

2005 Mass. Super. LEXIS 149,*;19 Mass. L. Rep. 219

Corporate Claims Management, Inc. n1 v. Star Fasteners, Inc. et al. n2

¹As subrogee of the Estate of Francis Frank

²Sid Harvey Industries, Inc.

03-464

SUPERIOR COURT OF MASSACHUSETTS, AT HAMPDEN

April 15, 2005, Decided

April 15, 2005, Filed

DISPOSITION:

[*1] Defendant's motion to dismiss without prejudice is GRANTED.

JUDGES: Peter A. Velis, Justice of the Superior Court.

OPINION BY: Peter A. Velis

OPINION

MEMORANDUM AND ORDER ON DEFENDANT'S MOTION TO DISMISS

This action arises out of an oil spill at the home of Francis Frank ("Frank") Feeding Hills. The oil spill was allegedly caused by a defective bolt supplied by the defendants. As insurer of Punderson Oil, the company that maintained Frank's oil tank, Corporate Claims Management ("Claims Management") paid Frank for the clean-up of the oil spill. The defendant, Sid Harvey, Inc., brings this motion to dismiss stating that Claims Management is not the subrogee of Frank and that this claim should be refiled as a claim for contribution, with Claims Management acting as subrogee for Punderson Oil.

"The general rule is well established that upon the payment of a loss the insurer is entitled to be subrogated pro tanto to any right of action which the insured may have against a third person whose negligence or wrong caused the loss." *New England Gas & Elec. Assoc. v. Ocean Acc. & Guar.*, 330 Mass. 640, 659, 116

N.E.2d 671 (1953) (emphasis added).

Claims Management was [*2] not subrogated to the rights of Frank in this matter. It is, rather, subrogee to its insured, Punderson Oil. This action should properly be brought as a claim for contribution.

ORDER

For the foregoing reasons, the defendant's motion to dismiss without prejudice is GRANTED.

Peter A. Velis

Justice of the Superior Court

DATED: April 15, 2005