

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

ZURICH INSURANCE COMPANY : CIVIL ACTION
 :
v. :
 :
HEALTH SYSTEMS INTEGRATION, INC, :
THE COMPUCARE COMPANY, :
and INDEPENDENCE BLUE CROSS : NO. 97-4994

MEMORANDUM AND ORDER

HUTTON, J.

March 18, 1998

Presently before the Court are Defendant Independence Blue Cross's Motion to Dismiss (Docket No. 19), Plaintiff Zurich Insurance Company's Response (Docket No. 23), and the Defendant's Reply thereto (Docket No. 26). For the following reasons, the Motion is granted.

I. BACKGROUND

In this declaratory action, Zurich Insurance Company ("Zurich") seeks to establish that it is not liable to defend and indemnify its insureds, Health Systems Integration, Inc. ("HSII") and The Compucare Company ("Compucare"), for claims brought against them in separate proceedings by Independence Blue Cross ("IBC").¹ In the underlying dispute, IBC brought arbitration proceedings against HSII and Compucare to obtain reimbursement of over \$9 million it paid HSII for the production of a software system capable of supporting its managed care and preferred

¹ HSII is a wholly-owned subsidiary of Compucare.

provider programs. According to IBC's arbitration pleadings, the software product was a dramatic failure and never became suitable for "live" use in IBC's business. IBC also brought a separate action in the Eastern District of Pennsylvania to prevent HSII from fraudulently transferring assets to its parent, Compucare, to escape enforcement of an eventual arbitration award.

The present action concerns insurance coverage. Zurich issued Electronic Data Processors and Computer Services Professional Liability Policies to HSII and Compucare, effective for the periods of July 31, 1996 to July 31, 1997 and August 1, 1996 to August 1, 1997, respectively. Although IBC brought its arbitration claim on December 11, 1996, facially within the coverage period, Zurich pleads in its Complaint that:

31. Prior to the effective date of the Zurich policies, HSII and Compucare had knowledge of circumstances that could result in a claim against them by IBC as a result of the numerous complaints reported to them by IBC throughout the term of the contract, and HSII and Compucare retained an attorney in March of 1996 to handle the aforesaid potential claim.

32. The Zurich policies preclude coverage where the insured had knowledge of circumstances before the inception of the Zurich policy, involving any negligent act, error or omission, which may result in a claim under the policy, and, therefore, Zurich has no duty to defend or indemnify HSII or Compucare in the Arbitration or the Federal Action.

(Compl. at ¶¶ 31-32). Zurich pleads three additional grounds for why it is not liable under the policies to defend or indemnify the insureds in either the arbitration or the federal action.

Notably, Zurich seeks no relief of any kind from IBC.

In the present Motion, IBC claims that it is an entirely nominal party, with no legal interest in Zurich's litigation with HSII and Compucare. IBC argues that it should be dismissed from the case because Zurich's Complaint alleges no cause of action against it and it is not a necessary party within the meaning of Rule 19(a) of the Federal Rules of Civil Procedure.

II. DISCUSSION

A. Standard of Review

A motion to dismiss is a device to test the legal sufficiency of a complaint. See Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). When considering a motion to dismiss, the Court must accept all of the plaintiff's factual allegations as true and draw all reasonable inferences in its favor. See Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). It may only grant the motion if, after viewing the complaint in the light most favorable to the plaintiff, "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief" under the applicable law. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994).

B. Claim for Relief

To state a "claim for relief," a complaint must contain at least three elements: (1) a short and plain statement of jurisdiction; (2) a short and plain statement of the claim

showing that the pleader is entitled to relief; and (3) a demand for judgment for the relief the pleader seeks. Fed. R. Civ. P. 8(a). Although the Rule does not literally require a complaint to state a demand for relief against each and every defendant, common sense indicates that it must. Accordingly, the Third Circuit has held that a complaint fails to state a claim for relief against a particular defendant if it fails to demand any relief from that defendant. See RKO-Stanely Warner Theatres, Inc. v. Mellon Nat'l Bank and Trust Co., 436 F.2d 1297, 1304 (3d Cir. 1971) (dismissing claim as against defendant from whom no relief was sought). See also Brancaccio v. Reno, 964 F. Supp. 1, 2 n.4 (D.D.C. 1997) (dismissing action as against defendants in their individual capacities where plaintiff stated claim against them only in their official capacities).

In the present case, Zurich demands no relief of any kind from IBC. The ad damnum clause in its Complaint seeks a declaration that Zurich has no duty to defend or indemnify HSII and Compucare in either the arbitration or federal action, and makes no mention of IBC. The action's sole purpose is to establish Zurich's status under the two insurance contracts. Although IBC's claims against HSII and Compucare gave rise to this action, IBC is itself irrelevant to Zurich's present concerns. Under the Zurich insurance policies, an injured party has no direct right of action against the insurer. Should Zurich win this action, it would have no legal rights as against IBC. Therefore, as against IBC, Zurich fails to state a claim for

which relief can be granted.

C. Necessary Party Status

In its terse brief, Zurich argues that IBC must nevertheless be joined in this action because it is a necessary party under Federal Rule of Civil Procedure 19(a).

Zurich relies entirely upon the Pennsylvania Supreme Court's opinion in Vale Chemical Co. v. Hartford Acc. & Indem. Co., 516 A.2d 684, 686 (Pa. 1986), in which the Court held that an injured claimant is an indispensable party to a declaratory action between an insurer and insured. Zurich cites an earlier opinion in which this Court found that "substantive state law," the Vale decision particularly, "should guide this Court in ascertaining whether the parties are indispensable within Rule 19." State Farm Fire & Cas. Co. v. Kessler, 1993 WL 89775, *3 (E.D.Pa. March 29, 1993). However, as IBC points out, the Third Circuit's intervening opinion in Shetter v. Amerada Hess Corp., 14 F.3d 934, 938 (3d Cir. 1994), overruled Kessler. In Shetter, the Court found that Rule 19 permitted a work-related personal injury action to go forward without joinder of the Commissioner of the Virgin Islands Department of Labor, in spite of a Virgin Islands statute that declared the Commissioner an indispensable party to such a claim. See Shetter, 14 F.3d at 941. Kessler clearly did not survive this holding, and the Court finds that the decision must be made independent of state law, and according to the

standards set forth in Rule 19(a).² See Continental Cas. Co. v. Diversified Indus., Inc., 884 F. Supp. 937, 943 n.2 (E.D.Pa. 1995).

"Federal Rule of Civil Procedure 19 governs the question of whether persons not a party to a suit should be joined because they are necessary to a more complete settlement of a dispute." Shetter, 14 F.3d at 938. In a diversity case, the Rule provides the standard of decision despite the presence of a contrary state law or rule. See id. (finding that Rule 19(a) trumped a clear and opposite Virgin Islands statute); Pittsburgh Corning Corp. v. The Travelers Indemn. Co., 1988 WL 100787, *2 (E.D.Pa. Sept 14, 1988) (citing Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102 (1968)). State law, however, may influence the Rule 19 analysis in the way it defines the legal interests at stake in the matter. See Shetter, 14 F.3d at 937.

Rule 19(a) provides in part:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party to the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the

² General principles of joinder control the question of whether a party is necessary to a declaratory action. See North American Hotels, LTD v. The Home Indem. Co., 112 F.R.D. 25, 26 (E.D.Pa. 1986). Therefore, Zurich's attempt to distinguish Shetter because it did not involve a declaratory action between insurers fails.

persons already parties subject to a
substantial risk of incurring double,

multiple, or otherwise inconsistent obligations by reason of the claimed interest

Fed. R. Civ. P. 19(a).

Ordinarily, courts are asked to decide whether an action can go forward in the absence of an assertedly necessary party. See e.g., Shetter, 14 F.3d at 938; Scott Paper Co. v. National Casualty Co., 151 F.R.D. 577, 578 (E.D.Pa. 1993). In the present case, IBC has been a party since Zurich filed its Complaint, and wishes to be let out. Zurich presented no argument under Rule 19(a), and essentially concedes that IBC does not meet the Rule's standard for joinder.

In any case, the Court finds that IBC is not a necessary party under Rule 19(a). IBC need not be joined under Rule 19(a)(1), because the present action concerns only whether Zurich will defend HSII and Compucare in their underlying dispute with IBC, and pay a judgment to IBC should it win. IBC has a financial interest in the outcome of the dispute, but no legal interest. See St. Paul Fire & Marine Ins. Co. v. AAOMS Mutual Ins. Co., 1995 WL 46683, *6 (E.D.Pa. January 30, 1995) ("The interest that makes an absent party necessary for just adjudication must be a legally protected interest, not merely a financial interest or interest of convenience."). Zurich, HSII and Compucare can resolve their insurance coverage dispute well enough without IBC.

Likewise, IBC is not a necessary party under Rule 19(a)(2). First, IBC has determined that HSII and Compucare will adequately

protect its interest in their insurance coverage, and cannot be required to remain a party under Rule 19(a)(2)(I). See Scott Paper, 151 F.R.D. at 579-80 (finding injured party's lack of interest in insurance litigation indicative of potential prejudice in non-joinder). Second, there is no risk that the remaining parties will be subject to multiple obligations if IBC is not a party. IBC has already brought an arbitration proceeding and federal action against HSII and Compucare, and the present dispute only concerns whether Zurich will defend and indemnify them. IBC has no direct action against Zurich, and there is no likelihood of additional litigation. In sum, IBC is not a necessary party and should not be required to remain in this action against its will.

For the foregoing reasons, IBC's Motion to Dismiss is granted. An appropriate Order follows.

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O R D E R

AND NOW, this 18th day of March, 1998, upon consideration of Defendant Independence Blue Cross's Motion to Dismiss, Plaintiff Zurich Insurance Company's Response, and the Defendant's Reply thereto, IT IS HEREBY ORDERED that the Motion is **GRANTED**.

BY THE COURT:

HERBERT J. HUTTON, J.