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ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims against the estate of the decedent shall make known the same to the person(s) named or to his/her/their attorney and all persons indebted to the decedent shall make payment to the person(s) named without delay.

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FICTITIOUS NAME NOTICE

Notice is hereby given that an Application for Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania on April 27, 2021 for **Big Tins Motorsports** at 930-2 Cass Street, New Castle, PA 16101. The names of each individual interested in the business are Robert J. Surrena of 386 Houk Road, New Castle, PA 16101, Larry Tusinac of 7629 North Lima Road, Poland, OH 44514, John D. Walsh of 306 Nathan Court, Wexford, PA 15090, Michael Sakoney of 1905 American

Way, Hermitage, PA 16148. This was filed in accordance with 54 PaC.S. 311.

L.C.L.J. - May 17, 2021

LEGAL NOTICE

Notice is hereby given that a Certificate of Organization: Domestic Limited Liability Company has been filed with the Department of State of the Commonwealth of Pennsylvania, regarding a Limited Liability Company organized according to the Pennsylvania Uniform Limited Liability Company Act of 2016, 15 Pa.C.S. §§ 8811 et seq., and any successor statute as amended. The Limited Liability Comapny is **MCS Pressure Washing LLC**, organized as of March 15, 2021.

Robert D. Clark, Jr.
Clark & Clark Law, P.C.
201 N. Market St.
New Wilmington, PA 16142

L.C.L.J. - May 17, 2021

Adams v. Savino

Amendment of Answer and New Matter – Contribution and Indemnity – Pending Motions – Sequence of Decisions – PaR.C.P. No. 1031.1(2) – Pa.R.C.P. No. 126 – Summary Judgment – Discovery Rule – Doctrine of Fraudulent Concealment – Independent Contractor – Management of Emergency Room – Duty to Disclose

A court is not required to decide multiple pending motions in any particular sequence and may do so as it sees fit in its discretion.

A request to amend an answer and new matter will be granted when made well within the statute of limitations and the amendment would ultimately contribute to ensuring the "just, speedy and inexpensive determination" of the proceeding.

An independent contractor charged with managing a hospital's emergency room has no "duty to speak" for purposes of the doctrine of fraudulent concealment, and the failure to reveal to a plaintiff its involvement does not constitute fraudulent concealment.

Motion to Amend Answer and New Matter and Motion for Summary Judgment – Court of Common Pleas of Lawrence County, Pennsylvania, No. 30013 of 2016, C.A.

Rudolph Massa and *Megan E. Carben*, attorneys for the Plaintiff

David R. Johnson and *Ashely L. Griffin*, attorney for Defendants, Jennifer Savino, D.O. and AHN Emergency Group of Lawrence County, Ltd.

Lynn E. Bell and *James R. Hartline*, attorneys for Defendants, Jameson Memorial Hospital and Jameson Health System, Inc.

Joseph J. Bosick, attorney for Defendant, Noga Ambulance Service, Inc.

OPINION

Hodge, J. July 19, 2019

Before the Court for disposition are a pair of pretrial motions, one being a Motion for Summary Judgment filed by Defendant AHN Emergency Group of Lawrence County, Ltd. (AHN), and the other being a Motion for Leave to Amend Answer filed by Defendants Jameson Memorial Hospital and Jameson Health System, Inc. (collectively, Jameson). The parties have briefed and argued these matters, which are now ripe for decision. For the reasons that follow, AHN's Motion for Summary Judgment is GRANTED, and Jameson's Motion for Leave to Amend Answer is also GRANTED.

I. Factual and Procedural History

A. Factual Background

The factual background of this case revolves around the care that Charles D. Adams, Jr. (Decedent), received from Defendant Dr. Jennifer Savino,

D.O. (Dr. Savino), AHN, Jameson, and Defendant NOGA Ambulance Service, Inc. (NOGA) on November 5-6, 2014. To wit, Plaintiff makes the following factual averments in the Amended Complaint:

Decedent had been in normal health throughout the day on November 5, 2014, when, at approximately 6:30 p.m., he was suddenly overcome with nausea and vomiting at his home in New Castle, Pennsylvania. Decedent's wife then called 911 for emergency help, and an ambulance crew from NOGA was dispatched to their home. Upon arriving at 7:16 p.m., the NOGA crew heard Decedent complain of nausea, vomiting, and weakness, and further observed Decedent to be seriously ill and in physical distress. Although NOGA had knowledge of Decedent's previous medical history of coronary artery disease, hypertension, and should have known that Decedent's symptoms that evening were likely indicative of a serious cardiac emergency, NOGA failed to initiate the appropriate care protocols, such as performing a 12-lead EKG or proceeding to a hospital with advanced facilities for treating cardiac patients.

NOGA transported Decedent to Jameson at approximately 7:40 p.m., but failed to inform Jameson en route that it may soon be treating an acute cardiac patient. When NOGA arrived at Jameson shortly before 8:00 p.m., Decedent continued to complain of nausea, vomiting, and weakness. Jameson, as with NOGA, also had knowledge of Decedent's medical history, specifically his previous experiences of serious cardiac episodes, and should therefore have initiated the appropriate diagnostic testing such as a 12-lead EKG. Despite this knowledge, nobody at Jameson initiated cardiac care for Decedent and instead simply administered to him dosages of Zofran and morphine at approximately 9:00 p.m. and later referred him for a CT scan at 9:40 p.m. At 9:41 p.m., Decedent went into full cardiac arrest, which prompted a Code Blue call from the CT scanner room and resuscitative efforts from Jameson staff. By 9:52 p.m., Decedent had been successfully revived, and a 12-lead EKG was immediately performed on him. The EKG results revealed that Decedent had suffered a ST-Elevation Myocardial Infarction (STEMI), i.e. a serious heart attack.

Dr. Savino, instead of ordering thrombolytics and having Decedent transported to a facility with additional levels of clinical care for severe cardiac patients, directed Decedent to continue with the previously ordered CT scans. Decedent's CT scan results, completed between 10:31 and 10:38 p.m., revealed that he had suffered cardiogenic shock/cardiac arrest but did not suggest any abdominal pathology to explain his earlier nausea and vomiting. Shortly after 12:00 a.m. on November 6, 2014, Decedent was flown via helicopter to UPMC Presbyterian Hospital in Pittsburgh, where he was rushed to the Cath lab immediately upon arrival due to a 100% occlusion in his right coronary artery. UPMC's records on Decedent indicated that he had not been administered heparin or thrombolytics while being cared for at Jameson. Despite this treatment, Decedent passed

away later in the day on November 6, 2014.

Because the pending Motion for Summary Judgment is only as to AHN, this Court will only recite AHN's response to the Amended Complaint as set forth in its Answer and New Matter. AHN denied all of Plaintiff's factual averments in its Answer, with the lone exception of admitting that Dr. Savino was the physician assigned to Decedent's care on November 5-6, 2014. Additionally, in its New Matter, AHN raises several affirmative defenses, including comparative negligence, payment for services rendered, provisions of the Pennsylvania MCARE statute, and, most saliently for our purposes, the statute of limitations. In its Reply to AHN's New Matter, Plaintiff issued a blanket denial of each averment.

B. Procedural History

Plaintiff is Decedent's widow, and filed suit both individually and as Administratrix of the Estate of Charles D. Adams, Jr. Plaintiff initiated the instant litigation by filing a Praecipe for Writ of Summons with the Prothonotary of Lawrence County on October 11, 2016, which named Dr. Savino, Jameson, and NOGA as defendants. Later, Plaintiff filed a five-count Complaint on December 5, 2016, asserting one count of negligence against Dr. Savino and Jameson, one count of negligence against NOGA, one count of negligence against Jameson, one count of wrongful death against all Defendants, and one count of loss of consortium against all Defendants. By stipulation of all then-parties dated December 28, 2016, Plaintiff dropped the count of loss of consortium from the complaint.

Each of the then-defendants filed a responsive pleading by February 2, 2017. In her Answer and New Matter dated January 26, 2017, Dr. Savino alleged for the first time that she was not an employee of Jameson but rather had been hired by AHN, who was in turn contracted by Jameson to run their emergency department. Jameson averred the same in its Answer and New Matter. This prompted Plaintiff to file a Motion for Leave of Court to File an Amended Complaint, the goal of which was to join AHN as an additional defendant. After consideration of the matter, President Judge Dominick Motto granted Plaintiff's motion on February 22, 2017, albeit with the proviso that AHN would be free to raise any statute of limitations issues at the summary judgment stage. Plaintiff then filed the Amended Complaint on March 10, 2017, that named AHN as an additional defendant, to which AHN responded with its Answer and New Matter.

Two years of discovery then ensued, following which Plaintiff filed a Notice to Complete Discovery and Dispositive Motions on April 10, 2019. On April 22, 2019, AHN filed its Motion for Summary Judgment, while on June 3, 2019, Jameson filed its Motion for Leave to Amend Answer.

II. Legal Analysis

A. Jameson's Motion for Leave to Amend Answer

Pursuant to the February 18, 2013 medical services agreement (MSA) signed between Jameson and AHN's predecessor in interest EMP, Jameson seeks to amend its Answer and New Matter to assert a cross-claim against AHN for contribution and indemnity. In the event that a jury finds Jameson liable to Plaintiff, Jameson maintains that Paragraph V.D.1 of the MSA requires AHN to indemnify and contribute any damages awarded against Jameson. Jameson argues that Pa. R.C.P. No. 1033 permits liberal amendment of pleadings at any stage of the proceedings and that Pa. R.C.P. No. 1031.1(2) more specifically allows for cross-claims to be asserted by one party against another when the second party may be "liable to or with the cross-claimant on any cause of action arising out of the transaction or occurrence or series of transactions or occurrences upon which the underlying cause of action is based."

AHN's entire response to Jameson's Motion for Leave to Amend Answer is premised on the notion that this Court must decide AHN's Motion for Summary Judgment first, even though AHN points this Court to no authority for this proposition. AHN argues that if its Motion for Summary Judgment is granted first, it will be dismissed as a party to the case, and that would then preclude Jameson from asserting its cross-claim under Pa. R.C.P. No. 1031.1, which only permits parties to the case to file cross-claims against each other. In turn, Jameson would only be able to assert its cross-claim against AHN, a putative non-party, via Pa. R.C.P. No. 2252, which governs the joinder of additional defendants. Lastly, AHN contends that adding it as an additional defendant under Pa. R.C.P. No. 2252 would be time barred because Pa. R.C.P. No. 2253(a) generally requires such joinder within 60 days of the plaintiff's complaint unless later joinder is permitted by order of court for good cause shown. In short, AHN maintains that Jameson's motion is untimely and that no good cause has been demonstrated for permitting this cross-claim amendment at such a relatively late stage in the case.

Jameson, in response, takes the position that this Court must decide its Motion for Leave to Amend Answer prior to deciding AHN's Motion for Summary Judgment, and in support points the Court to the case of Schreck v. North Cordorus Township, 537 A.2d 105 (Pa. Cmwlth. 1988). The Court has reviewed this case, and we first note that the procedural posture is somewhat altered, and therefore distinguishable, from the case at bar. In Schreck, the plaintiffs, homeowners in a recently built subdivision, filed suit against their township, the subdivision's land developer, and the township's supposed sewage enforcement officer (SEO) when the sewage system began to malfunction. Id. at 106. The township and the land developer next asserted cross-claims against the SEO; the SEO later filed for summary judgment as to the plaintiffs' claims. Id. The trial court denied the SEO's motion, and soon after the other defendants filed a motion to amend their cross-claims. Id.

Following the U.S. Supreme Court's decision in Daniels v. Williams, 474 US. 327 (1986), the SEO requested the trial court reconsider his motion for summary judgment. Id. In light of the high court's decision, the trial court granted the motion and dismissed the SEO entirely from the lawsuit, and even specifically noted that this meant the cross-claims against the SEO, and more specifically the other defendants' motion to amend them, would remain unaddressed. Id. at 107. The other defendants appealed to the Commonwealth Court, who reversed the trial court on the basis that it was "a clear abuse of discretion…for the trial court to dismiss [the SEO] entirely from the lawsuit when the only motion before the trial court was for summary judgment as to [the plaintiffs'] claims against [the SEO]." Id. at 108.

The key difference between Schreck and the instant matter is that in Schreck, the defendants had already articulated their cross-claims against one another when the SEO's motions for summary judgment came before the trial court, whereas here, Jameson has not heretofore asserted any cross-claim against AHN. Thus, when the Schreck trial court dismissed the SEO from the case, it did so without resolution of outstanding cross-claims, and it is for this reason that the trial court was reversed, not because it ruled on a motion for summary judgment before a motion regarding cross-claims. This Court has not located any rule or precedent requiring it to decide pending motions in any particular sequence, and thus concludes that this is a matter left to our discretion.

Here, it is undisputed that Jameson has not yet asserted any cross-claims against AHN, and that, while AHN filed its Motion for Summary Judgment weeks before Jameson's Motion for Leave to Amend, both motions were listed for argument for the same day before this Court. Given that AHN has provided no authority mandating that this Court consider its Motion for Summary Judgment first, we will decide Jameson's Motion for Leave to Amend first and do so against the backdrop of Pa. R.C.P. No. 1031.1. The 2007 Explanatory Comment notes that Rule 1031.1 was added that year to replace Rule 2252(d), which previously addressed cross-claims among extant parties to a case. In turn, this Court has examined prior case law interpreting Pa. R.C.P. No. 2252, which was generally construed in a liberal fashion by our appellate courts to favor avoiding "the multiplicity of suits by adjudicating in one suit the rights and liabilities of all the parties to a single transaction which constitutes the cause of action." Wnek v. Boyle, 96 A.2d 857, 859 (Pa. 1953); Martinelli v. Mulloy, 299 A.2d 19 (Pa. Super. 1972); Ianni v. Pantalone, 361 A.2d 772 (Pa. Super. 1976).

Such a rationale undoubtedly applies here, in that the rights and liabilities as between Jameson and AHN arising out of Decedent's care should certainly be litigated alongside the question of which defendants, if any, are liable to Plaintiff for what transpired on November 5-6, 2014. Additionally, we note that our Superior Court has stated:

> Under our rules of procedure, leave to amend a complaint should be liberally granted…Nevertheless, '[it] is axiomatic that a party may not plead a new cause of action in an amended complaint when the new cause of action is barred by the applicable statute of limitations at the time the amended complaint is filed.'

Shiflett v. Lehigh Valley Health Network, Inc., 174 A.3d 1066, 1083 (Pa. Super. 2017) (citations omitted). See also Noll by Noll v. Harrisburg Area YMCA, 643 A.2d 81, 84 (Pa. 1994) ("…amendments to pleadings should be liberally allowed…").

This, then, necessitates inquiring into whether Jameson's proposed cross-claim against AHN would be barred by the statute of limitations. Because Jameson asserts that AHN's indemnification and contribution is rooted in the MSA dating back to 2013, the applicable statute of limitation is found at 42 Pa. C.S. §5525(a)(8), which states that "an action upon a contract, obligation or liability founded upon a writing…" must be commenced within four years. However, the starting date for this four-year period would not be until Jameson knew it would be liable to Plaintiff; in other words, if a jury in this case awarded a verdict in favor of Plaintiff and against Jameson, that is the day the statute of limitations would begin to run on its indemnification and contribution claims against AHN. Kessock v. Conestoga Title Insurance Co., 194 A.3d 1046, 1055-56 (Pa. Super. 2018). Accordingly, the statute of limitations on Jameson's cross-claim has not yet begun to run, let alone expire, meaning that on this basis, the amendment should be permitted.

In light of these principles, this Court concludes that Jameson's proposed cross-claim falls well within the applicable statute of limitation and the ambit of Pa. R.C.P. No. 1031.1(2), and that permitting the amendment would ultimately contribute to ensuring the "just, speedy and inexpensive determination" of this proceeding. Pa. R.C.P. No. 126. Therefore, Jameson's Motion for Leave to Amend Answer is hereby GRANTED.

B. AHN's Motion for Summary Judgment

In its Motion for Summary Judgment and subsequent brief, AHN argues that it is entitled to judgment as a matter of law because it was made a party to the lawsuit outside of the applicable statute of limitations. Plaintiff, in response, contends that AHN was timely joined to the lawsuit because of the doctrine of fraudulent concealment, thus precluding summary judgment.

Summary judgment is a procedural mechanism that allows a litigant to move for judgment as a matter of law whenever "there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report," or "an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense

which…would require [submission] to a jury." Pa. R.C.P. No. 1035.2. For purposes of summary judgment, material facts are defined as "those that directly affect the outcome of the case," while the factual record encompasses any "pleadings…depositions, answers to interrogatories, admissions and affidavits, and…reports signed by an expert witness…" Gerrow v. Shincor Silicones, Inc., 756 A.2d 697 (Pa. Super. 2000); Pa. R.C.P. No. 1035.1. Indeed, the overall goal of summary judgment is for the court, when standing upon this factual foundation, to pierce the pleadings and see if a genuine need for trial exists. Ertel v. Patriot-News Co., 674 A.2d 1038, 1042 (Pa. 1996) (citations omitted).

Once a motion for summary judgment has been filed, the adverse party is required to respond within thirty days and identify "one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion…" Pa. R.C.P. No. 1035.3(a)(1). The trial court may only enter summary judgment if the movant's right to such relief is clear and free from doubt. Marks v. Tasman, 589 A.2d 205, 206 (Pa. 1991). When ruling on a motion for summary judgment, a further duty is imposed upon the trial court to "take all facts of record and reasonable inferences therefrom in a light most favorable to the non-moving party and…resolve all doubts as to the existence of a genuine issue of material fact against the moving party." Nicolaou v. Martin, 195 A.3d 880, 891 (Pa. 2018). Lastly, the trial court's role at the summary judgment stage is only to assess whether a genuine dispute of material fact exists, not to weigh the evidence and determine the truth of the matter in an imprudent invasion of the province of the jury. Summers v. Certainteed Corp., 997 A.2d 1152, 1161 (Pa. 2010).

Preliminarily, we note that Section 8301 of the Judicial Code authorizes actions in response to a death "caused by the wrongful act or neglect or unlawful violence or negligence of another" to be brought by the decedent's survivor. 42 Pa. C.S. §8301(a); see also Pennock v. Lenzi, 882 A.2d 1057, 1064 n.8 (Pa. Cmwlth. 2005). The statute of limitations, in turn, decrees that actions for wrongful death on those grounds must be commenced within two years. 42 Pa. C.S. §5524(2). Statutory time limits on filing suit are strictly enforced by Pennsylvania courts to uphold the policies of "the preservation of evidence, right of potential defendants to repose, and administrative efficiency and convenience." Sabella v. Appalachian Development Corp., 103 A.3d 83, 92 (Pa. Super. 2014) (citations omitted).

Once a lawsuit has been filed, defendants who believe that the action was untimely may plead the statute of limitations as an affirmative defense as part of a new matter. Pa. R.C.P. No. 1030(a). The defendant has an initial burden of proof for that affirmative defense. Reott v. Asia Trend, Inc., 55 A.3d 1088, 1092 (Pa. 2012). If the defendant is successful at meet-

ing that burden, the burden is then shifted to the plaintiff, who must then show some reason for the delay in filing suit, such as the discovery rule or the doctrine of fraudulent concealment. Sabella, supra, at 93; Westinghouse Electric Corp. v. Pennsylvania Dept. of Environmental Protection, 705 A.2d 1349, 1354 (Pa. Cmwlth. 1998).

Whether the statute of limitations "has run on a claim is usually a question of law for the judge, but where…the issue involves a factual determination, i.e. what is a reasonable period, the determination is for the jury. Smith v. Bell Telephone Co., 153 A.2d 477, 481 (Pa. 1959). Although the statute of limitations generally "begins to run as soon as the right to institute and maintain a suit arises," the countdown clock on the filing period may be tolled, that is, deemed to have not yet started ticking downward, in situations implicating the equitable principles of the discovery rule or the doctrine of fraudulent concealment. Fine v. Checcio, 870 A.2d 850, 857 (Pa. 2005). As a threshold matter, these concepts do not include, and thus the statute is not tolled by, a plaintiff's "mistake, misunderstanding, or lack of knowledge." Id.

The discovery rule excepts plaintiffs from filing suit strictly before the expiry of the statutory deadline in cases when the plaintiff's injury or its cause was "neither known nor reasonably knowable" at the time of its infliction. Id. at 858. The rule developed to "exclude from the running of the statute of limitations that period of time during which a party who has not suffered an immediate ascertainable injury is reasonably unaware he has been injured, so that he has essentially the same rights as those who have suffered such an injury." Id. (citing Hayward v. Medical Center of Beaver County, 608 A.2d 1040, 1043 (Pa. 1992)). The statute of limitations period instead begins running when the plaintiff "discovers or reasonably should discover that he has been injured and that his injury has been caused by another party's conduct." Id. at 859. The timeliness of the plaintiff's discovery of their injury and the diligence of their investigative efforts are then usually presented as questions for the jury, i.e. the reasonable diligence standard. Id. at 859; Kingston Coal Co. v. Felton Mineral Co., Inc., 690 A.2d 284, 288 (Pa. Super. 1997).

While the discovery rule enjoys frequent application in the realm of medical malpractice litigation, due to its helpfulness in instituting actions regarding latent injuries, our Supreme Court has clarified that the discovery rule is unequivocally unavailable in cases involving wrongful death and survival actions. Pastierik v. Duquesne Light Co., 526 A.2d 323, 325 (Pa. 1987) (citing Anthony v. Koppers Co., 436 A.2d 181 (Pa. 1981)). This is because death, in contrast to a latent injury manifested by oftentimes nebulous and amorphous symptoms whose causes require extensive time and effort to investigate, is a "definitely established event" that puts the decedent's survivors on "clear notice…to proceed with scientific examinations aimed at determining the exact cause of death so that a wrongful

death action, if warranted, can be filed without additional delay." Id. at 326. Accordingly, the discovery rule is inapplicable to the matter at bar for purposes of determining whether Plaintiff joined AHN to the lawsuit within the temporal boundaries of the statute.

A close sibling of the discovery rule, the doctrine of fraudulent concealment is "based on a theory of estoppel…that the defendant may not invoke the statute of limitations, if through fraud or concealment, he causes the plaintiff to relax his vigilance or deviate from his right of inquiry into the facts." Id. at 860; Nesbitt v. Erie Coach Co., 204 A.2d 473 (Pa. 1964). A defendant's fraud or concealment need not be perpetrated in the strictest sense, i.e. "with an intent to deceive;" rather, unintentional fraud or concealment is enough to toll the statute. Molineux v. Reed, 532 A.2d 792, 794 (Pa. 1987). Like the discovery rule, a plaintiff seeking to invoke the doctrine of fraudulent concealment must adhere to the reasonable diligence standard; "that is…[the statute of limitations] begins to run when the injured party knows or reasonably should know of his injury and its cause," a question which is usually put to the jury. Fine, supra, at 861. The doctrine of fraudulent concealment, unlike the discovery rule, is also fully applicable in wrongful death or survival actions. Krapf v. St. Luke's Hospital, 4 A.3d 642, 650 (Pa. Super. 2010) (Krapf II).

Subject to proof by clear and convincing evidence, a plaintiff may invoke the doctrine of fraudulent concealment in two scenarios: an affirmative misrepresentation by the defendant that the plaintiff justifiably relies on to his/her detriment, or the defendant's failure to "discharge a duty to disclose information." Krapf v. St. Luke's Hospital, 2009 WL 6353605 (Pa. Com. Pl. 2009) (Krapf I), aff'd, Krapf II, supra; Rice v. Diocese of Altoona-Johnstown, 2019 PA Super 186. With respect to the second prong, the Superior Court has stated that for silence to be considered fraudulent concealment, there must exist a duty to speak on the part of the defendant; "mere silence in the absence of the duty to speak" is insufficient to invoke this doctrine. Id. (citing Lange v. Burd, 800 A.2d 336, 339 (Pa. Super. 2002)). Whether such a duty exists is a question of law to be determined by the Court. Youndt v. First National Bank of Port Allegheny, 868 A.2d 539, 550 (Pa. Super. 2005).

Although the jurisprudence of this Commonwealth is replete with cases noting the common law duties that hospitals owe their patients (see, e.g., Krapf. I, supra; Tonsic v. Wagner, 329 A.2d 497 (Pa. 1974); Thompson v. Nason Hospital, 591 A.2d 703 (Pa. 1991); Capan v. Divine Providence Hospital, 430 A.2d 647 (Pa. Super. 1980)), in addition to statutory and regulatory duties[1], there is a dearth of case law addressing what duty, if any, is owed by an independent contractor charged with managing a hospital's emergency room. Neither party, through briefs and argument, has addressed the question of whether AHN owed a duty to Plaintiff of revealing its involvement in the management of Jameson's emergency room,

and the Court, after thoroughly scouring the case law, has been unable to reveal any precedents on this point. Although it would be well within this Court's purview to promulgate such an obligation, we decline at this time to impose or recognize a heretofore unknown "duty to speak" upon third party emergency room contractors for purposes of the doctrine of fraudulent concealment.[2]

Rather, this Court finds persuasive and controlling the opinions of our Superior Court in Lange, supra, and Pulli v. Ustin, 24 A.3d 421 (Pa. Super. 2011), both of which concerned the silence of a potential defendant in conveying information to a plaintiff. In Lange, supra, following a June 1996 motor vehicle accident, the plaintiffs attempted to sue the defendant in June 1998, less than three weeks before the statute of limitations had run; however, the defendant had died in December 1996. Id. at 338. Sometime after the statutory period for filing suit had expired, the plaintiffs attempted to file a new action against the deceased defendant's estate; the administrator of the estate responded with a motion for summary judgment on statute of limitations grounds. Id.

In opposing the motion, the Lange plaintiffs contended that the statute had been tolled because the deceased defendant's insurer misled them by implying that the defendant was alive after December 1996 by referring to the defendant in a number of letters exchanged as "Our Insured: Donald Burd." Id. at 339. Specifically, the Lange plaintiffs pointed to the doctrine of fraudulent concealment because the insurance company both had made an affirmative misrepresentation as to the defendant's status through the letters and had shirked its duty to inform the plaintiffs that the defendant had passed away. Id. The trial court disagreed and granted the defendant's motion for summary judgment. Id.

On appeal, the Superior Court agreed with the trial court that neither prong of the doctrine of fraudulent concealment provided the Lange plaintiffs with safe harbor from their untimely filing. Id. at 340. First, the Superior Court noted that the Lange plaintiffs had made an unreasonable assumption that the insurer's letters were conclusive proof that the defendant was still alive, and thus were unjustified in relying on this statement insofar as it comprised an affirmative misrepresentation. Id. Second, in response to the assertion that the insurer had an obligation to inform the plaintiffs of the defendant's death, the Superior Court flatly stated that the insurer "was under no duty to inform the [Lange plaintiffs] of the status of their insured." Id. In sum, the statute of limitations was not tolled in this case because "there was neither active concealment nor a duty to inform" on the part of the insurer. Id. Thus, the trial court was affirmed. Id. at 342. Accord Montanya v. McGonegal, 757 A.2d 947 (Pa. Super. 2000).

Pulli, supra, likewise concerned a car accident, and the litigants were involved in a vehicle collision on November 7, 2003. Id. at 423. The plain-

tiffs filed suit against the defendant on July 6, 2004, and the defendant was served with the complaint on July 19, 2004. Id. Interrogatories served contemporaneously with the complaint demanded that the defendant state "each place she traveled on the date of the accident" and her reasons for doing so. Id. The defendant responded in October 2004 that her reason for traveling on the day of the accident was to go to a bank in Lansdale, Pennsylvania. Id.

Following two years of discovery between the parties, the plaintiffs finally deposed the defendant on August 18, 2006, at which they learned for the first time that the defendant had been driving on November 7, 2003, to make a bank deposit on behalf of her employer, Comprehensive Financial Professionals, LLC (CFP), and not for personal reasons. Id. at 424. The plaintiffs immediately filed a Praecipe for Writ of Summons against CFP, who in turn responded with a motion for summary judgment based on the statute of limitations. Id. The trial court granted CFP's motion on the basis that the doctrine of fraudulent concealment did not toll the statute of limitations, and the plaintiffs appealed to the Superior Court. Id.

Observing the record before them, the Superior Court stated that it never appeared that CFP had engaged in an independent act of concealment that the plaintiffs justifiably relied upon to their detriment. Id. at 426. Furthermore, the Superior Court noted that the plaintiffs could have taken other measures to discover CFP's involvement in the car accident in a timely manner, such as filing motions to compel more specific answers to the defendant's interrogatories or compelling the defendant to have an earlier deposition. Id. Accordingly, the Superior Court held that the trial court was correct in its application of the doctrine of fraudulent concealment and affirmed the grant of summary judgment. Id.

Turning our attention back to the case at bar, the following facts appear to be undisputed: Decedent died on November 6, 2014, meaning that the statute of limitations for filing suit expired two years later on November 6, 2016. 42 Pa. C.S. §5524(2); Pastierik, supra. Plaintiff did not join AHN to the lawsuit until March 8, 2017, some four months after the statute had run. Plaintiff did not allege any affirmative misrepresentation from AHN until it filed its response to AHN's Motion for Summary Judgment on June 13, 2019, in which it referred to Dr. Savino's April 2, 2018 deposition testimony that the lab coat she wore while treating Decedent on November 5, 2014, did not refer at all to AHN but instead bore the initials of EMP, AHN's predecessor in interest. See Plaintiff's Response to Motion for Summary Judgment, Para. 9. Contentions about Dr. Savino's lab coat notwithstanding, it appears uncontroverted that AHN was otherwise silent with respect to its involvement in managing Jameson's emergency room at all times prior to the expiration of the statute of limitations.

These facts square with the scenarios presented by Lange and Pulli.

Similar to the insurer in Lange, AHN, as previously explained, was under no "duty to speak" regarding its role in providing care to Decedent. Although the Court understands the confusion that may arise from glimpsing an inaccurate lab coat, we consider this event in a similar vein to the insurer's ambiguous letters in Lange, in that we do not consider the lab coat as rising to the level of an affirmative misrepresentation justifiably relied upon by Plaintiff to her detriment such as would toll the statute. And in any event, the question of what logo was emblazoned on Dr. Savino's lab coat did not even arise until she was deposed well over a year after the lawsuit was filed, similar to the Pulli defendant.

Likewise, as the Superior Court also admonished in Pulli, Plaintiff could have taken measures to expedite learning of AHN's involvement in the management of Jameson's emergency room, such as by pre-complaint discovery permitted by Pa. R.C.P. No. 4003.8, or filing the lawsuit at an earlier date instead of less than one month before the statute expired. Simply put, Plaintiff was at no time excused from her duty of "[using] all reasonable diligence to properly inform [herself] of the facts and circumstances upon which the right of recovery is based and to institute suit within the prescribed period." Cappelli v. York Operating Co., Inc., 711 A.2d 481, 485 (Pa. Super. 1998) (citations omitted). Rather, Plaintiff has failed to establish facts essential to proving that the doctrine of fraudulent concealment applied here and tolled the statute of limitations against AHN. McCarthy v. Dan Lepore & Sons Co., Inc., 724 A.2d 938 (Pa. Super. 1998).

Even when considered in a light most favorable to the Plaintiff, as the Court is required to do at this stage, we hold that the uncontroverted facts show AHN neither engaged in active concealment nor violated a "duty to speak" regarding its participation in Jameson's emergency room prior to the expiration of the statute of limitations on November 6, 2016. Because this Court determines as a matter of law that the statute of limitations was not tolled by the doctrine of fraudulent concealment and that in turn Plaintiff's suit as filed against AHN was untimely, AHN's Motion for Summary Judgment is hereby GRANTED.

Consistent with the foregoing, the Court hereby enters the following order.

ORDER OF COURT

AND NOW, this 19th day of July, 2019, this case being before the Court on the Motion for Summary Judgment filed by Defendant AHN Emergency Group of Lawrence County, Ltd. (AHN), and the Motion for Leave to Amend Answer filed by Defendants Jameson Memorial Hospital and Jameson Health System, Inc. (collectively, Jameson), for oral argument on June 24, 2019, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Jameson's Motion for Leave to Amend Answer is hereby GRANTED,

and Jameson shall have 20 days from the date of this order to file its amended Answer and New Matter asserting a cross-claim against AHN.

2. AHN shall have 21 days following service of Jameson's amended Answer and New Matter to file a responsive pleading, such as Preliminary Objections or its own Answer and New Matter as concerns the cross-claim.

3. This Court's granting of Jameson's Motion for Leave to Amend shall be deemed to have occurred prior in time to our disposition of AHN's Motion for Summary Judgment, such that the cross-claim may be properly asserted under Pa. R.C.P. No. 1031.1.

4. AHN's Motion for Summary Judgment is hereby GRANTED on the basis that Plaintiff's suit against it was filed outside the statute of limitations at 42 Pa. C.S. §5524(2), and that such statute was not tolled by any applicable exception. Accordingly, Plaintiff's claims against AHN are dismissed with prejudice.

5. Although AHN is no longer a party to Plaintiff's claims, AHN shall remain a party to this lawsuit for purposes of adjudicating Jameson's cross-claim.

6. The Prothonotary of Lawrence County shall serve notice of this order upon all counsel of record, or if a party is unrepresented, at the party's last known address as contained in the Court's file.

BY THE COURT:

John W. Hodge, Judge

Footnotes:

[1] See, e.g., Krapf I, supra (discussing the imposition of duties to inform on hospitals through the Pennsylvania MCARE Act, 40 P.S. § 1303.101 et seq., and administrative regulations such as the Pennsylvania health care bill of rights, 28 Pa. Code § 103.21 et seq.).

[2] It is worth noting that even when the extant case law illustrates the absence of a legal duty, courts have sometimes felt moved to create new duties, often in response to particularly compelling or egregious circumstances. Krapf I, supra (hospitals have an affirmative duty to inform patients and/or their families when hospital staff killed or attempted to kill a paitent); R.W. v. Manzek, 888 A.2d 740 (Pa. 2005) (fundraising companies working with schools have a duty to warn students about the dangers of door-to-door sales). Before a legal duty may be carved out by the judiciary, and before it will be recognized in subsequent cases, our Supreme Court has decreed a litany of factors that must be weighed and considered in tandem with more general concepts about "our perception of history, morals, justice and society..." Althaus ex rel. Althaus v. Cohen, 756 A.2d 1166, 1169 (Pa. 2000) (citations omitted). In light of those factors, and in recognition of the stringent duties utilitzed to hold hospitals accountable for the misconduct perpetrated within their walls (see e.g., Thompson, supra), this Court declines to impose a duty upon a third party emergency room contractor to disclose its relationship with the hospital to patients and/or their families.