

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

TRAVELERS CASUALTY AND SURETY : CIVIL ACTION  
COMPANY AND BALIS & CO., INC. : NO. 97-CV-4363  
AS ASSIGNEES OF PENN SPRINKLER :  
COMPANY, INC. :  
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 :  
 Plaintiffs, :  
 :  
 :  
 v. :  
 :  
 :  
 CNA INSURANCE COMPANY/ :  
CONTINENTAL CASUALTY COMPANY, :  
 :  
 :  
 Defendant.

M E M O R A N D U M

BUCKWALTER, J.

March 10, 1998

Presently, Plaintiffs' in this declaratory action seek permission to amend their underlying complaint (Docket No. 12). Defendant argues, in relevant part, that amendment would be futile (Docket No. 13). I agree.

Leave to amend a complaint should be granted freely in the absence of undue delay or bad faith on the part of the movant as long as the amendment would not be futile and the opposing party would not suffer undue prejudice. Fed. R. Civ. P. 15(a); Foman v. Davis, 371 U.S. 178, 182 (1962). In this Circuit, an amendment is considered futile "if the amended complaint cannot withstand a motion to dismiss." Jablonski v. Pan American World Airways, Inc., 863 F.2d 289, 292 (3d Cir.1988).

Plaintiffs seek to amend their original complaint to add three new causes of action (Counts IV through VI) against a new defendant (Peterman Company, insurance agent for Defendant). Missing from all three counts, however, is any recognizable theory of liability. Each count is simply a request for declaratory relief. Furthermore, these counts are not bolstered by Plaintiffs' motion to amend which includes only "bald allegations" of misrepresentation and breach of contract against Peterman Company devoid of any factual context. In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1429-30 (3d Cir. 1997). Accordingly, Plaintiffs' motion to amend is denied.

An appropriate order follows.

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CNA INSURANCE COMPANY/	:	
CONTINENTAL CASUALTY COMPANY,	:	
	:	
Defendant.	:	

ORDER

AND NOW this 10th day of March 1998, upon consideration of Plaintiffs' motion to amend (Docket No. 12) and Defendant's response thereto (Docket No. 13), it is hereby ORDERED that Plaintiffs' motion is **DENIED**.

BY THE COURT:

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RONALD L. BUCKWALTER, J.