

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

WENDY BLAIR : CIVIL ACTION  
 :  
 v. :  
 :  
 PROTECTIVE NATIONAL INSURANCE :  
 COMPANY : NO. 96-8438

MEMORANDUM AND ORDER

Fullam, Sr. J. April , 1998

Plaintiff is suing an excess insurer, Protective National Insurance Company, to recover the balance due on a \$1.9 million judgment she obtained against a bus company, which had primary coverage in the amount of \$500,000 under a "fronting" policy issued by the third-party defendant, Ranger Insurance Company. Protective has joined Ranger in this action as a third-party defendant, on the theory that Ranger was negligent in its defense of plaintiff's tort suit, or colluded with the plaintiff, and should therefore reimburse Protective for any sums it is required to pay under its excess coverage. In response to the third-party complaint, Ranger has filed an amended counterclaim, which Protective seeks to dismiss.

Ranger's amended counterclaim asserts that, under the terms of its "fronting" arrangement with the bus company, the bus company agreed to reimburse Ranger for all sums it paid to satisfy legal liabilities imposed upon the bus company. Ranger has paid plaintiff more than \$500,000 on account of the personal

injury judgment. According to Ranger, Protective stands in the shoes of the bus company, insofar as the claims made in the third-party complaint are concerned; that is, Ranger asserts that Protective's third-party complaint charges Ranger with having breached duties owed to the insured bus company, and not to the excess carrier, Protective. In seeking dismissal of the amended counterclaim, Protective takes the position that the alleged obligation of the bus company to reimburse Ranger arises from a contract independent of, and unrelated to, the third-party claim.

The third-party claim has been allowed to proceed only because it is conceivable that Ranger's alleged mishandling of the underlying tort action might not necessarily provide a complete defense to Protective in this suit on the excess policy. And it is also conceivable - depending upon factual details not yet developed - that Ranger might be found to have breached a duty owed directly to the excess carrier. Be that as it may, I cannot conceive of any possibility that the excess carrier could be found liable to Ranger for the sums Ranger paid under its own primary policy, merely because the bus company may have had an obligation to reimburse Ranger. Protective's equitable subrogation claim, if valid at all, is plainly its own claim, and not that of the bus company. I note also that the parties have not addressed the impact of the bus company's Texas bankruptcy proceeding upon the reciprocal rights of Ranger and the bus company.

Because, in my view, there is no possibility that

Ranger can prevail on its amended counterclaim, the motion to dismiss will be granted.

An Order follows.

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v.	:	
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PROTECTIVE NATIONAL INSURANCE	:	
COMPANY	:	NO. 96-8438

ORDER

AND NOW, this            day of April, 1998, IT IS ORDERED:

That the amended counterclaim filed by third-party defendant Ranger Insurance Company against third-party plaintiff Protective National Insurance Company is DISMISSED, WITH PREJUDICE.

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John P. Fullam, Sr. J.

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COMPANY	:	NO. 96-8438

ORDER

AND NOW, this            day of April, 1998, upon  
consideration of the Motion of Third-Party Defendant Ranger  
Insurance Company for a Protective Order, IT IS ORDERED:

That the Motion for a Protective Order is DENIED.

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John P. Fullam, Sr. J.