

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

HARTFORD FIRE INSURANCE COMPANY : CIVIL ACTION
 :
 v. :
 :
 B. BARKS & SONS, INC., :
 THE MARAMONT CORPORATION, and :
 OCEAN SPRAY CRANBERRIES, INC. : NO. 97-7919

MEMORANDUM AND ORDER

HUTTON, J.

July 21, 1999

Presently before the Court are the Motion of Defendant B.Barks & Sons, Inc. ("Barks") to Substitute The Connecticut Indemnity Company ("Connecticut Indemnity") for Ocean Spray Cranberries, Inc. ("Ocean Spray") as the real party in interest (Docket No. 71), Ocean Spray's Response thereto (Docket No. 76), and Ocean Spray's Praecipe to Substitute Original Ratification Affidavit (Docket No. 78). For the reasons stated below, the Defendant's Motion is **DENIED**.

I. BACKGROUND

This is an insurance coverage case. Plaintiff, Hartford Insurance Company ("Plaintiff" or "Hartford"), commenced a declaratory judgment action against its insured, B. Barks & Sons, Inc. ("Barks" or "Defendant"), as well as other potentially interested parties: namely, Maramont Corporation ("Maramont"), Clement Pappas & Company ("Clement Pappas"), and Ocean Spray

Cranberries, Inc. ("Ocean Spray"). Ocean Spray asserted a cross-claim against Barks for damages resulting from the spoilage of seventeen million pounds of cranberries, which were being stored in the Barks' cold storage facility. Ocean Spray's cross claim for damages has been prosecuted within the larger declaratory judgment action.

On May 4, 1999, Barks filed the instant motion moving this Court to substitute The Connecticut Indemnity for Ocean Spray as the real party in interest pursuant to Federal Rule of Civil Procedure 17(a). On May 20, 1999, Ocean Spray filed its response. On June 25, 1999, Ocean Spray filed the original Ratification Affidavit signed by Jose A. Guerrero, Jr.

II. DISCUSSION

The Federal Rules of Civil Procedure provide that "[e]very action shall be prosecuted in the name of the real party in interest." Fed. R. Civ. P. 17(a).¹ Unless a party is "[a]n executor, administrator, guardian, bailee, trustee of an express

¹Rule 17(a) provides in relevant part:
Rule 17. Parties Plaintiff and Defendant; Capacity
(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest.... No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.
Fed. R. Civ. P. 17(a).

trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute," a litigant cannot sue in his "own name without joining the party for whose benefit the action is brought." Fed. R. Civ. P. 17(a). The underlying aim of the rule is to ensure fairness to the defendant by protecting the defendant against a subsequent action by the party actually entitled to relief, and by ensuring that the judgment will have proper res judicata effect. ICON Group, Inc. v. Mahogany Run Dev. Corp., 829 F.2d 473, 478 (3d Cir. 1987); Virginia Elec. & Power Co. v. Westinghouse Elec. Corp., 485 F.2d 78, 84 (4th Cir. 1973), cert. denied, 415 U.S. 935, 94 S.Ct. 1450, 39 L.Ed.2d 493 (1974).

In the present matter, before Hartford instituted this action, Ocean Spray submitted a claim of \$1.6 million to its insurance carrier, Connecticut Indemnity, for the damage Barks allegedly caused to its cranberries. Of that amount, Connecticut Indemnity paid \$944, 980.00, net of Ocean Spray's \$50,000.00 deductible. If an insurer has compensated an insured for an entire loss, the insurer is the only real party in interest, and must sue in its own name, but if the insured is only partially compensated by insurer, both insurer and insured are real parties in interest. Green v. Daimler Benz, AG, 157 F.R.D. 340, 341- 344 (E.D.Pa.1994) and Brocklesby Transport v. Eastern States Escort, 904 F.2d 131, 133 (2nd Cir. 1990) (Citing United States v. Aetna

Casualty & Surety Co., 388 U.S. 366, 380-382, 70 S.Ct. 207, 215-216 (1949)). Ocean Spray is, therefore, a real party in interest, and Connecticut Indemnity is a real party in interest to the extent that it partially paid Ocean Spray's claim.

Moreover, Connecticut Indemnity has issued a sworn affidavit stating that it ratifies the cross claim of Ocean Spray against Barks, that it will be bound by all rulings and judgments to the same extent applicable to Ocean Spray and that it will waive any right to pursue subrogation outside of this litigation. In Acme Markets, Inc. v. Shaffer Trucking, Inc., 102 F.R.D. 216 (E.D. Pa. 1984) (Weiner, J.) the Court stated that:

It has been held in this district that:
'[w]here only the insureds are named as plaintiffs, and the partially subrogated insurers have executed a ratification agreement authorizing plaintiffs to prosecute the action in their behalf and have agreed to be bound by the results in the action between plaintiffs and defendants, forever waiving any rights to pursue their subrogation rights outside that proceeding, joinder under 17(a) would be inappropriate.'

Id. at 217 (quoting Hancotte v. Sears, Roebuck & Co., 93 F.R.D. 845, 846 (E.D.Pa. 1982)). Thus, the Court finds that Connecticut Indemnity has satisfied the requirements of Federal Rule of Civil Procedure 17(a) by ratifying and agreeing to be bound by the results of this litigation. Accordingly, Barks' Motion to substitute The Connecticut Indemnity for Ocean Spray as the real party in interest pursuant to Federal Rule of Civil Procedure 17(a) is denied.

An appropriate Order follows.

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

HARTFORD FIRE INSURANCE COMPANY : CIVIL ACTION
 :
 v. :
 :
 B. BARKS & SONS, INC., :
 THE MARAMONT CORPORATION, and :
 OCEAN SPRAY CRANBERRIES, INC. : NO. 97-7919

O R D E R

AND NOW, this 21st day of July, 1999, upon consideration of the Motion of Defendant B.Barks & Sons, Inc. ("Barks") to Substitute The Connecticut Indemnity Company ("Connecticut Indemnity") for Ocean Spray Cranberries, Inc. ("Ocean Spray") as the real party in interest (Docket No. 71), Ocean Spray's Response thereto (Docket No. 76), and Ocean Spray's Praecipe to Substitute Original Ratification Affidavit (Docket No. 78), IT IS HEREBY ORDERED that Barks' Motion is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.