

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

NORTH AMERICAN COMPANY FOR LIFE	:	
AND HEALTH INSURANCE	:	CIVIL ACTION
Plaintiff,	:	
v.	:	
	:	No. 97-4424
PATRICIA RUPP, Individually, and	:	
as the Executrix, Administratrix	:	
or Intestacy Representative of	:	
the Estate of EDWARD S. RUPP, SR.,	:	
deceased,	:	
	:	
and	:	
	:	
JEROME REDINGTON	:	
Defendants.	:	

MEMORANDUM ORDER

Green, S.J.

December 17, 1997

Presently before this court is Defendant Redington's Motion to Dismiss Counts IV of Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a cognizable claim. For the reasons stated below, the motion will be denied.

Factual Background

Defendant Redington is an insurance broker authorized to do business on behalf of Plaintiff North American Company for Life and Health Insurance. Defendant Patricia Rupp is the wife of deceased Edward Rupp, and secretary to Defendant Redington. Plaintiff issued a life insurance policy to Mr. Edward Rupp, in May, 1996. The designated primary beneficiary is Defendant Patricia Rupp.

On May 13, 1996, prior to delivery of the policy, Mr. Rupp was hospitalised with a probable diagnosis of pancreatic cancer. Sometime prior to delivery, the parties had agreed to amend the policy. On May 13, 1996, Plaintiff mailed the Policy and Amendment to Defendant Redington along with instructions for delivery. According to those instructions, "[d]elivery should only be made while the applicant is living and in good health." (Comp ¶ 53). In addition, the Amendment contains a provision requiring "the statments and representations in the original application to remain true." (Comp ¶ 60).

On May 16, 1996, Defendant Redington delivered the Policy along with the Amendment to Mr. Rupp in his room at the Holy Redeemer Hospital. The fact that Defendant Redington was hospitalized, Plaintiff argues, was sufficient to put Defendant Redington on notice that Mr. Rupp's medical condition had changed significantly since the time of the application. Plaintiff alleges that Defendant Redington signed the Amendment, delivered the Policy, and accepted a check for the remaining premium with knowledge that Mr. Rupp was no longer in good health. The Complaint avers further that Defendant Redington knowingly concealed this information from Plaintiff in order to receive his commission on the Policy, and to help Mr. Rupp obtain insurance coverage to which he was not entitled. (Comp ¶ 159). Plaintiff seeks compensatory and punitive damages as well as attorneys' fees and costs.

Discussion

A court may grant a motion to dismiss for failure to state a claim under Rule 12(b)(6) of the Federal Rule of Civil Procedure only if it finds that the plaintiff cannot prove any set of facts, consistent with the complaint, which would entitle him to relief. Hishon v. Spalding, 467 U.S. 69, 73 , 104 S. Ct. 2229, 2232 (1984). In making this determination, the court must accept as true all allegations made in the complaint and any reasonable inferences therefrom. Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989).

Defendant Redington contends, that Count IV of the Complaint alleging fraud, should be dismissed because it fails to satisfy the special pleading requirements of Rule 9(b) and applicable case law.

Under Rule 9(b), a plaintiff is required to plead (1) a specific false representation of material fact; (2) knowledge by the person who made it of its falsity; (3) ignorance of its falsity by the person to whom it was made; (4) the intention that it should be acted upon; and (5) that the plaintiff acted upon it to his damage. Christidis v. First Pa. Mortgage Trust, 717 F.2d 96, 100 (3d Cir. 1983). Defendant Redington claims that Plaintiff has failed to allege the particular actions or misrepresentations that are fraudulent.

On the contrary, however, the Complaint alleges that Defendant Redington knew that Mr. Rupp had been hospitalized and that his medical condition had changed significantly since he submitted his application for insurance coverage. Plaintiff alleges that Defendant Rupp concealed this information from

Plaintiff in order to receive his commission, and in order to help Mr. Rupp obtain insurance coverage to which he was not entitled.

Defendant Redington contends that there was no fraud because Mr. Rupp's official diagnosis of pancreatic cancer was not made until May 22, 1996, six days after the Policy was delivered. At this stage, however, the court does not have to decide if there was actually fraud, only whether the Plaintiff has alleged sufficient facts to state a claim for fraud.

Moreover, the Third Circuit has cautioned against adopting too narrow a reading of Rule 9(b)'s particularity requirements. Id. Specific allegations of time and place are not required by the rule, provided that the plaintiff gives the defendants other means of precision and substantiation. Seville Indus. Mach. Corp. v. Southmost Mach. Corp., 742 F.2d 786, 791 (3d Cir. 1984) cert. denied, 469 U.S. 1211, 105 S. Ct. 1179 (1985). Here, I conclude that the Complaint has given Defendant Redington sufficient facts so as to put him on notice of the fraud claim. Accordingly, Plaintiff has satisfied the pleading requirements of Rule 9(b). The motion is denied. An appropriate order follows.