UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

QUANSHAVIA GREEN and ANNIE GREEN,

Plaintiffs,

v. **Case No: 6:11-cv-1774-Orl-18KRS**

LUIS J. RUSSE, UNITED STATES OF AMERICA, and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendants.

ORDER

THIS CAUSE comes for consideration on Defendant United States' Motion to Dismiss with Prejudice State Farm's Crossclaim for Subrogation (Doc. 20) to which Defendant State Farm Mutual Automobile Insurance Company ("State Farm") responded in opposition (Doc. 22). For the following reasons, the United States' motion is granted in part and denied in part.

I. BACKGROUND

Plaintiffs Quanshavia Green and Annie Green (collectively "Plaintiffs") allege that on November 19, 2009, Plaintiffs were occupants of a motor vehicle on Coy Drive in Orlando, Florida. (Doc. 1 at 2.) Plaintiffs allege that Russe negligently operated a motor vehicle owned by the United States, causing it to collide with Plaintiffs' vehicle. (Id.) At all times relevant, Defendant Luis J. Russe was an employee of the United States Department of Agriculture ("USDA") and was acting within the scope of his employment. (Id.) At the time of the

incident, State Farm was Annie Green's underinsured or uninsured motorist ("UM") insurance carrier. (Doc. 13 at 2.)

Plaintiffs named as defendants Russe; the United States, acting through the USDA; and State Farm. State Farm brought a crossclaim against the United States and Russe to pursue subrogation against the United States and Russe. In an Order dated April 24, 2012, the Court dismissed Plaintiffs' claims against Russe. (Doc. 23 at 3.) The United States now moves to dismiss Russe as a defendant to State Farm's crossclaim and to dismiss State Farm's crossclaim in its entirety.

II. ANALYSIS

A. Russe as a Defendant to State Farm's Crossclaim

The United States contends that Russe must be dismissed as a defendant to State Farm's crossclaim pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure because sovereign immunity bar this claim against him. "Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." FDIC v. Meyer, 510 U.S. 471, 475 (1994) (citing Loeffler v. Frank, 486 U.S. 549, 554 (1988) and Fed. Hous. Admin. v. Burr, 309 U.S. 242, 244 (1940)). "Sovereign immunity is jurisdictional in nature." Id. Through passage of the Federal Torts Claims Act, Congress waived sovereign immunity for the United States for certain torts committed by federal employees. Meyer, 510 U.S. at 475-76 (citing 28 U.S.C. § 1346(b)). However, individual federal employees are immune from suit. United States v. Smith, 499 U.S. 160, 163 (1991). A suit against the United States is the exclusive remedy for a tort committed by a federal employee acting within the scope of his or her employment. Id.; see also 28 U.S.C. § 2679(b)(1).

In an earlier Order, the Court dismissed Plaintiffs' claims against Russe because such claims are barred by sovereign immunity. (Doc. 23 at 3.) Likewise, State Farm's crossclaim against Russe is barred by sovereign immunity. Therefore, Russe must be dismissed as a defendant to State Farm's crossclaim.

B. Viability of State Farm's Crossclaim Generally

The United States argues that under section 627.727, Florida Statutes (2011), and Metro. Cas. Ins. Co. v. Tepper, 2 So. 3d 209 (Fla. 2009), State Farm may not pursue subrogation through a crossclaim in this case. Instead, the United States contends that to pursue its subrogation claim, State Farm must make payment to Plaintiffs and then bring a separate action against the United States. Isolated language in Tepper may suggest this result. See id. at 214-15 ("[T]he statutory language is plain in its requirement that the UM carrier is not entitled to bring a subrogation claim until after the UM claim has reached 'final resolution.'") However, reading Tepper in its entirety and in the context of section 627.727(6)'s language reveals that the holding in Tepper is more limited than the United States now suggests.

Section 627.727(6), subsections (a) and (b), state:

> (6)(a) If an injured person . . . agrees to settle a claim with a liability insurer and its insured, and such settlement would not fully satisfy the claim for personal injuries or wrongful death so as to create an underinsured motorist claim, then written notice of the proposed settlement must be submitted by certified or registered mail to all underinsured motorist insurers that provide coverage. The underinsured motorist insurer then has a period of 30 days after receipt thereof to consider authorization of the settlement or retention of subrogation rights. If an underinsured motorist insurer authorizes settlement or fails to respond as required by paragraph (b) to the settlement request within the 30-day period, the injured party may proceed to execute a full release in favor of the underinsured

> motorist's liability insurer and its insured and finalize the proposed settlement without prejudice to any underinsured motorist claim.
> (b) If an underinsured motorist insurer chooses to preserve its subrogation rights by refusing permission to settle, the underinsured motorist insurer must, within 30 days after receipt of the notice of the proposed settlement, pay to the injured party the amount of the written offer from the underinsured motorist's liability insurer. Thereafter, upon final resolution of the underinsured motorist claim, the underinsured motorist insurer is entitled to seek subrogation against the underinsured motorist and the liability insurer for the amounts paid to the injured party.

In Tepper, the Florida Supreme Court construed these subsections as mandating that a UM carrier cannot pursue a subrogation claim until after the UM claim has reached final resolution. See 2 So. 3d at 214-15. However, a number of conditions must be satisfied before section 627.727(6)(b) is applicable in such fashion. First, an injured person must agree to settle a claim with a liability insurer and its insured. Fla. Stat. § 627.727(6)(a). Also, that settlement must not fully satisfy the claim for personal injury or wrongful death. Id. Then, upon timely notice of the proposed settlement, the UM carrier must elect to preserve its subrogation rights by refusing permission to settle. Id. at §§ 627.727(6)(a)-(b). In such circumstances, the UM carrier must then await final resolution of the UM claim before seeking subrogation against the underinsured or uninsured motorist and his or her liability insurer. Id. at § 627.727(6)(b); see also Diaz-Hernandez v. State Farm Fire and Cas. Co., 19 So. 3d 996, 1000 (Fla. 3d DCA 2009) (section 627.727(6) applies to situations involving uninsured motorists as well as underinsured motorists).

In State Farm's response to the United States' motion to dismiss, State Farm states that section 627.727(6) should not apply to bar its crossclaim because the United States has not offered to settle the Plaintiffs' claims. (See Doc. 22 at 4.) On the record currently before the

Court, there is no suggestion that the all of the conditions necessary to make section 627.727(6)(b) applicable have occurred. Therefore, section 627.727(6)(b), as construed in Tepper, is currently inapplicable to this case.

Rule 13(g) of the Federal Rules of Civil Procedure provides that a party may bring a crossclaim "against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim . . . ." Such a crossclaim "may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant." Id. Where it is applicable, Rule 13 should be construed liberally to promote judicial efficiency. See LASA Per L'Industria Del Marmo Societa Per Azioni of Lasa, Italy v. Alexander, 414 F.2d 143, 146 (6th Cir. 1969); 6 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure, § 1431 (3d ed. 1995). State Farm's crossclaim against the United States arises out of the same occurrence as Plaintiffs' claims against the United States. Further, resolving State Farm's subrogation claim against the United States in the course of adjudicating Plaintiffs' claims would promote efficiency. Therefore, State Farm's crossclaim against the United States will not be dismissed.

III. CONCLUSION

For the foregoing reasons, the United States' Motion to Dismiss with Prejudice State Farm's Crossclaim for Subrogation (Doc. 20) is **GRANTED in part and DENIED in part.** Defendant Luis J. Russe is **DISMISSED** as a defendant from State Farm's Crossclaim and **TERMINATED** from this case.

DONE and **ORDERED** in Orlando, Florida on this 18 day of May, 2012.

G. KENDALL SHARP
SENIOR UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record