

**National Union Fire Ins. Co. of Pittsburgh, PA v Ace
Am. Ins. Co.**

2023 NY Slip Op 31080(U)

April 5, 2023

Supreme Court, New York County

Docket Number: Index No. 653702/2020

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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NATIONAL UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, PA,

INDEX NO. 653702/2020

Plaintiff,

MOTION DATE 02/10/2023

- v -

MOTION SEQ. NO. 002

ACE AMERICAN INSURANCE COMPANY, CHUBB
GROUP OF INSURANCE COMPANIES, ASPEN
SPECIALTY INSURANCE COMPANY

**DECISION + ORDER ON
MOTION**

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 71

were read on this motion to AMEND PLEADINGS.

Plaintiff National Union Fire Insurance Company of Pittsburgh, PA (“National Union” or “Plaintiff”) seeks leave to file an Amended Complaint to remove its claims against Defendants Ace American Insurance Company (“Ace”) and Chubb Group of Insurance Companies (“Chubb”), and to change its claim against Defendant Aspen Specialty Insurance Company (“Aspen”) from breach of the duty of good faith and fair dealing under New York law to equitable subrogation under Georgia law. Plaintiff’s motion is **granted**.

CPLR 3025(b) provides that “[a] party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court” “Motions for leave to amend should be freely granted, absent prejudice or surprise . . . unless the proposed amendment is palpably insufficient or patently devoid of merit” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 499 [1st Dept 2010]). Courts have held that prejudice “arises when a party incurs a change in position or is hindered in the preparation of its

case or has been prevented from taking some measure in support of its position” (*Valdes v Marbrose Realty*, 289 AD2d 28, 29 [1st Dept 2001]; *Anoun v City of New York*, 85 AD3d 694, 694 [1st Dept 2011]). A party opposing leave to amend “must overcome a heavy presumption of validity in favor of [permitting amendment]” (*CIFG Assur. N. Am., Inc. v J.P. Morgan Sec. LLC*, 146 AD3d 60, 65 [1st Dept 2010]).

Aspen takes no position on Plaintiff’s request to remove Plaintiff’s claims against Defendant Ace (NYSCEF 70 ¶1 [“Camacho Aff.”]). No parties have objected to Plaintiff’s request to remove Defendant Chubb from this action. Prior to this motion, Plaintiff stipulated with Defendants Ace and Chubb that Plaintiff would discontinue its action against Chubb (*see* NYSCEF 14 [Stipulation of Discontinuance]). There are no cross-claims asserted against either defendant. Thus, Plaintiff’s motion to file an Amended Complaint to remove its claims against Defendant Ace and Chubb is granted.

Aspen opposes Plaintiff’s request to amend to assert a claim of equitable subrogation under Georgia law. Aspen has failed, however, to show prejudice or surprise, or that the proposed amendments are palpably insufficient or patently devoid of merit. Plaintiff’s proposed Amended Complaint, as Defendant Aspen acknowledges (NYSCEF 70 ¶ 8), does not allege new facts. The parties can utilize the discovery that has already been conducted. Aspen did not specify what additional discovery it needed, or what different discovery it would have sought to prepare a defense. Thus, Aspen has not shown that it will be prejudiced by the proposed amendment, or “hindered in the preparation of its case” (*Valdes v Marbrose Realty*, 289 AD2d 28, 29 [1st Dept 2001]).

Plaintiff argues Georgia law should apply to its claims because Georgia has the most significant relationship to this case because the subject suit at the heart of this case was filed,

prosecuted, defended, evaluated, mediated, negotiated, and ultimately settled in Georgia (NYSCEF 61 at 2-4). Aspen does not challenge that position, focusing instead on the assertion that could have asserted the Georgia law claim in its initial complaint. Its criticism of Plaintiff's proposed amendment is unavailing, as a showing of prejudice requires "more than 'the mere exposure of the [party] to greater liability'" (*Pitt v Hague Corp.*, 191 AD3d 1344, 1345 [4th Dept 2021], quoting *Loomis v Civetta Corinno Constr. Corp.*, 54 NY2d 18, 23 [1981], *rearg denied* 55 NY2d 901 [1981]). Although Aspen may be correct that Aspen could have pleaded equitable subrogation under Georgia law in its initial complaint (NYSCEF 70 at 3), "[m]ere delay is insufficient to defeat a motion for leave to amend" (*Kocourek v Booz Allen Hamilton Inc.*, 85 AD3d 502, 503 [1st Dept 2011]). Aspen has ample time to defend against the proposed claim, which again does not raise new factual allegations. Thus, Aspen has not overcome the "heavy presumption of validity in favor of [permitting amendment]" (*CIFG Assur. N. Am., Inc. v J.P. Morgan Sec. LLC*, 146 AD3d 60, 65 [1st Dept 2010]).

Accordingly, it is

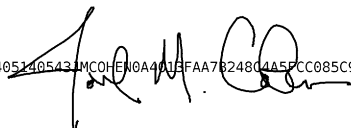
ORDERED that the motion by Plaintiff for leave to file its proposed Amended Complaint is **GRANTED**; it is further

ORDERED that Plaintiff shall file the Amended Complaint on NYSCEF within 5 business days of the date of this Order; and it is further

ORDERED that Defendants shall serve an answer or otherwise respond to the Second Amended Complaint within 20 days from the date of said filing.

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

4/5/2023
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					OTHER
					REFERENCE