

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

GUTHRIE CLINIC, LTD.,	:	
Plaintiff	:	
	:	
v.	:	No. 3:00cv1173
	:	
THE TRAVELERS INDEMNITY	:	
COMPANY OF ILLINOIS;	:	
AON CORPORATION; and	:	(Judge Munley)
AON RISK SERVICES, INC.,	:	
U.S. NOW KNOWN AS AON	:	
RISK SERVICES INC. OF	:	
MARYLAND, INC.,	:	
Defendants	:	

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MEMORANDUM

Before the court for disposition is Defendant Travelers Indemnity Company of Illinois’s (hereinafter “Travelers”) motion to dismiss the plaintiff’s third amended complaint. The motion is opposed by the plaintiff, Guthrie Clinic, Ltd., (hereinafter “plaintiff” or “Guthrie”) and the other defendants, Aon Corporation and Aon Risk Services, Inc., U.S. now known as Aon Risk Service, Inc. of Maryland. Also under consideration is the plaintiff’s motion to voluntarily dismiss without prejudice its claims against Aon Corporation. For the reasons that follow, the motion to dismiss will be granted, and the motion to voluntarily dismiss will be denied as moot.

Background

Plaintiff brought the instant action against its insurer, Defendant Travelers, and its insurance brokers, the Aon defendants. The background facts, as alleged in the complaint are

as follows: Defendant Travelers initially issued a \$5 million Catastrophe Umbrella Insurance Policy to the plaintiff in 1996 for the policy period September 1, 1996 to September 1, 1997. Compl. ¶ 8. In 1997, Travelers issued a renewal policy identical to the 1996 policy. Compl. ¶ 16. In 1998, however, a policy was issued which differed in certain terms from the 1996 and 1997 policies (hereinafter the “1998 Renewal Policy”) Compl. ¶ 22. In 1999, Travelers issued a renewal policy identical to the 1998 policy (hereinafter the “1999 Renewal Policy”). Compl. ¶ 58.

Plaintiff claims that the changes in the 1998 renewal policy were made unilaterally by Travelers without any notice being provided to the plaintiff. Compl. ¶ 22-48. Guthrie had expected that the 1998 policy would be identical to the 1996 and 1997 policies. Compl. ¶ 22. In June of 1998, plaintiff Guthrie was sued by Ellen Thurston. Compl. ¶ 60. The case settled and Guthrie made a claim of \$2.5 million to Travelers. Travelers denied the claim based upon the provisions of the policy that the plaintiff contends Travelers’ unilaterally inserted into the policy. Compl. ¶ 102. Twenty-seven other additional medical malpractice claims have been brought against the plaintiff that may ultimately fall into the gap of coverage created by the 1998 and 1999 Renewal Policies. Compl. ¶ 115. Accordingly, plaintiff instituted the instant action.

Plaintiff makes claims against Defendant Travelers for monetary damages for breach of contract, for declaratory relief, and for bad faith and unfair insurance practices arising out of the following: 1) Travelers’ improper denial of coverage for underlying medical

malpractice actions; 2) Travelers' unilateral alteration and limitation of plaintiff's insurance coverage under its renewal policy, without notifying plaintiff and subsequent to Guthrie's application and premium payment for the renewal insurance policy; 3) Travelers' unilateral creation of a significant gap in plaintiff's insurance coverage, by changing the terms of the policy; 4) Travelers' unilateral refusal to participate in good faith settlement negotiations in the underlying Thurston medical malpractice action before Travelers denied coverage; and 5) bad faith.

In addition to seeking relief from Travelers, plaintiff seeks relief from its insurance brokers. Over the years the insurance brokers have gone through various name changes and organizational changes, although the plaintiff apparently always dealt with the same insurance agent working out of an office located in Hershey, Pennsylvania. It is undisputed that initially, plaintiff dealt with Aon Risk Services, Inc. of Pennsylvania (hereinafter "ARS PA I"), a Pennsylvania corporation. It is also agreed that in March of 1998, articles of merger were filed that purported to merge ARS PA I with Alexander & Alexander, Inc., the merged entity is known as Aon Risk Services, Inc. U.S., (hereinafter "ARS US") and is apparently a Maryland corporation. In June 1999, ARS US changed its name to Aon Risk Services, Inc. of Maryland (hereinafter "ARS MD"). ARS MD is a defendant in the instant case. The parties disagree as to whether the merger of Alexander & Alexander and ARS PA I was valid as of March of 1998. We need not decide that issue, however, for resolution of the instant motion.

In June 1998, ARS US filed an application with the Pennsylvania Corporation Bureau to carry on business in Pennsylvania under the fictitious name of Aon Risk Services, Inc. of Pennsylvania (hereinafter “ARS PA II”). ARS US withdrew and canceled this fictitious name February 1999. Also in February of 1999, a new Pennsylvania corporation was formed, Aon Risk Services, Inc. of Pennsylvania (hereinafter “ARS PA III”). Guthrie worked with ARS PA III during the summer of 1999 in obtaining the 1999 renewal policy that is at issue in the instant complaint.

Plaintiff makes the following claims against its insurance broker, Aon.¹ “Upon information and belief, AON breached its agreement with Guthrie to procure insurance policies on Guthrie’s behalf by failing to procure excess layer policies for the 1998 and 1999 policy periods which would provide coverage for the type of claims at issue in this litigation.” Compl. ¶ 196. Plaintiff proceeds to assert that this failure was a breach of contract. Plaintiff further claims that Aon violated a duty owed to Guthrie by, *inter alia*, negligently procuring excess layer policies for 1998 and 1999 policy periods which did not provide the same, or substantially similar, coverage as the 1996 Policy and the 1997 Renewal Policy. Compl. ¶ 202. Plaintiff further asserts that it would have procured excess layer insurance policies for the 1998 and 1999 policy periods which provided coverage for the claims at issue which would not have created the gap in coverage created by the 1998 and 1999 Travelers’ policies. Compl. ¶ 204. Next, plaintiff asserts that Aon was notified of, or

¹It is part of our task in disposing of this motion to determine which Aon entity plaintiff has a cause of action against.

was, or should have been, aware of the material changes made by Travelers to Guthrie's renewal *policies*. Compl. ¶ 211.

Plaintiff seeks compensatory damages in excess of \$75,000.00, plus interest and attorneys' fees, and exemplary damages.

Travelers claims that ARS PA I and/or ARS PA III are indispensable parties that must be joined in the instant action. For the following reasons, we agree that ARS PA III is an indispensable party. As we have found that ARS PA III is an indispensable party, and its joinder in the case will destroy diversity jurisdiction, we need not discuss whether ARS PA I is an indispensable party.

Jurisdiction

Jurisdiction is based upon diversity of citizenship. 28 U.S.C. § 1332.² Travelers has moved to dismiss the complaint pursuant to FED.R.CIV.PRO. 12(b)(7) and 19. Travelers claims that at least one Pennsylvania corporation is an indispensable party and must be joined in the action. If either Pennsylvania corporation is joined, diversity of citizenship would be destroyed, and the case would be dismissed for lack of jurisdiction.

Discussion

The issue to determine is whether ARS PA III is an indispensable party such that we

²The plaintiff is a Pennsylvania corporation with a principal place of business located at Sayre, Pennsylvania. Defendant Aon Corporation is a Delaware corporation with a principal place of business in Chicago, Illinois. Defendant Aon Risk Services Inc. U.S., which is now known as Aon Risk Services Inc. of Maryland, is a Maryland corporation with its principal place of business in Baltimore, Maryland. Defendant Travelers is an Illinois corporation with its principal place of business in Hartford Connecticut. Compl. para. 2-4.

cannot continue with this case in its absence. FED.R.CIV.PRO. 19.³ In order to make this determination we will follow the two-step process provided for by Rule 19. The first step is to decide, pursuant to Rule 19(a), whether ARS PA III is a necessary party who should be joined if “feasible.” Next, if we find that ARS PA III is necessary, but joinder is not feasible, we must decide whether ARS PA III is indispensable pursuant to Rule 19(b). If we find that it is, then the case must be dismissed. The Third Circuit Court of Appeals has explained Rule 19 as follows:

Rule 19(a) determines whether a party is a necessary party who should be joined in the action. If the answer to that first question is yes, then the court must do so if feasible. If the answer to the first question is no, however, then the inquiry need go no further. Rule 19(b) governs the situation in which the court determines that a party must be joined but that joinder cannot be effectuated (as, for example, . . . where the joinder . . . would destroy diversity). Where joinder of a Rule 19(a) necessary party is not feasible, the court must decide whether the absent party is “indispensable,” and hence that the action cannot go forward.

Bank of America v. Hotel Rittenhouse Associates, 844 F.2d 1050, 1053-54 (internal citation omitted).

In sum, two determinations must be made. First, it must be decided whether the Pennsylvania corporation(s) are necessary parties under Rule 19(a) and second whether they are indispensable under 19(b). We shall address each issue separately.

Rule 19(a)

To determine if ARS PA III is a necessary party under Rule 19(a), we must examine

³Fed.R.Civ.Pro. 12 (b)(7) provides that a party may move to dismiss a complaint for the failure to join a party under Rule 19 regarding indispensable parties.

complete relief can be accorded among those already parties in its absence. Angst v. Royal Maccabees Life Ins. Co., 77 F.3d 701, 705 (3d Cir. 1996). Complete relief cannot be accorded without ARS PA III's presence. Plaintiff makes claims against the broker of the 1999 Renewal Policy and ARS PA III was that broker. See Compl. ¶ 128 (“[A]t no time during the 1999 renewal process did AON inform Guthrie that the terms and conditions of the proposed 1999 Renewal Policy differed materially from the terms and conditions of the 1997 Renewal Policy or that the 1999 Renewal Policy would create a significant gap in Guthrie’s insurance coverage.”); see also Compl. ¶ 131.⁴

In its brief, plaintiff argues: “[ARS PA III] was incorporated on February 26, 1999 and it was Guthrie’s broker for the 1999 Policy, not the 1998 Renewal Policy, which is the policy under which Guthrie has a claim for damages.” Pl’s Brief in Oppo. to Motion To Dismiss at pg. 10-11. This argument is contradicted by numerous paragraphs of the complaint including those cited above. See also Compl. ¶ 192- ¶ 198 (seeking damages for breach of contract regarding the 1998 *and* 1999 renewal policies); Compl. ¶ 199- ¶ 205 (seeking damages for negligence/professional malpractice regarding the 1998 *and* 1999 renewal policies); Compl. ¶ 206 - ¶ 209 (seeking damages for intentional misrepresentation

⁴Paragraph 131 reads as follows: “To the extent AON received notice of [proposed changes in the terms and conditions of the 1998 and 1999 renewal policies] or received information or documents which should have placed AON on notice of such changes, AON had an obligation to Guthrie, as its broker and as a skilled professional in the insurance field, to recognize those proposed changes and the effect of such changes on Guthrie’s coverage and to provide such information to Guthrie on a timely basis so that Guthrie could take appropriate action to procure insurance coverage with Travelers or with other carriers, which provided Guthrie the coverage it intended to purchase and thought it was purchasing for the 1998 and 1999 policy periods.”

with regard to the policies); and Compl. ¶ 210 ¶ 213 (seeking damages for negligent misrepresentation with respect to the renewal policies). Thus, the plaintiff itself has put the actions of ARS PA III at issue. It cannot now argue that the broker that they are making claims against is not a necessary party to obtain the complete relief that it seeks. ARS PA III is a necessary party that should be joined if feasible.

Rule 19(b)

Because we have found ARS PA III to be a party that must be joined if feasible, we have to determine if such joinder is feasible. In the instant case such joinder is not feasible because joining ARS PA III, a Pennsylvania corporation, would destroy diversity jurisdiction as the plaintiff is also a citizen of Pennsylvania. Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 404 (3d Cir. 1993). Accordingly, we must proceed to the second inquiry of Rule 19, that is, whether AON is an “indispensable” party. Id. Rule 19(b) provides:

[T]he court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

FED. R. CIV. PRO. 19(b).

The United States Supreme Court has indicated that four interests need to be examined in the Rule 19 (b) analysis to determine if, in equity and good conscience, the court should proceed without a party. Provident Tradesmen Bank and Trust Co. v. Patterson, 390 U.S. 102, 109 (1968); Angst, 77 F.3d at 706. These interests include: 1) the plaintiff's interest in having a forum; 2) the defendant's desire to avoid multiple litigation, or inconsistent relief, or sole responsibility for a liability he shares with another; 3) the interest of the outsider whom it would have been desirable to join; and 4) the interest of the courts and the public in complete, consistent and efficient settlement of controversies. Id. at 110-11. A review of these factors indicates that ARS PA III is indispensable.

The strength of the interest of the plaintiff in having a forum depends upon whether an alternative forum exists; Id. at 109. In the instant case, the plaintiff has an alternate forum in state court. Plaintiff has presented no arguments on why the state court would be an inadequate forum. This factor in itself can be dispositive of the Rule 19(b) analysis. See e.g. Angst, 77 F.3d at 706.

Regardless, the remaining factors also indicate that the case should be dismissed. It is in the interests of the court and the public for a complete consistent and efficient settlement of controversies. The Supreme Court has stated that the public has a stake in "settling disputes by wholes, whenever possible." Provident, 390 U.S. at 111. To try this case piecemeal, some of it in state court and some in federal court, would be wasteful of scarce judicial resources.

Moreover, the interest of the un-joined party is great. Plaintiff has specific allegations against ARS PA III in the complaint, although it is not specifically named. The presence of such allegations distinguish this case from the typical Rule 19 case where such specific allegations are usually not present. Without ARS PA III as a party, the case simply cannot proceed. A judgment rendered by the jury in favor of the plaintiff on the claims against ARS PA III relating to the 1999 Renewal Policy, would certainly be prejudicial to ARS PA III. ARS PA III needs to be in the case to defend itself from the allegations that are present in the complaint.

For the above-discussed reasons, we find that ARS PA III is an indispensable party under Rule 19(b). Joinder of ARS PA III, however, would destroy this Court's diversity jurisdiction. Accordingly, the motion to dismiss filed by defendant Travelers will be granted. An appropriate order follows.⁵

⁵Also pending is the plaintiff's motion to dismiss its claims against Aon Corporation. As the resolution of that motion would have no effect on the analysis of the Travelers' motion to dismiss, it shall be denied as moot.

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MARYLAND, INC.,	:	
Defendants	:	

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ORDER

_____ **AND NOW**, to wit, this 7th day of August 2002, the motion to dismiss plaintiff's third amended complaint for failure to join an indispensable party [Doc. 61] filed by Defendant Travelers Indemnity Company of Illinois, is hereby **GRANTED**. Plaintiff's motion to voluntarily dismiss claims against Aon Corporation [Doc. 66] is **DENIED** as moot. The Clerk of Court is directed to close this case.

BY THE COURT:

Filed: August 7, 2002

JUDGE JAMES M. MUNLEY
United States District Court