IP 97-1326-C T/K Great Western Express v Hauser
Judge John D. Tinder Signed on 6/26/02

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

GREAT WESTERN EXPRESS A DIVISION OF LISA MOTORLINES INC* (06/13/00, DISMISSED ONLY AS TO ROBERT PERANI'S COUNTER-CLAIM),

Plaintiff,

vs.

HAUSER, ROBERT* DISMISSED CROSSCLAIM OF ROBERT PERANI PUR ORDER 01/18/01,
PARDO'S SERVICE INC!* DISMISSED AS TO R. PERANI'S CROSS-CLAIM PUR ORDER OF 12/05/00,
PARDO, PAUL S!* DISMISSED AS TO R. PERANI'S CROSS-CLAIM PUR ORDER OF 12/05/00,
TAYLOR, JUDITH L* (07/20/00, DISMISSED ONLY AS TO ROBERT PERANI CLAIMS AGAINST JUDITH L. TAYLOR),
BALL, THOMAS A* DISMISSED AS TO R. PERANI'S CROSS-CLAIM (12/11/00),
STEVENS TRANSPORT INC* (NOT NAMED IN FIRST AMENDED COMPLAINT 02/09/98) AND DISMISSED AS TO ROBERT PERANI'S CROSS-CLAIM W/ PREJ 04/06/00,
JONES, STEVEN M* (NOT NAMED IN FIRST AMENDED COMPLAINT 02/09/98) DISMISSED AS TO CLAIMS OF ROBERT PERANI 04/06/00 W/ PREJ,
UNITED VAN LINES INC!^* CROSS-CLAIM AGAINST R. HAUSER

ONLY (DISMISSED AS TO R. PERANI'S CROSS-CLAIM PUR ORDER OF 12/05/00), WRIGHT, DAVID L!^* CROSS-CLAIM AGAINST R. HAUSER ONLY (DISMISSED AS TO R. PERANI'S) CAUSE NO. IP97-1326-C-T/?

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CROSS-CLAIM PUR ORDER OF          )
12/05/00,                         )
ROBINSON, SHELICE R* DISMISSED    )
8/29/01,                          )
FERGUSSON, ALLISTAIR* DISMISS     )
CROSS-CLAIM COMPLAINT FOR         )
DAMAGES (R. PERANI),              )
PERANI, ROBERT^!*(06/13/00,       )
DISMISSED ONLY TO CLAIMS          )
BROUGHT BY GREAT WESTERN          )
EXPRESS W/ PREJ)),                )
CANON EXPRESS CORP* DISMISSED     )
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AS TO R. PERANI'S CROSS CLAIM)
(12/07/00),)
TAYLOR, BILLY JOE* DISMISSED AS)
TO R. PERANI'S CROSS CLAIM)
(12/07/00),)
HOOSIER CARTAGE & TRANSFER INC,)
WHEELS AMERICA INC,)
CARRON, KENNETH E,)
)
Defendants.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

GREAT WESTERN EXPRESS, INC., A Division of Lisa Motorlines, Inc.,	)	
Plaintiff,	)	
v.	)	IP 97-1326-C-T/K
ROBERT HAUSER, et al.,	)	
Defendants,	)	

ENTRY ON DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT[1]

This case comes to the court because of a dispute in the aftermath of an automobile accident that occurred on January 7, 1996. Twenty vehicles were involved in the accident on Interstate 70 a few miles west of Richmond, Indiana. As a result of that accident, four separate lawsuits were filed in this court. Three of these cases were filed in 1996 and consolidated into a single action (Cause No. IP 96-1047-C-T/G). In 1997, this action was filed by Great Western Express, a division of Lisa Motorlines, Inc., ("Great Western") seeking compensation for damages to its tractor-trailer and cargo.

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[1] This entry is a matter of public record and is being made available to the public on the court's web site, but it is not intended for commercial publication either electronically or in paper form. Although the ruling or rulings in this Entry will govern the case presently before this court, this court does not consider the discussion in this Entry to be sufficiently novel or instructive to justify commercial publication or the subsequent citation of it in other proceedings.

On April 30, 2001, the consolidated case proceeded before a jury. Following a two week trial, the jury allocated fault among the parties. Afterwards, the Defendants in this case filed motions for summary judgment arguing that this action is barred by the doctrine of collateral estoppel, also referred to as issue preclusion, since the jury in the consolidated case assessed and apportioned fault for the January 7, 1996 accident. For the reasons discussed below, the court **GRANTS** the Defendants' motions for summary judgment.[2]

A. MOTIONS FOR SUMMARY JUDGMENT

The purpose of summary judgment is to "pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Summary judgment is appropriate when there are no genuine issues of material fact, leaving the moving party entitled to judgment as a matter of law. FED. R. CIV. P. 56(C). The moving party must show there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A factual issue is material only if resolving the factual issue might change the suit's outcome

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[2] Three motions for summary judgment were filed in this case. Defendant Thomas A. Ball filed his motion for summary judgment on October 3, 2001. Defendant Allistair Fergusson filed a motion for summary judgment on October 12, 2001. Both of these motions argue that issue preclusion bars Great Western from pursuing its claim. Fergusson's motion for summary judgment also raises a proximate cause issue. However, the court finds Great Western is barred from relitigating the comparative fault assessment and will not address the proximate cause issue. Defendants Pardo's Service, Inc., and Paul S. Pardo (collectively "Pardo") also filed a motion for partial summary judgment on October 15, 2001. The Pardo motion for partial summary judgment is discussed separately since it seeks to use issue preclusion offensively.

under the governing law. *Clifton v. Schafer*, 969 F.2d 278, 281 (7th Cir. 1992). An issue is genuine if there is sufficient evidence for a reasonable jury to return a verdict in favor of the non-moving party on the evidence presented. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Baucher v. Eastern Ind. Prod. Credit Ass'n*, 906 F.2d 332, 334 (7th Cir. 1990).

B. UNDISPUTED MATERIAL FACTS

The evidence taken in the light reasonably most favorable to Plaintiff Great Western shows the following.

A tractor-trailer owned by Great Western and operated by Joe Mathis was involved in the January 7, 1996 accident. The tractor-trailer and cargo were damaged in the accident. Great Western filed the Complaint in this action on August 12, 1997, seeking compensation for property damage to its tractor-trailer and cargo.

Three actions were filed against Great Western and Joe Mathis for personal injury and wrongful death. Subsequently, these actions were consolidated into one action (Cause No. IP 96-1047-C T/G) against Great Western and Joe Mathis. (Defs.' Ex. at 2.) The consolidated case was tried to a jury on the issue of Great Western's negligence in causing the wrongful death of Angela Johnson and the personal injuries of Keith Johnson.[3]

[3] In 1998, the Scheffler action was settled and dismissed. The consolidated lawsuits of Keith Darnell Johnson and MaKeeda LeBlanc, Administratrix of the Estate of Angela Johnson, against Great Western and Joe Mathis were heard by the jury.

The defendants in this suit were identified as nonparties in the consolidated suit.[4] During the trial, Great Western argued that the accident and injuries were caused by the negligence of the nonparties as permitted by Indiana Code § 34-51-2-14. On May 14, 2001, the jury reached a verdict and allocated fault among the parties and nonparties. The jury found that the plaintiffs had zero percent fault, Great Western had sixty percent fault, and all nonparties had forty percent fault for the accident.

C. DISCUSSION

The court has diversity jurisdiction over this case, therefore state, rather than federal, substantive law applies. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78-80 (1938). To determine whether Great Western is precluded from relitigating the comparative fault issue, the court must look at Indiana's law on issue preclusion. See *Semtek International Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 507-09 (2001). The task for this court is to decide issues of Indiana law as the court believes that the Supreme Court of Indiana would decide them.

Under Indiana law, the doctrine of *res judicata* is divided into two separate doctrines under which a prior judgment bars litigation in a subsequent case: claim preclusion and issue preclusion. *Eichenberger v. Eichenberger*, 743 N.E.2d 370, 374

[4] A nonparty is "a person who caused or contributed to cause the alleged injury, death, or damage to property, but who has not been joined in the action as a defendant." *Mendenhall v. Skinner & Broadbent Co.*, 728 N.E.2d 140, 142 (Ind. 2000), quoting Ind. Code § 34-6-2-88.

(Ind. Ct. App. 2001); *Starzenski v. City of Elkhart*, 87 F.3d 872, 877 (7th Cir. 1996) (applying Indiana law). Claim preclusion "applies where a final judgment on the merits has been rendered which acts as a complete bar to a subsequent action on the same issue or claim between those parties and their privies." *Eichenberger*, 743 N.E.2d at 374. Issue preclusion bars the "relitigation of the same fact or issue where that fact or issue was necessarily adjudicated in a former suit and the same fact or issue is presented in a subsequent action." *Id*.; *In re Marriage of Moser*, 469 N.E.2d 762, 765 (Ind. Ct. App. 1984). Such preclusion "protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." *Montana v. United States*, 440 U.S. 147, 153 (1979). Preclusion also furthers the interests of judicial economy and efficiency by preventing unnecessary litigation.

> The *Eichenberger* court stated:
>
> Our supreme court, in *Sullivan v. American Casualty*, relaxed the once rigid standards of collateral estoppel, allowing a stranger to the first action to take advantage of collateral estoppel in a subsequent action. 605 N.E.2d 134, 138 (Ind. 1992). The *Sullivan* court formulated the following two-part rule for applying collateral estoppel: (1) whether the party against whom the prior judgment is pled had a full and fair opportunity to litigate the issue; and (2) whether it would be otherwise unfair under the circumstances to permit the use of collateral estoppel. *Id*. If the two elements are fulfilled, then the court may apply collateral estoppel to prevent relitigation of the same issue.

743 N.E.2d at 375. The issue in the subsequent case must have been "actually litigated and determined" in the prior litigation. *Starzenski*, 87 F.3d at 877. The determination of the issue must also have been essential to the court's determination in the prior action. *Id*.

"If the plaintiff had a 'full and fair opportunity' to litigate the issue, *any* party may use the prior litigation as a bar against the plaintiff's relitigation of that issue in a subsequent proceeding." *Starzenski*, 87 F.3d at 877, quoting *Sullivan v. American Cas. Co.*, 605 N.E.2d 134, 139 (Ind. 1992).

In the consolidated case, the jury, after two weeks of hearing evidence, found Great Western negligent and assessed its amount of fault under the Indiana Comparative Fault Act, Ind. Code § 34-51-2-1 *et seq*. The Defendants seek to use issue preclusion defensively to prevent Great Western from relitigating the issue of comparative fault. If issue preclusion is appropriate, the jury's finding that Great Western was sixty percent at fault will bar Great Western from pursuing this case. *See* Ind. Code § 34-51-2-6. The Defendants argue that Great Western had a full and fair opportunity to argue that the January 7, 1996 accident was the result of the Defendants' negligence. The comparative fault issue was actually litigated and the jury assessed fault for the claimants, Great Western, and the nonparties in accordance with Indiana Code § 34-51-2-7. The Defendants also argue that the comparative fault issue was essential to the final judgment rendered, since it determined the extent of Great Western's liability.[5]

The court agrees and concludes that Great Western is barred from pursuing this claim by the previous comparative fault determination. Under the Comparative Fault Act,

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[5] In Indiana's Comparative Fault Act 'fault' is defined as "any act or omission that is negligent, willful, wanton, reckless, or intentional toward the person or property of others." Ind. Code § 34-6-2-45(b).

"the total fault for an accident is apportioned between the plaintiff, defendant, and any other negligent person who is properly named as a nonparty." *Kmart Corp. v. Englebright*, 719 N.E.2d 1249, 1260 (Ind. Ct. App. 1999) trans. denied; *Shand Mining, Inc., v. Clay County Bd. of Comm'rs.*, 671 N.E.2d 477, 479 (Ind. Ct. App. 1997) (Under the Comparative Fault Act, a jury is charged with allocating 100 percent of the fault among all culpable parties and non-parties.). If this case proceeded to trial, the jury would need to make exactly the same comparative fault determination between Great Western and the Defendants. The same legal issues would have to be determined based on the same evidence of the accident. The court will not give Great Western a second chance to try convincing a jury that the fault should be apportioned differently between the parties. *See Martin v. County of Los Angeles*, 51 Cal. App. 4th 688, 699-701 (Cal. Ct. App. 1997) (jury's prior comparative fault determination defensively precludes relitigation of fault in an indemnity action by nonparties); *Brown v. Kassouf*, 558 N.W.2d 161, 164-66 (Iowa 1997) (jury's prior fault determination defensively precludes relitigation of fault in a subsequent action even though plaintiff was not a party in the original action); *John Cheeseman Trucking, Inc. v. Pinson*, 855 S.W.2d 941, 943-44 (Ark. 1993) (multi-vehicle comparative fault determination in a prior proceeding used defensively to bar subsequent relitigation of the issue).[6]

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[6] Great Western also argues that issue preclusion should be denied because the verdict forms did not identify the nonparties. (Pls.' Br. at 5 n.2, citing Ind. Code § 34-51-2-11.) It is unnecessary to reach a conclusion about whether the failure to include the names of the nonparties on the verdict forms was error. Even if not disclosing the identity of the nonparties was error, it does not change the preclusive effect of the final judgment. It would be improper for this court to determine if the failure to comply with the statutory language was reversible error or harmless error, and to decide the preclusive effect of the final

(continued...)

Great Western argues that issue preclusion does not apply because it alleges damages that are different from those that were at issue in the consolidated case. In the consolidated case, according to Great Western, the issue before the jury was the determination of liability and damages for the wrongful death of Angela Johnson and the personal injuries of Keith Johnson. Great Western states: "While both lawsuits involve a determination of negligence arising out of the multi-vehicular chain-reaction accident that occurred on January 7, 1996, the issue of negligence for the wrongful death and personal injury in the consolidated lawsuits of LeBlanc and Johnson is not the same issue of negligence for the property damages Great Western Express, Inc.'s tractor-trailer and cargo sustained." (Pls.' Br. at 2.)

The fault attributable to the parties is not changed by the damages sought. In the consolidated case, the issue was whether Great Western's conduct fell below the standard of care that a reasonably prudent person would exercise at the time of the January 7, 1996 accident. In this case the issue would be whether Great Western's conduct fell below the standard of care that a reasonably prudent person would exercise in exactly the same circumstances. The legal duty that Great Western had in the consolidated case would be the same in this case. The facts that made up Great Western's breach of that duty would

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[6](...continued)
judgment based on that determination. Besides, it is beyond dispute that the evidence before the jury in the previous trial included information about the involvement of all of the vehicles in the collision. Great Western cannot seriously contend that the trial was limited to the discrete events directly leading to impact with the Johnsons. The record presented to this court does not demonstrate that the consolidated case was tried in such a piecemeal fashion.

be the same in this case. The facts that established causation between Great Western's breach of its standard of care and the death of Angela Johnson and the personal injuries of Keith Johnson are the same facts that the Defendants would use to show causation in this case. The fact that the damages sought are based on the property damage to Great Western's tractor-trailer and cargo does not change the issues. *See Cruise v. Wendling Quarries, Inc.*, 498 N.W.2d 916, 920 (Iowa Ct. App. 1993) (liability determination made in a prior comparative fault determination is binding, even though the subsequent claim was for personal injuries not previously asserted).

Furthermore, Great Western has not presented any evidence to show that the use of the issue preclusion doctrine would be unfair under the circumstances. First, Great Western was adequately represented in the consolidated case. Second, Great Western has not presented any evidence to suggest that fault for the accident should be apportioned any differently. All indications are that the evidence in the prior trial allowed the jury to consider the entire series of related events that resulted in the twenty vehicle pile up, rather than limiting their attention to the isolated contacts with the Johnsons. The consolidated trial was about a unitary series of events, not just a part of those events.

Great Western also argues: "As there was no determination of the liability for a property damage claim in the consolidated lawsuits of LeBlanc and Johnson, it would be impossible for the determination of the liability for the property damage claim to be essential to the final judgment for the liability of the wrongful death and personal injury claims." (Pls.' Br. at 8-9.) This argument misses the point. "For issue preclusion to apply,

. . . the issue in the subsequent case must have been 'actually litigated and determined' in the prior litigation. In other words, the determination of the *issue* must have been essential to the court's determination in the prior action." *Starzenski*, 87 F.3d at 877 (citations omitted). The determination of this property damages claim need not be essential to the prior judgment, only the resolution of the liability issue must have been essential to the prior judgment. The issue of Great Western's negligence was the focus of the consolidated case, and was essential to the judgment rendered.

Since Great Western had a full and fair opportunity to litigate the issue and the application of issue preclusion in this case would not be unfair, Great Western is bound by the comparative fault determination. The jury in the consolidated case found that Great Western was sixty percent at fault. Thus, under Indiana's Comparative Fault Act Great Western is barred from seeking damages from the defendants. Ind. Code § 34-51-2-6. Defendant Thomas A. Ball's and Defendant Allistair Fergusson's motions for summary judgment are granted. The court will now turn to examine the final motion for summary judgment.

Defendants and Counter-Plaintiffs Pardo's Service, Inc., and Paul S. Pardo (collectively "Pardo") filed a separate motion for partial summary judgment on its counterclaim against Great Western. Pardo wants to use the comparative fault determination in the consolidated case offensively and seeks a determination that Great Western is liable for sixty percent of its damages. The offensive use of issue preclusion occurs when a plaintiff seeks to foreclose the defendant from litigating an issue the

defendant had previously litigated unsuccessfully in another action with another party. *Parklane Hosiery Co., v. Shore*, 439 U.S. 322, 326 n.4 (1979). Thus, defensive issue preclusion acts as a shield and offensive issue preclusion acts as a sword.

The offensive use of issue preclusion has been viewed as more problematic than the defensive use of issue preclusion. However, the standard for offensive issue preclusion is the same. Determining the appropriateness of offensive issue preclusion involves two considerations: (1) whether the party in the prior action had a full and fair opportunity to litigate the issue; and (2) whether it is otherwise unfair to apply collateral estoppel given the facts of the particular case. *Tofany v. NBS Imaging Sys., Inc.*, 616 N.E.2d 1034, 1038 (Ind. 1993), citing *Parklane Hosiery*, 439 U.S. at 330-32. The above analysis applies to the offensive use of issue preclusion as well as to the defensive use of it. The fairness prong may be more closely examined when issue preclusion is being used offensively, but Great Western has not presented any argument that its use would be unfair. Thus, the Pardo motion for partial summary judgment is granted as well.

D. CONCLUSION

For the foregoing reasons, the court **GRANTS** Defendant Thomas A. Ball's and Defendant Allistair Fergussion's motions for summary judgment. Furthermore, the court **GRANTS** Defendants Pardo's Service, Inc., and Paul S. Pardo's motion for partial summary judgment. A trial on damages will be set. No judgment will be entered at this time to prevent multiple appeals from these interrelated matters.

ALL OF WHICH IS ORDERED this 26th day of June 2002.

John Daniel Tinder, Judge
United States District Court
Southern District of Indiana

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