

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TED A. MCCRACKEN, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 02-1482 JJF
 :
 DHILLON RAGHBIR; NISHAN TRANSPORT :
 INC. BILL THOMPSON TRANSPORT INC.; :
 FREDERICK THOMPSON CO. a/k/a :
 FREDERICK THOMPSON INDUSTRIES; :
 JOHN DOE I; JOHN DOE II; JOHN DOE :
 III; JOHN DOE IV; JOHN DOE V; JOHN :
 DOE VI; TRAVELERS PROPERTY AND :
 CASUALTY CORP.; and ROBERT I. LIPP, :
 :
 Defendants. :

Ted A. McCracken, North Wales, Pennsylvania.
Pro Se Plaintiff.

Benjamin C. Wetzel, III, Esquire and Natalie M. Ippolito, Esquire
of BAILEY & WETZEL, P.A., Wilmington, Delaware.
Attorneys for Defendants Dhillon Raghbir, Nishan Transport, Inc.,
Bill Thompson Transport, Inc., and Frederick Thompson Co. a/k/a
Frederick Thompson Industries.

Louis J. Rizzo, Jr., Esquire of REGER & RIZZO, LLP, Wilmington,
Delaware.
Attorney for Defendants Travelers Property Casualty Corporation
and Robert I. Lipp.

MEMORANDUM OPINION

October 7, 2004
Wilmington, Delaware

FARNAN, District Judge.

Presently before the Court is a Motion To Dismiss The Complaint For Failure To State A Claim Upon Which Relief Can Be Granted (D.I. 27) filed by Defendants Dhillon Raghbir, Nishan Transport, Inc., Bill Thompson Transport, Inc., and Frederick Thompson Co. a/k/a Frederick Thompson Industries ("Transport Defendants"), and a Motion To Dismiss (D.I. 41) filed by Defendants Travelers Property Casualty Corporation and Robert I. Lipp ("Travelers Defendants"). For the reasons discussed, the motions will be granted.

BACKGROUND

This action arises from allegations of negligence related to a traffic accident that occurred on or about September 1, 1999, in Newark, Delaware. Plaintiff Mr. McCracken was traveling southbound on Route 896 at or near its intersection with Old Baltimore Pike in Newark, Delaware, when his vehicle collided with a tractor-trailer driven by Defendant Dhillon Raghbir. As a result of this collision, Plaintiff alleges that he suffered multiple physical injuries.

At the time of the accident, Mr. Raghbir was an employee of Defendant Frederick Thompson Co. a/k/a Frederick Thompson Industries. Defendant Nishan Transport, Inc. owned the tractor that Mr. Raghbir was driving and Defendant Bill Thompson Transport, Inc. owned the trailer the Mr. Raghbir was

transporting at the time of the accident.

Mr. McCracken filed an action in the United States District Court for the Eastern District of Pennsylvania ("Pennsylvania Action"), C.A. No. 01-CV-4159, alleging negligence claims against Transport Defendants. Mr. McCracken made a claim seeking monetary damages for physical and personal injuries resulting from the accident. The parties settled the issues in the action, and on September, 7, 2001, Mr. McCracken executed a Settlement Agreement and Release. (D.I. 41 Ex. B.) On October 12, 2001, the United States District Court for the Eastern District of Pennsylvania entered an Order dismissing Mr. McCracken's action with prejudice. (D.I. 27 Ex. D.)

Mr. McCracken subsequently filed a Complaint in the United States District Court for the District of Maryland alleging negligence claims against Transport Defendants. On September 11, 2002, the District Court for the District of Maryland entered an order transferring the case to this Court. (D.I. 4.)

On October 14, 2003, Transport Defendants filed a Motion To Dismiss The Complaint For Failure To State A Claim Upon Which Relief Can Be Granted (D.I. 27) pursuant to Federal Rule of Civil Procedure 12(b)(6). On January 20, 2004, Plaintiff filed an Amended Complaint (D.I. 30) against Travelers Defendants, alleging fraud in the negotiation of the Settlement Agreement and Release in the Pennsylvania Action. On June 24, 2004, Travelers

Defendants filed a Motion To Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

DISCUSSION

I. Standard Of Review

When a court analyzes a motion to dismiss brought pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, it must accept the factual allegations of the Complaint as true.

Langford v. City of Atlantic City, 235 F.3d 845, 847 (3d Cir. 2000). The court must draw all reasonable inferences in favor of the nonmoving party. Id. Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'"

Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

II. Motion To Dismiss Filed By Travelers Defendants

By their motion, Travelers Defendants contend that Mr. McCracken's Complaint should be dismissed because Mr. McCracken can prove no set of facts consistent with his fraud allegation that would entitle him to relief for several reasons. First, the Settlement and Release are valid and binding upon Mr. McCracken. Second, Mr. McCracken has not pled the fraud claim in his Amended Complaint with particularity, as required by Federal Rule of

Civil Procedure 9(b). Third, Mr. McCracken lacks standing to pursue an action against Travelers Property Casualty Corporation because, under Delaware state law, an injured plaintiff may not bring an action directly against a tort-feasor's insurance carrier, absent a valid assignment. Fourth, Mr. McCracken has not stated a claim against Robert I. Lipp in his Amended Complaint and the CEO of a corporation is not generally liable for the actions of the corporation.

Mr. McCracken contends in his response that res judicata cannot be applied as a defense when the prior judgment was derived from fraud, deceit and misrepresentations. As Travelers Defendants do not allege a defense of res judicata in their Motion To Dismiss, this argument is irrelevant.

Mr. McCracken further contends that his Amended Complaint pleads fraud with sufficient particularity because it conforms to Rule 9. Mr. McCracken argues that because he is a plaintiff pro se, the Court should apply a lesser standard of pleading to him.

A. Whether Plaintiff Has Pled Fraud With Particularity As Required By Federal Rule Of Civil Procedure 9(b)

Federal Rule Of Civil Procedure 9(b) requires a party alleging fraud or mistake to plead with particularity the circumstances constituting his or her claims. Fed.R.Civ.P. 9(b). The intent behind Rule 9(b) is to give defendants notice of the claims against them and to reduce the number of frivolous

actions. In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1418 (3d Cir. 1997). Accordingly, Rule 9(b) does not require the "exhaustive cataloging of facts but only sufficient factual specificity to provide assurance that plaintiff has investigated ... the alleged fraud and reasonably believes that a wrong has occurred." " Levine v. Metal Recovery Tech., Inc., 182 F.R.D. 112, 116 (D.Del.1998) (quoting In re ML-Lee Acquisition Fund II, L.P. and ML-Lee Acquisition Fund (Retirement Accounts) II, L.P. Sec. Litig., 848 F.Supp. 527, 555 (D.Del. 1994)). Rule 9(b) does not require the recitation of "every material detail of the fraud such as date, location and time[; however,] plaintiffs must use 'alternative means of injecting precision and some measure of substantiation into their allegations of fraud.'" In re Rockefeller Ctr. Prop., Inc. Sec. Litig., 311 F.3d 198, 216 (3d Cir.2002) (quoting In re In re Nice Sys., 135 F.Supp.2d 551, 557 (D.N.J. 2001)).

In the circumstances of this action, the Court finds that Mr. McCracken has not stated his allegations of fraud with sufficient particularity for several reasons. First, the Court finds that Mr. McCracken has failed to state the identity of the person who made any fraudulent statement to him, or the time, place, and content of the misrepresentation.

Second, the Court finds that Mr. McCracken relies only on the Settlement and Release document itself as evidence of the

alleged fraud. He has offered no other evidence of fraudulent conduct on behalf of the Travelers Defendants.

Third, Mr. McCracken alleges that his attorney in the Pennsylvania Action acted in concert with Travelers Defendants to defraud him, however, he offers no evidence in support of that allegation.

For these reasons, the Court concludes that Mr. McCracken has not plead his claim of fraud with sufficient particularity to satisfy the requirements of Rule 9. Given the Court's conclusions with respect to this issue, it is unnecessary for the Court to address at this time the Traveler Defendants' arguments that Mr. McCracken has no standing to sue Travelers Property Casualty Corporation and that Mr. McCracken has not pled a claim against Mr. Lipp. Because Mr. McCracken has not pled his claim of fraud with sufficient particularity to satisfy the requirements of Rule 9, the Court will grant the Motion To Dismiss filed by the Travelers Defendants.

III. Motion To Dismiss The Complaint For Failure To State A Claim Upon Which Relief Can Be Granted Filed By Transport Defendants

By its motion, Transport Defendants contend that Mr. McCracken's Complaint is barred by the doctrine of res judicata because Mr. McCracken has reasserted the same claims against the same parties as he did in the Pennsylvania Action.

In response, Mr. McCracken contends that the defense of res

judicata is not available to Defendants because the judgment in the Pennsylvania Action was obtained through fraud. Mr. McCracken further contends that the claims in this action differ from the claims in the Pennsylvania Action because of the presence of the fraud claim against Travelers Defendants, and because he has asserted constitutional claims against Transport Defendants. Mr. McCracken also argues that the parties in the two actions differ because the Settlement and Release names Raghbir Dhillon, while the Complaint in this action names Dhillon Raghbir.

The Third Circuit has stated, "[t]he doctrine of res judicata 'is not a mere matter of technical practice or procedure' but 'a rule of fundamental and substantial justice.'" Equal Employment Opportunity Commission v. U.S. Steel Corp., 921 F.2d 489, 492 (3d Cir. 1990) (quoting Hart Steel Co. v. Railroad Supply Co., 244 U.S. 294 (1917)). "Res judicata avoids the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." Id.

Res judicata, also known as claim preclusion, "requires a showing that there has been (1) a final judgment on the merits in a prior [law]suit involving (2) the same claim and (3) the same parties or their privies." Id. at 493 (citing United States v. Athlone Industries, Inc., 746 F.2d 977, 983 (3d Cir. 1984)).

In regard to the first prong, Plaintiff filed an Amended Complaint (D.I. 27 Ex. A) in an action in the Eastern District of Pennsylvania. The parties settled the issues in the Pennsylvania Action. The district court then dismissed the action with prejudice on September 22, 2003. (D.I. 27 Ex. D.) "Dismissal with prejudice constitutes an adjudication of the merits as fully and completely as if the order had been entered after trial." Gambocz v. Yelencsics, 468 F.2d 837, 840 (3d Cir. 1972) (citing Lawlor v. National Screen Service Corp., 349 U.S. 322, 327 (1955)). Thus, the Court concludes there was a final judgment on the merits in a prior lawsuit, namely the action filed in the Eastern District of Pennsylvania, that satisfies the first element of Defendants' res judicata contention.

In regard to the second and third res judicata elements, the same claims and the same parties, in the Pennsylvania Action, Plaintiff asserted four claims alleging personal injury related to a traffic accident that occurred on or about September 1, 1999, on Route 896 in Delaware. Plaintiff asserted a negligence claim against each of four defendants: Defendants Raghbir Dhillon, Nishan Transport, Inc., Bill Thompson Transport, Inc., Frederick Thompson Co. a/k/a/ Frederick Thompson Industries. In this lawsuit, Plaintiff asserts four negligence claims related to a traffic accident that occurred on or about September 1, 1999, on Route 896 in Delaware. Mr.

McCracken asserts a negligence claim against each of the same four parties as he did in the Pennsylvania Action. Consequently, the Court concludes that the Pennsylvania Action and this lawsuit involve the same four claims and the same parties. The fraud claims against the Travelers Defendants in this lawsuit have been dismissed, rendering Mr. McCracken's argument that the cases differ moot. Therefore, the Court finds that Defendants have satisfied the second and third elements of their res judicata claim.

In sum, Defendants have a right to rely on the dismissal of the lawsuit filed in the Eastern District of Pennsylvania. Defendants expended resources defending themselves in the Pennsylvania Action, and considerations of fairness dictate that Defendants should not have to defend themselves twice against the same allegations made by the same party. For these reasons, the Court will grant the Motion To Dismiss The Complaint For Failure To State A Claim Upon Which Relief Can Be Granted filed by Transport Defendants.

CONCLUSION

For the reasons discussed, the Motion To Dismiss The Complaint For Failure To State A Claim Upon Which Relief Can Be Granted (D.I. 27) filed by Transport Defendants will be granted, and the Motion To Dismiss (D.I. 41) filed by Travelers Defendants will be granted.

An appropriate Order (D.I. 47) has been entered with regard to the Motion To Dismiss The Complaint For Failure To State A Claim Upon Which Relief Can Be Granted filed by Transport Defendants.

An appropriate Order will be issued with regard to the Motion To Dismiss filed by Travelers Defendants.

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 INC. BILL THOMPSON TRANSPORT INC.; :
 FREDERICK THOMPSON CO. a/k/a :
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 JOHN DOE I; JOHN DOE II; JOHN DOE :
 III; JOHN DOE IV; JOHN DOE V; JOHN :
 DOE VI; TRAVELERS PROPERTY AND :
 CASUALTY CORP.; and ROBERT I. LIPP, :
 :
 Defendants. :

ORDER

At Wilmington this 7th day of October 2004, for the
reasons set forth in the Opinion issued this date;

IT IS HEREBY ORDERED that the Motion To Dismiss (D.I. 41)
filed by Defendants Travelers Property Casualty Corporation and
Robert I. Lipp is **GRANTED**.

Joseph J. Farnan, Jr.
UNITED STATES DISTRICT JUDGE

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 :
 Defendants. :

FINAL JUDGMENT IN A CIVIL CASE

At Wilmington, this 7th day of October 2004, for the reasons set forth in the Memorandum Opinion and Order issued this date;

IT IS HEREBY ORDERED that judgment is entered in favor of Dhillon Raghbir, Nishan Transport, Inc., Bill Thompson Transport, Inc. and Frederick Thompson Co. a/k/a Frederick Thompson Industries, John Doe I, John Doe II, John Doe III, John Doe VI, John Doe V, John Doe VI, Travelers Property Casualty Corporation, and Robert I. Lipp, and against Plaintiff Ted A. McCracken.

Joseph J. Farnan, Jr.
UNITED STATES DISTRICT JUDGE

Deborah L. Krett
(By) Deputy Clerk