

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

ELECTROGRAPHICS INTERNATIONAL	:	CIVIL ACTION
CORPORATION,	:	
Plaintiff	:	
	:	
v.	:	
	:	
FEDERAL INSURANCE COMPANY,	:	
CHUBB CORPORATION, AND	:	
CHUBB GROUP OF INSURANCE	:	
COMPANIES,	:	
Defendants	:	NO. 98-3220
 Newcomer, J.		 September , 1998

M E M O R A N D U M

Presently before the Court are the following Motions and the responses thereto: (1) Motion of Defendant, Federal Insurance Company, to Dismiss Plaintiff's Complaint; (2) Defendant Chubb Corporation's Motion to Dismiss or for Summary Judgment; and (3) Motion of Defendant, Chubb Group of Insurance Companies, to Dismiss Plaintiff's Complaint. For the reasons that follow, said Motions will be granted in part and denied in part.

A. Background¹

This is an action by plaintiff Electrographics International Corporation ("Electrographics"), a manufacturer of cooling products, against defendant insurance companies/groups, Federal Insurance Company ("Federal"), Chubb Corporation ("Chubb"), and Chubb Group of Insurance Companies ("Chubb Group"). Plaintiff brings, inter alia, claims for breach of

¹ For purposes of the instant Motions the factual background is taken from plaintiff's Complaint.

contract and bad faith insurance practices arising out of defendants' allegedly wrongful failure to defend and indemnify plaintiff in an underlying lawsuit. In the underlying lawsuit, filed in the Northern District of Illinois, Electrographics was sued by a competitor in the cooling products industry, Thermoelectric Cooling America Corporation ("TECA"), for violation of the Lanham Act, violation of the Illinois Uniform Deceptive Trade Practices Act, and violation of the Illinois Consumer Fraud and Deceptive Business Practices Act. TECA in essence claimed that Electrographics was liable for false advertising.

Under its general liability policy with Federal, Electrographics sought to be defended and indemnified in the underlying litigation. Federal, however, refused Electrographics' claim for defense and indemnification on the grounds that TECA's action was based only on Electrographics' allegedly false advertising of its own products, not TECA's products, and that therefore the claim was excluded under Federal's policy. Thereafter Electrographics instituted the present action in this District for violation of Pennsylvania's bad faith statute, violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and breach of contract. All three defendants now move to dismiss plaintiff's Complaint and/or for summary judgment.

B. Legal Standard

Pursuant to Rule 12(b)(6), a court should dismiss a claim for failure to state a cause of action only if it appears to a certainty that no relief could be granted under any set of facts which could be proved. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). Because granting such a motion results in a determination on the merits at such an early stage of a plaintiff's case, the district court "must take all the well pleaded allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 664-65 (3d Cir. 1988), cert. denied, 489 U.S. 1065 (1989) (quoting Estate of Bailey by Oare v. County of York, 768 F.2d 503, 506 (3d Cir. 1985)). If the Court considers matters outside of the pleadings, then the Rule 12(b)(6) motion is to be treated as one for summary judgment. See Fed. R. Civ. P. 12(b). In that event, "all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Id.

C. Discussion

1. Federal's Motion to Dismiss

Federal moves to dismiss all of plaintiff's claims asserted against it. First, Federal argues that there can be no coverage for a defense and indemnification in the underlying lawsuit because TECA's complaint in the underlying lawsuit does not contain any factual allegation that Electrographics made

misleading statements about TECA or its products. According to Federal, TECA's complaint only alleges that Electrographics made misleading statements about its own products. Federal thus argues that the underlying action fails to meet the definition of an "advertising injury" under the policy and that therefore Federal is not obligated to defend or indemnify Electrographics in the underlying action. Alternatively, Federal argues that coverage is excluded by the "Failure to Conform to Advertising" exclusion which states that the insured is not covered for an advertising injury arising out of the failure of the goods, products, or services to conform with advertised quality or performance.

This Court finds that plaintiff's Complaint adequately pleads a cause of action for breach of contract to survive a 12(b)(6) Motion. Taking all the well-pleaded allegations as true and construing the complaint in the light most favorable to the plaintiff, this Court finds more than ample grounds on which plaintiff may be entitled to relief. The complaint in the underlying action, which is incorporated into plaintiff's Complaint in this action, clearly contains allegations which potentially bring TECA's claims within the advertising injury definition of the insurance policy at issue. TECA alleges repeatedly in the underlying complaint that Electrographics' misrepresentations are "related to the nature of both parties' products." See Pl.'s Compl. at Exh. A. Thus it cannot be said that it appears to a certainty that no relief could be granted

under any set of facts which could be proved. Indeed, in view of well established Pennsylvania law which upholds a broad and clear duty to defend on the insurer's part where a complaint sets forth a claim even potentially falling within the policy's coverage, this Court is well satisfied that plaintiff's action survives a Motion to Dismiss. See Pacific Indem. Co. v. Linn, 766 F.2d 754, 760 (3d Cir. 1985) ("Under Pennsylvania law, an insurance company is obligated to defend an insured whenever the complaint filed by the injured party may potentially come within the policy's coverage.").

Likewise, with respect to plaintiff's bad faith claim under 42 Pa. Cons. Stat. § 8371, this Court finds that plaintiff's Complaint survives a Rule 12(b)(6) Motion as plaintiff's allegations could give rise to a finding of bad faith. Federal's Motion is premature with respect to this claim, the arguments therein being better addressed in a summary judgment motion after the parties have engaged in discovery. At this point, however, plaintiff's pleading of a bad faith claim is sufficient, and accordingly Federal's Motion must be denied on this claim.

Finally, Federal moves to dismiss plaintiff's claim for violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("PUTPCPL") on the grounds that plaintiff lacks standing to sue under the PUTPCPL. The PUTPCPL, 73 Pa. Cons. Stat. §§ 201-209, provides a cause of action to "[a]ny person who purchases or leases good or services primarily for personal,

family or household purposes." Id. at §201-9.2. According to plaintiff's Complaint, however, it is clear that the insurance purchased by plaintiff was not for personal, family, or household purposes, but rather for business purposes. Indeed, plaintiff does not contest or oppose any of the defendants' arguments to dismiss Count II of the Complaint. Accordingly, as this Court finds that plaintiff has failed to show that it has standing to pursue a claim under the PUTPCPL, Federal's Motion will be granted as to Count II of plaintiff's Complaint.

2. Chubb's Motion to Dismiss

Defendant Chubb moves to dismiss plaintiff's claims against it on the grounds that Chubb is a holding company, is not licensed to engage in the business of insurance in any state or jurisdiction, and did not issue the policy under which plaintiff now sues. In support of these allegations, Chubb submits the affidavit of its Vice President and Secretary. Plaintiff argues in response that under an alter ego theory Chubb could be held liable for the acts of its wholly owned subsidiary, Federal, and that in any event it must be afforded the opportunity to conduct discovery in order to present all material pertinent to a summary judgment motion.

This Court must agree with plaintiff. As Chubb has submitted and this Court has taken into consideration the affidavit mentioned above, the instant Motion must then be converted into a Motion for Summary Judgment. According to Fed. R. Civ. P. 12(b), in such an event the Court must afford the

parties reasonable opportunity to present all materials pertinent to a Rule 56 motion. Plaintiff argues, and this Court agrees, that plaintiff has not been afforded such an opportunity. Accordingly, Chubb's Motion will be denied at this time without prejudice to its ability to file a motion for summary judgment at the proper time. With respect to Count II of plaintiff's Complaint, however, Chubb's Motion will be granted for the reasons stated above with respect to Federal's Motion.

3. Chubb Group's Motion to Dismiss

Defendant Chubb Group moves to dismiss plaintiff's claims against it on the grounds that Chubb Group is simply a descriptive phrase used to describe several affiliated but separately incorporated insurance companies, of which Federal is one; that Chubb Group is not an insurance company, and in fact is not a person, firm, or corporation; and that Chubb Group is not a party to the insurance contract between Federal and plaintiff. In support of its contentions, Chubb Group submits an affidavit from a litigation examiner employed by Federal. Taking into consideration this affidavit, this Court is persuaded that Chubb Group is not a party amenable to suit in this case as Chubb Group is not an insurance company and was not a party to the insurance policy at issue in this case.

This Court must agree with plaintiff, however, that at this juncture Chubb Group's Motion cannot be granted. Identical to the situation with Chubb, Chubb Group has submitted and this Court has taken into consideration the affidavit mentioned above.

Thus the instant Motion must be converted into a Motion for Summary Judgment. Plaintiff argues, and this Court agrees, that plaintiff has not been afforded an opportunity to discover and present material pertinent to a summary judgment motion. Accordingly, Chubb Group's Motion will be denied at this time without prejudice to its ability to file a motion for summary judgment at the proper juncture. With respect to Count II of plaintiff's Complaint, however, Chubb Group's Motion will be granted for the reasons stated above with respect to Federal's Motion.

D. Conclusion

In conclusion, defendants' Motions to Dismiss will be granted in part and denied in part for the aforementioned reasons.

An appropriate Order follows.

Clarence C. Newcomer, J.

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Plaintiff	:	
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COMPANIES,	:	
Defendants	:	NO. 98-3220

O R D E R

AND NOW, this day of September, 1998, consistent with the foregoing Memorandum, it is hereby ORDERED as follows:

(1) The Motion of Defendant, Federal Insurance Company, to Dismiss Plaintiff's Complaint is hereby GRANTED in part and DENIED in part. The Motion is GRANTED as to Count II of plaintiff's Complaint and DENIED as to all other counts. It is further ORDERED that Count II of plaintiff's Complaint is hereby DISMISSED.

(2) Defendant Chubb Corporation's Motion to Dismiss or for Summary Judgment is hereby GRANTED in part and DENIED in part. The Motion is GRANTED as to Count II of plaintiff's Complaint and DENIED as to all other counts. It is further ORDERED that Count II of plaintiff's Complaint is hereby DISMISSED.

(3) The Motion of Defendant, Chubb Group of Insurance Companies, to Dismiss Plaintiff's Complaint is hereby GRANTED in part and DENIED in part. The Motion is GRANTED as to Count II of plaintiff's Complaint and DENIED as to all other counts. It is

further ORDERED that Count II of plaintiff's Complaint is hereby
DISMISSED.

AND IT IS SO ORDERED.

Clarence C. Newcomer, J.