers, prospective Advertisers and others concerned.

Please take notice that the office of the managing editor of this journal will be moving, effective Monday, October 17, 1983. The address of the editor as of that date, for all Journal business will be:

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The record indicates that two views of the property were conducted by the Board of View and two hearings were held for the purpose of taking testimony regarding the necessity and location of the roads. The condemnees were heard as were several other witnesses. Therefore, the decision of the Board of View cannot be labeled "arbitrary". The Board members obviously put much time and careful consideration into their decision. It is not proper for this Court to now substitute its judgment for that of the Board of View absent a showing of abuse of discretion. The record indicates only that the Board performed its assigned task in a thorough and conscientious manner and its decision is hereby confirmed by this Court.

ORDER OF COURT

NOW, this 17th day of May, 1983, the motion to quash the appeal of Melvin L. Bland and Nancy L. Bland and confirm the Report of the Board of View is granted except as to the issue of damages due Melvin L. Bland and Nancy L. Bland by reason of said condemnation. The trial on the issue of damages shall be heard by a jury commencing at 9:00 A.M. on June 9, 1983.

NEWCOMER v. MARTIN, C.P. Franklin County Branch, No. 397 - 1982

Trespass - Auto Accident - Damages - Loss of future earning capacity - more specific complaint

1. A claim may be made for loss of future earning capacity apart from a claim for loss of earnings.

2. Where plaintiff does not plead facts setting forth his earning capacity prior to the accident he will be required to be more specific in his pleading.

3. Without allegations of prior earning capacity, plaintiff would be unable to introduce at trial, evidence in support of an allegation of reduced earning capacity.

William S. Dick, Esq., Counsel for Plaintiffs.

Daniel W. Long, Esq., Counsel for Defendant.

OPINION AND ORDER

KELLER, J. May 17, 1983:

This action in trespass was commenced by the filing of a complaint. On January 6, 1983, preliminary objections in the nature of four motions for a more specific complaint were filed on behalf of the defendant. (The plaintiffs original complaint has disappeared from the case file in the office of the Prothonotary.) On January 21, 1983, an amended complaint was filed and served upon counsel for the defendant. On January 24, 1983, preliminary objections to the amended complaint were filed and served upon counsel for the plaintiff.

The matter was listed for the May Argument Court. Briefs were exchanged and arguments were heard on May 5, 1983. The matter is now ripe for disposition.

The amended complaint alleges the vehicle of the plaintiff, Roy M. Newcomer, and the vehicle of the defendant, Stephen R. Martin, collided on January 5, 1981 on L.R. 28081 between the villages of Waynecastle and Five Forks, and as a result of the defendant's alleged gross negligence, plaintiff Roy M. Newcomer sustained traumatic physical injury requiring medical attention on various dates from various physicians, the acquisition and use of orthopedic appliances to support his knee, and suffered prolonged and intractable pain which will require medication the remainder of his life. The complaint does not allege any specific injuries suffered by Mr. Newcomer. Paragraph 8 alleges:

> In addition, Roy Newcomer believes that his future earning capacity has been significantly diminished because of physical limitations and disabilities, to wit:
>
> (1) the plaintiff suffers from congenital hip dislocation;
>
> (2) the plaintiff has degenerative changes in his dorsal spine; and
>
> (3) the plaintiff has a 20% partial disability, permanent in nature, proximately caused by the collision.

The defendant's motion for a more specific complaint alleges:

The plaintiff, Roy M. Newcomer, alleges in paragraph 8 of his amended complaint 'that his future earning capacity has been significantly diminished' but does not set forth any facts as to what his earning capacity was at and prior to the time of the alleged accident.

The defendant desires to be informed specifically concerning the nature of plaintiff's employment or earning capacity prior to the alleged accident and if employed the name of his employer, the wages he was receiving and the length of time he was absent from his employment, and any other facts to establish his earning capacity at or prior to the time of the alleged accident.

The plaintiff contends that he has not claimed and is not seeking to recover for any loss of earnings; that paragraph 8 alleges a diminution of his future earning capacity, as a result of his physical limitations and disabilities. He urges that there is a difference between loss of earnings and loss of earning capacity, and at trial the finder of fact will be required to look to the plaintiff's impairment and not to his earning statement in determining the loss of future earning capacity. Therefore, the plaintiff argues that his complaint is sufficiently specific and to plead anything more would require the pleading of evidence in violation of the Rules of Civil Procedure.

The defendant does not contend that loss of earnings and loss of earning capacity are one and the same. However, he does contend that he is entitled to know the nature of the plaintiff's employment or earning capacity, and if employed the name of his employer, the wages he was receiving, the length of time he was absent from his employment, his age and other facts which would establish his earning capacity at or prior to the time of his injury. He argues that the amended complaint is utterly devoid of any factual allegations upon which he can proceed to an investigation of the plaintiff's alleged loss of earning capacity, prepare his defense or, indeed, contemplate the possibility of making an offer of settlement.

In *Laursen v. General Hospital of Monroe County,* 259 Pa. Super. 150, 160, 393 A. 2d 761 (1978), the Superior Court stated:

> While Pennsylvania pleadings are no longer controlled by formalistic rules, it is still important that the complaint appraise a defendant of the nature and extent of the plaintiff's claim: Standard Pennsylvania Practice, Revised Edition, Pleading, Vol. 3, Sect. 5. Pleadings serve the function of defining issues and giving notice to the opposing party of what the pleader intends to prove at trial so that the opposition may, in turn, prepare to meet such proof with its own evidence: *Kochinksy v. Independent Pier Co.,* 157 Pa. Super. 15, 41 A. 2d 409 (1945).

We understand there are two forms of pleading well-recognized in the United States. They are fact pleading and notice pleading. Under the Rules of Civil Procedure adopted by the Supreme Court, Pennsylvania is a fact-pleading state.

Pa. R.C.P. 1019(a) provides:

> "The material facts on which a cause of action or defense is based shall be stated in a concise and summary form."

Frequently the courts have held that pleadings must be not only concise but precise. In our judgment the plaintiffs' complaint and specifically paragraph 8 fails to precisely allege the material facts necessary under the liberalized rule enunciated by the Superior Court in *Laursen v. General Hospital of Monroe County,* supra.

In the case at bar, the plaintiff has failed to allege any injuries suffered, and nothing concerning past or present employment, employment skills or other facts concerning earning capacity. In *Carroll v. Pittsburgh Railways Company,* 200 Pa. Super. 80, 83, 84 (1962), the appellants contended the trial court erred in refusing to submit the issue of impairment of earning power to the jury. The Superior Court held:

> "The answer is that the record is devoid of any evidence upon which the jury could have predicated a finding that the future earning power of the husband-appellant had been impaired. Indeed the testimony negatives such a conclusion. Loss of earning power and its amount must appear by proper and satisfactory proof, and must not be left to conjecture: Citations omitted."

In the present posture of the pleadings the plaintiff would not be permitted over objection to introduce any evidence in support of his alleged diminution of earning capacity, and the jury would not be permitted to award damages based on such loss on the basis of mere speculation.

ORDER OF COURT

NOW, this 17th day of May, 1983, the defendant's preliminary objection in the nature of a motion for a more specific pleading is granted.

The plaintiff is granted leave to file an amended complaint within twenty (20) days of date hereof.

BOWERS v. VALLEY MUTUAL, C.P. Franklin County Branch, No. A.D. 1982 - 335

Assumpsit - Homeowners Insurance - Explosion - Hionis v. Northern Mutual Insurance Co.

1. Where kerosene is placed in a tank and a hole developed in the tank, plaintiffs have the burden of proof that an explosion occurred.

2. Where the facts of a case do not fit into the policy definition of an explosion, case law must be used to interpret explosion.

3. Under *Hionis v. Northern Mutual Insurance Co.* the burden of establishing the applicability of an exclusion or limitation involves proof that the insured had the exclusion explained to him and was aware of it.

4. The policy holder does not have a duty to read the policy unless under the circumstances it is unreasonable not to read it.

5. Exceptions to the *Hionis* rule are: (1) the policy clearly explains the exclusion and (2) the insured had notice of the exclusion from a source outside the policy.

Thomas B. Steiger, Jr., Esquire, Attorney for Plaintiffs

William A. Addams, Esquire, Attorney for Defendant

OPINION AND ORDER

Eppinger, P.J., June 24, 1983:

Plaintiffs, Harold E. and Dorothy J. Bowers, own a mobile home insured by the defendant, Valley Mutual Insurance Company. The mobile home is heated by kerosene stored in a tank at the rear of the home. While the tank was being filled by an employee of Bock Oil Company on November 3, 1981, the plaintiff, Mrs. Bowers, inside the home, heard a hissing or gushing sound which