

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STATE FARM MUTUAL AUTOMOBILE : CIVIL ACTION
INSURANCE COMPANY :
 :
v. :
 :
ANTHANASIOS MAKRIS, ET AL. : NO. 01-5351

MEMORANDUM AND ORDER

Plaintiff, State Farm Mutual Automobile Insurance Company ("State Farm"), has brought this action against fifteen individuals, alleging that they participated in a scheme to defraud it by staging automobile accidents and submitting fraudulent insurance claims in connection with those accidents. The Amended Complaint alleges state law claims against Defendants for fraud, statutory insurance fraud, and conspiracy. Before the Court are the Motion to Dismiss the Amended Complaint filed by Defendants Igor Avagimyan, Nina Allakhverdova, Dmitry Mirkin, Andrey Borovikov and Dimitri Vozni (Docket No. 39) and the Motion to Dismiss the Amended Complaint filed by Alexandre Shmakov and Olena Khyzhyak¹ (Docket No. 41). For the reasons which follow, the Motions are **DENIED**.

¹Defendants Igor Avagimyan, Nina Allakhverdova, Dimitry Mirkiiv, Andrey Borovikov, Dimitri Vozni, Alexandre Shmakov, and Olena Khyzhnyak are hereinafter referred to as the "Moving Defendants." George Mavroudis, Pantalis Bratsis, and Pete Papanicolau have not been served in this action. Defendants Larisa Kouratnikov, Kirill Kouratnikov and Eugenia Wells filed answers to the Amended Complaint. Athanasios Makris and Alexander Metlitsky were served but have not answered or otherwise moved with respect to either the Complaint or the Amended Complaint.

I. FACTUAL BACKGROUND

The Amended Complaint alleges that the fifteen Defendants participated in a scheme to defraud State Farm by staging automobile accidents, alleging phony injuries, seeking medical treatment for the phony injuries, and filing false and fraudulent insurance claims with State Farm under various policies of insurance for first- and third-party benefits, uninsured and underinsured motorist benefits, property damage, and bodily injury. State Farm alleges that it has expended in excess of \$80,000 in connection with Defendants' fraudulent claims. (Am. Compl. ¶ 57.) State Farm further alleges that, as a result of Defendants' efforts to conceal their fraudulent scheme, it did not discover the individual acts of fraud or the fraudulent scheme until less than two years prior to filing this lawsuit. (Am. Compl. ¶ 59.)

The Amended Complaint further alleges that the accidents were arranged by Igor Avagimyan, Peter Bratsis and Pete Papanicolau, who arranged for individuals to drive cars that would intentionally rear-end other vehicles. (Am. Compl. ¶¶ 26-27.) The drivers of the striking vehicles were paid. (Am. Compl. ¶ 28.) The passengers in the vehicles that were hit would make false and fraudulent insurance claims for first-party medical benefits, underinsured and/or uninsured motorist coverage and third-party claims for pain and suffering and property damage. (Am. Compl. ¶ 28.)

The Amended Complaint alleges that the following accidents were part of the fraudulent scheme. On December 19, 1996, George Mavroudis, driving an uninsured car, intentionally rear-ended a car driven by Andrey Borovikov in which Nina Allakhverdova was a passenger. (Am. Compl. ¶ 29.) The car driven by Borovikov was insured under a policy issued by State Farm at the time of the accident. (Am. Compl. ¶ 30.) After the accident, both Borovikov and Allakhverdova sought medical treatment for injuries they did not suffer and prepared and submitted false insurance claims to State Farm for first-party medical payments and uninsured motorist benefits. (Am. Compl. ¶¶ 31-32.)

On November 18, 1997, Mavroudis, driving an uninsured car, rear ended a car driven by Alexander Metlitsky and occupied by Dimitri Vozni. (Am. Compl. ¶ 33.) Metlitsky's car was insured by State Farm at the time of the accident. (Am. Compl. ¶ 34.) After the accident, both Metlitsky and Vozni sought medical treatment for injuries which they had not suffered and prepared and submitted false insurance claims to State Farm for first-party medical payments for their medical treatment and for uninsured motorist benefits. (Am. Compl. ¶¶ 35-36.) On April 26, 1999, Metlitsky and Vozni gave false testimony during an arbitration held in connection with that accident. (Am. Compl. ¶ 37.)

On April 20, 1998, Athanasios Makris, who was driving a car insured by State Farm, intentionally rear-ended a vehicle owned

and operated by Alexander Shmakov, which was also insured by State Farm, in which Olena Khyzhnyak and Dimitry Mirkin were passengers. (Am. Compl. ¶¶ 38-41.) After the accident, Shmakov, Khyzhnyak and Mirkin sought medical treatment for injuries which they had not suffered and prepared and submitted false insurance claims to State Farm for first-party medical payments and for third-party benefits under the policy covering Makris' car. (Am. Compl. ¶¶ 42-43.) On May 10, 2000, in furtherance of the scheme to defraud State Farm, Shmakov, Khyzhnyak, and Mirkin gave false testimony under oath during an arbitration hearing regarding the April 20, 1998 accident. (Am. Compl. ¶ 44.)

On April 30, 1998, Makris, who was driving a car insured by State Farm, intentionally rear-ended a vehicle operated by Kirill Kouratnikov, which was also insured by State Farm, in which Larisa Kouratnikov and Eugenia Wells were passengers. (Am. Compl. ¶¶ 45-48.) After the accident, Kirill Kouratnikov, Larisa Kouratnikov and Wells sought medical treatment for injuries which they had not suffered and prepared and submitted false insurance claims to State Farm for first-party medical payments and for third-party benefits under the policy covering Makris' car. (Am. Compl. ¶¶ 49-50.) On June 1, 2000, in furtherance of the scheme to defraud State Farm, Kirill and Larissa Kouratnikov and Wells filed a civil complaint against Makris in the Philadelphia Court of

Common Pleas which contained false sworn verifications. (Am. Compl. ¶ 51.)

On June 24, 1999, Pantalís Bratsis was involved in a staged accident with a vehicle driven by Igor Avagimyan in which Nina Allakhverdova was a passenger. (Am. Compl. ¶ 52.) After the accident, Allakhverdova and Avagimyan sought medical treatment for injuries which they had not suffered and prepared and submitted false insurance claims to State Farm for medical payments and for benefits under the uninsured motorist provision of their State Farm policy. (Am. Compl. ¶¶ 53-55.) On September 7, 2000, in furtherance of the scheme to defraud State Farm, Allakhverdova gave false testimony under oath regarding the June 24, 1999 accident. (Am. Compl. ¶ 56.)

II. DISCUSSION

The Moving Defendants have moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. They have also moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted.

A. Rule 12(b)(1)

The Amended Complaint alleges that this Court has diversity jurisdiction over this matter. The district courts have diversity jurisdiction over all civil actions in which the amount in controversy exceeds \$75,000 and the matter is between citizens

of different states. 28 U.S.C. § 1332(a) (West 1992). The Moving Defendants argue that the Amended Complaint should be dismissed pursuant to Rule 12(b)(1) because it does not adequately specify the amount of damages Plaintiff suffered as a result of the allegedly fraudulent insurance claims.

For purposes of measuring the amount in controversy, the sum claimed by the plaintiff controls if the claim is apparently made in good faith. A motion to dismiss a complaint for lack of the jurisdictional amount should be granted only if from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed

Abiona v. PNC Bank, N.A., No.Civ.A. 98-1994, 1998 WL 426552, *2 (E.D. Pa. July 29, 1998) (citations omitted). The Amended Complaint alleges that State Farm has been damaged in an amount in excess of \$80,000, which is the amount State Farm has paid in connection with Defendant's fraudulent scheme for false and fraudulent medical bills, claim investigation, legal expenses for defending third party, uninsured and underinsured motorist claims, and indemnity payments on third-party claims. (Am. Compl. ¶ 57.) This allegation is sufficient to confer subject matter jurisdiction on this Court. Accordingly, Defendants' Motions to Dismiss pursuant to Rule 12(b)(1) are denied.

B. Rule 12(b)(6)

The Moving Defendants argue that the Amended Complaint should be dismissed pursuant to Rule 12(b)(6) because it does not

allege fraud with sufficient particularity and because it is time barred by the applicable statute of limitations. When determining a Motion to Dismiss pursuant to Rule 12(b)(6), the court may look only to the facts alleged in the complaint and its attachments. Jordon v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the Plaintiff. Angelastro v. Prudential-Bache Securities, Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted when a Plaintiff cannot prove any set of facts, consistent with the complaint, which would entitle him or her to relief. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

The Moving Defendants argue that the Amended Complaint must be dismissed for failure to comply with Federal Rule of Civil Procedure 9(b). Rule 9(b) requires that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Fed. R. Civ. P. 9(b). This rule "requires plaintiffs to plead with particularity the circumstances of the alleged fraud in order to place the defendants on notice of the precise misconduct with which they are charged, and to safeguard defendants against spurious charges of immoral and fraudulent behavior." McHale v. NuEnergy Group, Civ.A.No. 01-4111,

2002 WL 321979, *3 (E.D. Pa. Feb. 27, 2002) (citation omitted).

There is no formula for pleading fraud with particularity:

Allegations of "date, place, or time" fulfill these functions, but nothing in the rule requires them. A plaintiff is free to use alternative means of injecting precision and some measure of substantiation into their allegations of fraud. Further, courts should be "sensitive" to the fact that application of the Rule 9(b) prior to discovery "may permit sophisticated defrauders to successfully conceal the details of their fraud." They should also respect the "general simplicity and flexibility" of the Federal Rules of Civil Procedure.

Id. (citations omitted).

The Amended Complaint contains specific allegations with respect to the following: the dates of the staged accidents and the participants therein (Am. Compl. ¶¶ 26-29, 33, 38, 45, and 52); the false insurance claims, the Defendants making those claims, and the approximate dates on which those claims were made (Am. Compl. ¶¶ 29-32, 33-36, 38-43, 45-50, and 52-55); and the Defendants who made false statements under oath in connection with these staged accidents and the dates and circumstances of those false statements (Am. Compl. ¶¶ 37, 44, 51, and 56). Accepting these allegations as true, and viewing them in the light most favorable to Plaintiff for the purpose of these Motions to Dismiss, these allegations "place the defendants on notice of the precise misconduct with which they are charged" (McHale, 2002 WL 321979, at *3) and, accordingly, satisfy the requirements of Rule 9(b). Therefore, the Moving

Defendants' Motions to Dismiss pursuant to Rule 12(b)(6) for failure to plead fraud with particularity pursuant to Rule 9(b) are denied.

The Moving Defendants also argue that the Amended Complaint must be dismissed because this action is barred by the relevant statute of limitations. Plaintiff's claims for fraud, conspiracy to commit fraud, and statutory insurance fraud are subject to the two-year statute of limitations for actions "sounding in trespass, including deceit or fraud." 42 Pa. Cons. Stat. Ann. § 5524(7). The Amended Complaint alleges that Defendants filed fraudulent insurance claims arising from four separate auto accidents occurring between December 19, 1996 and June 24, 1999. This proceeding was not initiated until October 22, 2001, more than two years after the last auto accident.

Plaintiff argues that the statute of limitations did not run prior to the filing of this action because Defendants were still committing fraudulent acts in furtherance of the conspiracy through at least September 7, 2000. Accordingly, the statute of limitations would not have begun to run on Plaintiff's claims until September 7, 2000 and the Complaint was timely filed thirteen months later, on October 22, 2001. Plaintiff also argues that the statute of limitations was tolled in this case by Defendants' fraudulent concealment of the nature of their insurance claims. "The doctrine of fraudulent concealment tolls the statute of

limitations where 'through fraud of concealment the defendant causes the plaintiff to relax his vigilance or deviate from the right of inquiry.'" Tyler v. O'Neil, No.Civ.A. 97-3353, 1998 WL 961383, at *3 (E.D. Pa. Dec. 15, 1998) (citing Bohus v. Belloff, 950 F.2d 919, 925 (3d Cir. 1991)). If fraudulent concealment is established, the statute of limitations is tolled until Plaintiff knew, or should have known, of the fraud. Id. Moreover, Plaintiff must have reasonably relied upon the fraudulent concealment. Lujan v. Mansmann, No.Civ.A. 96-5098, 1997 WL 634499 (E.D. Pa. Sept. 24, 1997).

Viewed in the light most favorable to Plaintiff, the Amended Complaint alleges a fraudulent conspiracy which continued through at least September 7, 2000, less than two years prior to the filing of this action. The Amended Complaint further alleges that Defendants intentionally concealed the fraudulent nature of their insurance claims and the existence of the conspiracy by making false statements to Plaintiff regarding the nature of the accidents, their injuries, and damage to the automobiles involved in the accidents and by providing false testimony under oath regarding the nature of the accidents within the two years immediately preceding the filing of this action. As a result of Defendants' fraudulent concealment, Plaintiff was unable to discover the individual acts of fraud and the fraudulent scheme until less than two years prior to filing this action. Therefore,

Defendants' Motions to Dismiss the Amended Complaint as time-barred by the applicable statute of limitations are denied.

An appropriate order follows.

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O R D E R

AND NOW, this day of April, 2002, upon consideration of Defendants Igor Avagimyan, Nina Allakhverdova, Dmitry Mirkin, Andrey Borovikov and Dimitri Vozni's Motion to Dismiss the Amended Complaint (Docket No. 39), the Motion to Dismiss the Amended Complaint filed by Alexandre Shmakov and Olena Khyzhyak (Docket No. 41), and Plaintiff's response to both Motions, **IT IS HEREBY ORDERED** that said Motions are **DENIED**.

BY THE COURT:

John R. Padova, J.