

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ONEBEACON INSURANCE COMPANY,)
Successor in interest to CGU)
Insurance Company and American)
Employers' Insurance Company,)

Plaintiff,)

vs.)

No. 00-2815-V

WHITEHAVEN GOLF COURSE, L.L.C.,)
G.L. LEONARD and RANDALL)
LEONARD, SR., and THE ST. PAUL)
FIRE AND MARINE INSURANCE CO.,)

Defendants.)

ORDER DENYING THE MOTIONS OF DEFENDANT
ST. PAUL FIRE AND MARINE INSURANCE CO. TO STRIKE AMENDED CROSS-
COMPLAINT FILED BY G. L. LEONARD, d/b/a/ WHITEHAVEN GOLF COURSE AND
FOR PROTECTIVE ORDER

Before the court is a motion of St. Paul Fire and Marine Insurance Co. to strike the amended cross-complaint filed by G. L. Leonard against it on August 24, 2001. Also before the court is the motion of St. Paul for a protective order pursuant to Rule 26(c) to relieve it from responding to requests for admissions, interrogatories, and requests from production of documents recently propounded by G. L. Leonard. For the reasons that follow, both motions are denied.

By order dated August 21, 2001, the court extended the deadline for amendment of pleadings to Friday, August 31, 2001. In

that same order, the court allowed the parties until October 15, 2001, to conduct discovery and to file dispositive motions "as to new matters raised in the amended pleadings." According to the original scheduling order, all discovery was to have been completed by June 18, 2001.¹ On August 24, 2001, G. L. Leonard filed two separate pleadings: an amended answer to the plaintiff OneBeacon's third amended complaint and an amended cross-complaint against St. Paul. The amended cross-complaint repeated G.L. Leonard's claim for breach of contract for failure to pay benefits due under the insurance policy; it eliminated the bad faith claim which the court had dismissed on St. Paul's motion; and it included a detailed breakdown of the damages claimed. On the same day, G. L. Leonard also propounded his second request for admissions, interrogatories, and requests for production of documents to St. Paul. These new discovery requests relate to the existence of a partnership between G. L. Leonard and Randall Leonard, Sr. and the properly designated insured party under the St. Paul policy.²

Prior to filing the amended cross-complaint, G.L. Leonard did

¹ The deadline for document production was April 2, 2001, and the deadline for depositions, interrogatories, and requests for admissions was June 11, 2001.

² The discovery requests were not attached to the motion for protective order as required by the local rules. See Local Rule 26.1(b)(1)(A).

not obtain leave to amend from the court nor did he obtain the written consent of all the other parties to file an amended cross complaint as required by Rule 15(a) of the Federal Rules of Civil Procedure. Thereafter, on August 30, 2001, G .L. Leonard filed a motion for leave to amend its cross-complaint against St. Paul, which motion the court granted on August 31, 2001.³

St. Paul's only objection to the amended cross-complaint deals with language in Paragraph Two of the amended cross-complaint supporting the breach of contract claim. Paragraph Two now references an alleged partnership between G. L. Leonard and his son Randall as the basis for St. Paul's denial of G. L. Leonard's claim for benefits under the St. Paul policy. Paragraph Two of the amended cross-complaint states in full:

That said refusal [to pay benefits] is based on a allegation that a) Cross-Plaintiff was in partnership with his son and Co-Defendant Randall Leonard, Sr. in the operation of Whitehaven Golf Course and that the St. Paul Insurance policy named the insured as a partnership; and that b) Cross-Plaintiff and/or his partner, Randall Leonard, Sr., committed fraudulent acts, including arson, and failed to cooperate with the Cross-Defendant's investigation after the fire. That Cross-Plaintiff vehemently denies these allegations and discovery has failed to support these allegations in any manner whatsoever.

This language in Paragraph Two differed from the language of

³ St. Paul was not served with the motion for leave to amend until after the court granted the motion.

Paragraph Two of the previous cross-complaint to the extent it referenced the alleged partnership between G.L. Leonard and Randall Leonard.⁴ St. Paul insists that the new language is not necessary to state a claim for breach of contract and was only inserted to allow additional discovery on the issue of the alleged partnership, which information G. L. Leonard was aware of prior to the expiration of the discovery deadline. G. L. Leonard denies that the new language was inserted solely to obtain additional discovery, but rather to conform the pleadings to evidence revealed during discovery.

G. L. Leonard timely filed a motion to amend his cross-claim, and the motion was granted. Therefore, the amended cross-complaint will not be disallowed in its entirety. The order granting the motion to amend directed G. L. Leonard to file its amended cross-claim within ten days of the order. Because St. Paul filed a motion to strike, the amended cross-claim was never filed. G. L. Leonard is directed to file his amended cross-claim within five days of the date of this order.

Under Rule 12(f), a court "may order stricken from any

⁴ Paragraph 2 of the previous cross-complaint stated:

That said refusal is based on a allegation of wrong doing on the part of the Cross-Plaintiff which is vehemently denied and strict proof thereof should be required of Cross-defendant at the trial of this cause.

pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). An immaterial allegation is one that either bears "no essential or important relationship to the claim for relief . . . or a statement of unnecessary particulars in connection with and descriptive of that which is material." 6 Wright & Miller, Federal Practice and Procedure: Civil 2d § 1382 at 706-708. Motions to strike are looked upon with disfavor and have been denied when no prejudice will result from leaving the material in the pleadings. *Id.* at 683-92. The court finds that the language concerning the partnership is not immaterial or prejudicial to St. Paul, nor does the phrase cause confusion about the causes of actions pleaded. In the absence of prejudice to St. Paul, the court sees no reason to strike the language from the cross-claim. St. Paul's motion to strike is therefore denied in its entirety.

The motion for protective order is denied as well. The discovery propounded by G. L. Leonard falls within the parameters of discovery of "new matters raised in the amended pleadings" as ordered on August 21, 2001. St. Paul is directed to file its response within eleven days of the entry of this order.

IT IS SO ORDERED this 26th day of September 2001.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE