

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

RLI INSURANCE CO.,	:	CIVIL ACTION
Plaintiff,	:	NO. 05-1216
	:	
v.	:	
	:	
REGULUS GROUP, LLC	:	
and	:	
REGULUS INTEGRATED SOLUTIONS, LLC,	:	
Defendants.	:	

ORDER AND MEMORANDUM

NEWCOMER, S.J.

June 7, 2005

Presently before the Court is Defendants' Motion for Judgment on the Pleadings and for Rule 11 Sanctions, Defendants' Response, and the Parties' Replies. For the reasons stated below, the Court will deny Defendant's Motions.

I. BACKGROUND

The Court has jurisdiction pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* Plaintiff, an insurer, seeks a declaration of its obligations vis-a-vis Defendants, the insured. Defendants ("Regulus") provide certain computer processing services to banks, including Wells Fargo. On October 3, 2004, Regulus' Norcross, Georgia computer facility was burglarized, the thieves absconding with personal data on Wells Fargo's customers. Wells Fargo, weary of the increasing value of privacy, and no doubt aware of the staggering cost of litigation in this country, suggested to Regulus, informally, that they might reimburse Wells Fargo for its anticipated losses stemming from the burglary of the data.

In accordance with the terms of their insurance policy, Regulus informed Plaintiff that they might eventually require coverage for the Wells Fargo matter. This contract, the Parties do not dispute, has a \$250,000.00 deductible that must be reached before it is invoked. Defendants claim that they have spent just \$36,000.00 on the Wells Fargo issue so far. It is not disputed that, to this point the extent of any damage to Wells Fargo is not known, that no formal demand by Wells Fargo or Regulus has been made, and that no underlying lawsuit (besides this one) has been filed. Defense Counsel communicated to this Court on May 31, 2005, that settlement discussions between Regulus and Wells Fargo are underway, and that the ultimate settlement figure could exceed \$250,000.00.

Plaintiff seeks a declaration that it has no duty to indemnify or defend Plaintiffs. Plaintiffs argue that the state of the facts is too nebulous, too contingent, and too conditional for this Court to stand in judgment of the Parties obligations at this time. Defendants also request sanctions under FED. R. CIV. P. 11, claiming that Plaintiff's suit is legally frivolous.

II. LEGAL STANDARD

A. Subject Matter Jurisdiction

Regulus argues that Plaintiff's claim fails because there is not yet a ripe controversy between the Parties sufficient to support subject matter jurisdiction, much less to support a claim

under the Declaratory Judgment Act. Because the crux of Regulus' Motion turns on matters of ripeness, the Court will treat Regulus' Motion as a factual attack on the Court's jurisdiction made under Rule 12(b)(1). "[N]o presumptive truthfulness attaches to plaintiff's allegations [in a factual attack], and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. Moreover, the plaintiff will have the burden of proof that jurisdiction does in fact exist." Mortensen v. First Federal Savings & Loan Association., 549 F.2d 884, 891 (3d Cir. 1977). In this case, Regulus lodges an attack on the existence of subject matter jurisdiction in fact, meaning that the Court has a somewhat deeper font of information to draw from while making its determination.

B. *The Declaratory Judgment Act*

The Declaratory Judgment Act provides that "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). Inherent in a court's ability to render a declaratory judgment is that the claim must be "ripe" for adjudication in a constitutional sense. See Step-Saver Data Systems v. Wyse Technology, Inc., 912 F.2d 643, 647

(3d Cir. 1990) ("The discretionary power to determine the rights of parties before injury has actually happened cannot be exercised unless there is a legitimate dispute between the parties."). As Regulus exclusively challenges the ripeness of this case, the Court's analysis will focus on the existence of a case or controversy.

C. *Rule 11*

FED. R. CIV. P. 11(b) is violated if a claim is presented for an improper purpose, if a claim is not warranted by existing law (or can be justified by a nonfrivolous argument for the extension or modification of present law), if the allegations have no evidentiary support, or if denials or factual contentions are unwarranted. See FED. R. CIV. P. 11(b).

III. DISCUSSION

A. *The Ripeness of Plaintiff's Claim*

At the core of the instant Motion lies the question of whether there is a constitutionally ripe dispute between Regulus and Plaintiff. As the Third Circuit has noted, this is not always an easy question to answer. See Step-Saver Data Systems, 912 F.2d at 646.

"Even when declaratory actions are ripe, the Act only gives a Court the power to make a declaration regarding 'the rights and other legal relations of an interested party seeking such declaration;' it does not *require* that the court exercise that power. Second, declaratory judgments are issued before 'accomplished' injury can be established and this ex

ante determination of rights exists in some tension with traditional notions of ripeness. Nonetheless, because the Constitution prohibits federal courts from deciding issues in which there is no 'case or controversy' declaratory judgments can be issued only when there is an 'actual controversy.' The Discretionary power to determine the rights of parties before injury has actually happened cannot be exercised unless there is a legitimate dispute between the parties." Id. (internal citations omitted).

Step-Saver sets forth a three-factor examination to determine the ripeness of an action. A district court will consider (1) the adversity of the interests of the parties; (2) the conclusiveness of the judicial judgment; and (3) the practical help, or utility of that judgment. See id. at 647. In the present case, the Step-Saver factors weigh in favor of a finding of ripeness.

The Parties have truly adverse interests, as Regulus has undertaken actions which indicate that it intends to seek a contribution from Plaintiff for its settlement of the Wells Fargo events. Despite the fact that Regulus has not yet formally filed a claim with Plaintiff for insurance, it is quite evident from their course of dealings to this point that they intend to. This fact weighs heavily on the second prong of the Step-Saver test. Although it may well be too early to tell what will happen between Regulus and Wells Fargo, all of the facts necessary to determine the applicability of the Parties' insurance contract appear to be available without need for much further fact-finding. It is also clear that Regulus has taken it upon itself to pursue settlement, and that it intends to seek contribution

from Plaintiff. The exclusions that Plaintiff claims would or might apply to any potential claim by Regulus are clear, and the core facts causing any potential claim to arise - the theft of the computers - are not being challenged. With little fact-finding, therefore, the Court can soundly stand in judgment of the Parties' rights with respect to one another, as those rights will turn on an interpretation of a legal document that premises obligations on events which have already happened. From where the Court now stands, the only contingency that could alter Plaintiff's obligation to indemnify or defend would be whether Regulus decides to formally file a claim with Plaintiff. The second Step-Saver prong therefore favors prompt adjudication of this matter. Likewise, the utility and practical help of a judgment will aide both Parties - Plaintiff in that it will need not fear a bad faith suit arising from a denial in coverage, and Regulus because it will have the benefit of knowing with certainty what impact the Wells Fargo event will have on its bottom line. Regulus will also be enriched from knowing how much, if any, over \$250,000.00 it will be liable for, should it choose to settle with Wells Fargo. For these reasons, Defendants' Motion must be denied.

B. *Rule 11*

Regulus demands that this Court enter and enforce sanctions against Plaintiff for frivolously filing the instant case. For

obvious reasons, Plaintiff's filing is not legally frivolous. A reasonable jurist might, in this Court's opinion, view this case differently. And certainly a reasonable attorney might. Here, none of the preconditions to Rule 11 liability have been met. The state of the law is not such that Plaintiff's claim is at all frivolous in the eyes of the Court, nor is there any real indication that the suit was commenced with an improper motive - and the Court does not approve of the liberal filing of Rule 11 Motions. Defendants' Motion is denied.

IV. CONCLUSION

For the reasons stated above, Defendants' Motions are denied. An appropriate Order follows.

/s/ Clarence C. Newcomer

United States District Judge

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REGULUS GROUP, LLC	:	
and	:	
REGULUS INTEGRATED SOLUTIONS, LLC,	:	
Defendants.	:	

O R D E R

AND NOW, this 7th day of June, 2005, upon consideration of Defendants' Motion for Judgment on the Pleadings and for Rule 11 Sanctions (Doc. 10), Plaintiff's Motion to Strike and Response (Doc. 12), and the Parties' Replies, it is hereby ORDERED that Defendants' Motions are DENIED, and that Plaintiff's Motion is DENIED.

AND IT IS SO ORDERED.

/S Clarence C. Newcomer

United States District Judge