Chattanooga Professional Baseball LLC et al v. National Casualty Company et al

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Chattanooga Professional Baseball LLC, et al.,

Plaintiffs, v. National Casualty Company, et al.,

Defendants.

No. CV-20-01312-PHX-DLR ORDER

Before the 1 I. Background Plaintiffs are twenty-four entities associated with or providing services for nineteen Minor South Carolina, Tennessee, Texas, Virginia, and West Virginia. (Doc. 23 at 3.) Plaintiffs each held substantially identical commercial first-party property and casualty insurance policies provided by Defendants. (Docs. 23-1-23-12.) In 2020, MiLB experienced its first-ever cessation since its establishment, which Plaintiffs allege was ncerns for the health and safety of players, employees, and fans related to the SARS-CoV-2 virus; action and inaction by federal and state governments

1 adequately briefed and oral argument will not help the Court resolve the motion. See Fed. R. Civ. P. 78(b); LRCiv. 7.2(f); Lake at Las Vegas Investors Grp., Inc. v. Pac. Malibu Dev., 933 F.2d 724, 729 (9th Cir. 1991).

supplying players t Id. at 4.) Following cessation, Plaintiffs submitted claims for coverage under the Policies to Defendants, but Defendants have allegedly denied their claims or intend to do so. 2

(Id. at 6.) On July 2, 2020, Plaintiffs filed suit against Defendants in this Court. (Doc. 1.) The operative amended complaint, filed on August 21, 2020, brings claims for breach of contract, anticipatory breach of contract, and declaratory judgment. (Doc. 23.) On September 11, 2020, Defendants filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). The motion is now ripe. II. Legal Standard

A. Fed. R. Civ. P. 12(b)(6) To survive dismissal for failure to state a claim pursuant to Federal Rule of

Civil Procedu Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 laims See Adams v. Johnson, 355 F.3d 1179, 1183 (9th Cir. 2004); see also Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). When analyzing the sufficiency of a complaint, the well-pled factual allegations are taken as true and construed in the light most favorable to the plaintiff. Cousins v. Lockyer, 568 F.3d 1063, 1067 (9th Cir. 2009). However, legal conclusions couched as factual allegations are not entitled to the assumption of truth, Iqbal, 556 U.S. at 680, and therefore are insufficient to defeat a motion to dismiss for failure to state a claim, In re Cutera Sec. Litig., 610 F.3d 1103, 1108 (9th Cir. 2008).

B. Choice of Law choice-of-law rules of the state in which it sits. Abogados v. AT&T, Inc., 223 F.3d 932, 934 (9th Cir. 2000). Applying Arizona choice-of-law rules, when addressing a claim based on an insurance policy, the

2 Plaintiffs explain that they fall into two categories -Breach Plaintiffs depending on the steps their respective Insurers have

arties understood was to be the principal location of the insured risk during the term of the policy Beckler v. State Farm Mut. Auto. Ins. Co., 987 P.2d 768, 772 (Ariz. Ct. App. 1999) (emphasis in original). Here, it is undisputed that the insured risk for each Plaintiff rests in the state where each team resides California, Idaho, Indiana, Maryland, Oregon, South Carolina, Tennessee, Texas, Virginia, or West Virginia. III. Discussion Defendants assert that each of the amend counts should be dismissed as a matter of law because Plaintiffs are not entitled to recover from Defendants from their COVID-related losses because the Policies include a virus exclusion provision that expressly excludes coverage for losses caused by a virus. The virus exclusion, which applies to all coverage under the Policies, generally

23-1 at 58.) Under the law of each of the ten states in which the MiLB teams reside, the Court construes insurance contracts according to their plain and ordinary meaning. 3 Plaintiffs do not dispute that the virus exclusion s meaning that policy coverage does not include losses stemming from or related to a virus is clear and unambiguous. Rather, they contend that the exclusion should not result in a dismissal of their complaint because (1) whether the losses were caused by the virus is a question of fact that cannot be decided at this juncture and (2) Defendants are estopped from applying the exclusion.

A. Factual Dispute Plaintiffs argument that a factual dispute exists as to the cause of their loss is not 3 Tustin Field Gas & Good, Inc. v. Mid-Century Ins. Co., 219 Cal. Rptr.3d 909, 914 (Cal. Ct. App. 2017); Clark v. Prudential Prop. & Cas. Ins. Co., 66 P.3d 242, 245 (Idaho 2003); Erie Indem. Co. for Subscribers at Erie Ins. Exch. v. Estate of Harris by Harris, 99 N.E.3d 625, 630 (Ind. 2018); Kurland v. ACE Am. Ins. Co., CV No. JKB-15-2668, 2017 WL 354254, at *2 (D. Md. Jan. 23, 2017); Groshong v. Mutual of Enumclaw Ins. Co., 985 P.2d 1284, 1289 (Or. 1999); Whitlock v. Stewart Title Guar. Co.,732 S.E.2d 626, 628 (S.C. 2012); Garrison v. Bickford, 377 S.W.3d 659, 664 (Tenn. 2012); Aggreko, L.L.C. v. Chartis Specialty Ins. Co., 942 F.3d 682, 688 (5th Cir. 2019); Erie Ins. Exch. v. EPC MD 15, LLC, 822

S.E.2d 351, 355 (Va. 2019); W. Virginia Fire & Cas. Co. v. Stanley, 602 S.E.2d 483, 489 (W. Va. 2004).

plausible. Plaintiffs explicitly attributes their losses to the virus, stating, and the measures required to mitigate its spread constitute an actual and imminent threat and direct physical loss or damage to the ballparks (as well as the areas surrounding them)

virus, attendant disease, resulting pandemic governmental responses, and MLB not supplying players, the Teams have been deprived of their primary source of (Doc. 23 at ¶ ¶ 58, 71.) Plaintiffs attempt to create a question of fact by arguing it is virus or the virus itself, (Doc. 30 at 6), is unavailing.

The amended complaint alleges that the government orders in question were issued as a direct result of the virus. It states, around the country to issue stay-in-place orders to protect persons and property. . . Indeed,

¶ 45.) Plaintiffs theory for the issuance of the government orders. There is no allegation in the complaint

that absent the pandemic, the government would have been prompted to issue stay-at-home orders or otherwise inhibit access to the ballparks. Similar COVID-19 causation arguments have been consistently rejected. See Diesel Barbershop, LLC v. State Farm Lloyds, No. 5:20-CV-461-DAE, 2020 WL 4724305, at * 6 (W.D. Tex. Aug. 13, 2010)

sequentially as a result of the COVID-19 virus. . . Thus, it was the presence of COVID-19 Franklin EWC, Inc. v. The Hartford Finn. Servs. Grp., Inc., No. 20-cv-04434 JSC, 2020 WL

by the Closure Orders rather than the virus, and therefore the Virus Exclusion does not

, s were caused

by such failure and the virus did not cause such failure the Policies include an exclusion [s] (Doc. 23-1 at 44.) Again, Plaintiffs do not argue that the exclusion is ambiguous, but rather that it is inapplicable because they have not alleged that a suspension, lapse or cancellation of a contract between MLB and MiLB occurred when MLB failed to provide players to MiLB. Not so. Plaintiffs state in their amended complaint that MLB is contractually obligated to but failed to do so. (Doc. 23 at ¶¶ 69-70.) Any effort to ignore the contractual nature of is disingenuous. In sum,

B. Estoppel Plaintiffs next argue dismissal is inappropriate because they have adequately alleged that Defendants are estopped from enforcing the virus exclusion. Particularly, they contend that regulatory estoppel prevents enforcement of the provision because Defendants were only able to gain regulatory approval for the virus exclusion in 2006 by making misrepresentations 4

to the state insurance commissions. However, regulatory estoppel is a New Jersey state law defense, espoused in Morton Inter. v. Gen. Acc. Ins. Co. of Am., 629 A. 2d 831 (N.J. 1993), which no state whose laws apply has adopted. See SnyderGeneral Corp. v. General Am. Ins. Co., 928 F. Supp. 674, 682 (N.D. Tex. 1996) (collecting cases) (Plaintiffs suggest that, even if no relevant state has adopted regulatory estoppel, 5

lack of current recognition is of no import, because the states would recognize it if given the opportunity, each state nevertheless recognizes general equitable estoppel, and, regardless, federal common law governs their estoppel defense.

First,

4 Plaintiffs assert that Defendants falsely represented to regulatory commissions, when securing approval, that the exclusion was merely a clarification of current policy in order to avoid premium reductions when, in fact, the exclusion reduced prior coverage.

5 Plaintiffs argue West Virginia has recognized regulatory estoppel, citing to Joy Tech., Inc. v. Liberty Mut. Ins. Co., 421 S.E. 2d 493 (W. Va. 1992), a case which does not discuss estoppel.

courts in Texas and Indiana have already refused to follow Morton the opportunity, declining to apply regulatory estoppel when facing an unambiguous

insurance provision. Id.; Cincinnati Ins. Co. v. Flanders Elect. Motor Serv., Inc., 40 F.3d 146, 153 (7th Cir. 1994). Second, general equitable estoppel within the coverage of a policy risks not covered by its terms, or risks expressly excluded

Reno Contracting, Inc. v. Crum & Forster Specialty Ins. Co., 359 F. Supp. 3d 944, 952 (S.D. Cal. 2019); see also Spring Vegetable Co. v. Hartford Cas. Ins. Co., 801 F. Supp. 385, 392 (D. . Rather, estoppel prevents the insurer from denying coverage based on printed provisions in the

policy that conflict with representations by the insurer or its agents on which the policy Shoup v. Union Sec. Life Ins. Co., 124 P.3d 1028 (Idaho 2005). 6 Plaintiffs, here, make the estoppel defense in attempt to bring virus-related losses within the coverage of the Policies, even though such risks are expressly excluded. Plaintiffs have not alleged that Defendants made representations to them that the virus exclusion did not apply, or that their coverage otherwise differed from that represented in the printed materials. Plaintiffs estoppel theory that Defendants should not be able to apply the virus exclusion because it allegedly came into being following misrepresentations made by Defendants to state commissions to avoid premium reductions is not one that is cognizable under general equitable estoppel. Third, federal common law does not govern

substantive rules of decision, federal common law exists only in such narrow areas as those

concerned with the rights and obligations of the United States, interstate and international disputes implications the conflicting rights of States or our relations with foreign nations, Tex. Indus., Inc. v. Radcliff Materials, Inc., 461 U.S. 630, 641

6 See also Emmco Ins. v. Pashas, 224 N.E.2d 314, 318 (Ind. App. 1967); St. Paul Mercury Ins. Co. v. Am. Bank Holdings, Inc., 819 F.3d 728, 739 (4th Cir. 2016); Mayes v. Paxton, 437 S.E.2d 66, 68 (S.C. 1993); Henry v. S. Fire & Cas. Co., 330 S.W.2d 18, 31 (Tenn. Ct. App.1958); Mitchell v. State Farm Lloyds, No. 05-08-00184-CV, 2009 WL 596611, at *3 (Tex. Ct. App. Mar. 10, 2009); Harris v. Criterion Ins. Co., 281 S.E.2d 878, 881 (Va. 1981); Potesta v. U.S. Fid. & Guar. Co., 504 S.E.2d 135, 150 (W. Va. 1998).

(1981). The rare circumstances in which federal common law exists are absent here. In sum, estoppel defense fails as a matter of law

Plaintiffs have advanced no additional arguments against the applicability of the virus exclusion. Accordingly, dismissal is appropriate.

IT IS ORDERED GRANTED. The Clerk of Court is directed to terminate the case.

Dated this 13th day of November, 2020.

Douglas L. Rayes United States District Judge