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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4669-15T2

STATEWIDE INSURANCE
FUND, as subrogee of the
COUNTY OF WARREN,

Plaintiff-Appellant,

v.

OWL CONTRACTING,

Defendant/Third-Party
Plaintiff-Respondent,

v.

DANIEL HILL,

Third-Party Defendant-Respondent.

Argued September 7, 2017 – Decided September 27, 2017

Before Judges Rothstadt and Vernoia.

On appeal from the Superior Court of New
Jersey, Law Division, Warren County, Docket
No. L-0347-14.

Richard P. Cushing argued the cause for
appellant (Gebhardt & Kiefer, PC, attorneys;
Tracy B. Bussel, on the briefs).

Christopher Bally argued the cause for
respondent Owl Contracting (Law Office of

Joseph Carolan, attorneys; Mr. Bally and George H. Sly, Jr., on the brief).

Christopher M. Troxell argued the cause for respondent Daniel Hill.

PER CURIAM

Plaintiff Statewide Insurance Fund, as subrogee of the County of Warren, appeals from the Law Division's entry of summary judgment dismissing its complaint for indemnification from defendant/third-party plaintiff, Owl Contracting. Statewide's complaint alleged that, as Warren County's workers' compensation carrier, it was entitled to recover sums it paid in satisfaction of third-party defendant Daniel Hill's workers' compensation claim in excess of the amounts Statewide recovered from Hill's settlement with Owl in an earlier third-party action. Statewide argued that it was entitled to the additional sums based upon an indemnification clause in the construction contract between Warren County and Owl. According to its complaint, Statewide sought amounts in excess of those it was entitled to recover under the Workers' Compensation Act (WCA), N.J.S.A. 34:15-1 to -146.

The motion judge disagreed, finding Statewide's claim was barred by virtue of Statewide's receipt of funds from the settlement reached between Hill and Owl in satisfaction of its

lien under the provisions of the WCA.¹ Moreover, to the extent Statewide believed it was entitled to anything more, it was obligated to join in the action between Hill and Owl to assert its claim as required by the entire controversy doctrine. See R. 4:30A.

On appeal, Statewide argues that the motion judge erred by denying it a trial on the issue of Owl's employee's negligence before it determined whether Statewide was entitled to indemnification. It also contends the judge erred by relying upon the settlement between Hill and Owl and the Entire Controversy Doctrine as reasons for denying Statewide the benefit of the indemnification under Owl's agreement with Warren County.

The facts, when viewed in the light most favorable to Statewide, see Anland v. Mountain Creek Resort, Inc., 213 N.J. 573, 577 (2013) (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995)), are undisputed and can be summarized as follows. Hill's claim arose from injuries he sustained while employed by Warren County when he was struck by a vehicle owned by Owl. At the time of the accident, Owl was performing construction services for Warren County pursuant to a written agreement. The agreement contained an indemnification clause in

¹ N.J.S.A. 34:15-40(b),(e) and (g).

which Owl held Warren County harmless and agreed to indemnify it for any claims arising from Owl's negligence.

Hill filed a workers' compensation claim and Statewide made payments to and on behalf of Hill for his injuries and their treatment. He also filed a lawsuit against Owl that they settled. Statewide received a payment from the settlement proceeds in satisfaction of its lien, in accordance with the WCA. After the settlement, Hill continued treatment and Statewide made partial payments to Hill's medical providers also as required by the WCA. Statewide filed this action seeking reimbursement from Owl for the amounts it paid in excess of the amounts it received from Hill's settlement.

Applying the legal principles governing our de novo review where, as here, there is no genuine issue of material fact and "only a question of law remains," Cypress Point Condo. Ass'n v. Adria Towers, LLC, 226 N.J. 403, 414-15 (2016), we conclude Statewide's contentions are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). Suffice it to say, Statewide's entitlement to recover any amounts from the parties to this action was governed solely by the WCA. Warren County's agreement with Owl did not entitle Statewide to anything more.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

