



KEMP v. METABOLIFE INTERNATIONAL

2003 | Cited 0 times | E.D. Louisiana. | April 22, 2003

Golden Eagle Insurance Corporation, as claims administration agent for Golden Eagle Insurance Company, in Liquidation ("Golden Eagle Corporation") moves to dismiss all claims brought against Golden Eagle Insurance Company ("Golden Eagle Company") in the above captioned matter pursuant to Federal Rules of Civil Procedure 12(b)(2); (4); (5); and (6). Golden Eagle Corporation moves for dismissal on the grounds that: (1) such claims must be brought in the San Francisco County Superior Court; and (2) service of the complaint and amended complaints was ineffective. For the following reasons Golden Eagle Corporation's motion to dismiss is DENIED.

Golden Eagle Company is a named Defendant in Plaintiffs' First Amendment to Class Action Complaint for Damages, wherein Plaintiffs allege that Golden Eagle Company issued a policy of Commercial General Liability Insurance to Metabolife International, Inc. (Rec. Doc. 128). However, "Golden Eagle Insurance Company has not existed as a viable entity since February 18, 1998," when a Final Order of Liquidation for Golden Eagle Company was issued by the San Francisco Superior Court. (Rec. Doc. 255, Statement of Uncontested Facts, ¶ 2; see also ¶ 4 and Ex. B).¹

First, although Golden Eagle Corporation has never been served in this litigation, it has actual notice of Plaintiffs' attempt and is aware of their claims. Because there is no indication of prejudice to Golden Eagle Corporation, Plaintiffs are permitted to amend the process to correct the defect. See *Rose v. Koch*, 465 F. Supp. 1157, 1159 (D.C.N.Y. 1979), citing, 5 *Wright & Miller* §§ 1353, 1354 ("Defective service is not grounds for dismissal absent some showing of prejudice.").

Second, the Court rejects the arguments of both Plaintiffs and Golden Eagle Corporation, with respect the preclusive effect of the California Superior Court Judgment. On February 18, 1998, the Superior Court for the State of California, County of San Francisco issued a Final Order of Liquidation for Golden Eagle Company. The Final Order of Liquidation states:

All parties and entities are hereby enjoined from instituting or maintaining any action at law, suit in equity, or other action of any kind or nature against Golden Eagle Insurance Company, the Liquidating Trust, the Trustee or any Deputy Trustee, . . . over the assets of GEIC or the Liquidating Trust. No judgment, lien, attachment, claim or right of any kind or nature shall be valid against said assets unless same is either adjudicated by this Court or is filed and approved as a claim in these proceedings pursuant to the said Rehabilitation Plan.

(Rec. Doc. 255, Ex. B, ¶ 9). This Order transferred Golden Eagle Company's remaining assets to a liquidating trust, and required all claims against Golden Eagle Company be pursued through



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procedures established under a Rehabilitation Plan entered August 4, 1997. (Id., Exs. A & B).

Plaintiffs' counter that "the State of California . . . is without jurisdiction to limit the manner and method in which Louisiana litigants may assert claims against an insurer." (Rec. Doc. 268 at 1). Plaintiffs contend that Louisiana law provides for direct action against insurance companies under La.R.S. § 22:655, and that the United States Supreme Court has held that "Louisiana has a constitutional right to subject foreign liability insurance companies to direct action provisions of its laws whether they consent or not." *Watson v. Employers Liability Assurance Corp.*, 348 U.S. 66, 74 (1955). In reliance on *Watson*, Plaintiffs suggest that "Louisiana law must trump the order of the district [sic] court of California." (Rec. Doc. 268 at 3).

The Court disagrees. Plaintiffs' reliance on *Watson* is misplaced. The issue before the Court is not whether the California Order invalidates Plaintiffs' Louisiana statutory right to bring a direct action against a foreign insurance company, but rather whether under principles of comity Louisiana's direct action statute should "trump" the Judgment entered by the California court.

Principles of comity suggest the Court to give full faith and credit to the preclusive effect of the California Judgment. 28 U.S.C. § 1738; see also *In re First Actuarial Corp.*, 182 B.R. 178, 182-83 (W.D.Mich. 1995), citing, *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985) (directing federal courts to refer to preclusion law of state in which judgment was rendered). However, the Court is concerned that outright dismissal may result in some prejudice to Plaintiffs for prescription purposes. Although an alternative forum exists in California for the presentation of these claims, the Court hesitates to dismiss these claims altogether at this time.

Finally, Golden Eagle Corporation contends that precedent set forth in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943) dictates that the Court abstain from exercising jurisdiction in this matter. Specifically, Golden Eagle Corporation relies on *Clark v. Fitzgibbons*, 105 F.3d 1049 (5th Cir. 1997) for the proposition that permitting Plaintiffs "to proceed in federal court would undermine the comprehensive apparatus established by the state of [California] for the orderly disposition of claims against insolvent insurance companies." *Id.* at 1051. However, *Clark* failed to address the United States Supreme Court's express holding in *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 731 (1996), that a damages action allows the district court no discretion in exercising jurisdiction and may not be remanded under the *Burford* doctrine. Accord *Webb v. B.C. Rogers Poultry, Inc.*, 174 F.3d 697, 701 (5th Cir. 1997). Because Plaintiffs' claim is one for damages, the *Burford* abstention doctrine does not apply.

Accordingly, IT IS ORDERED that Golden Eagle Insurance Corporation, in Liquidation, as claims administration agent for Golden Eagle Insurance Company's Motion to Dismiss the claims brought against Golden Eagle Insurance Company is DENIED.

IT IS FURTHER ORDERED that Plaintiffs effect proper service of process of the complaint and any



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necessary amending complaints on Golden Eagle Insurance Corporation, in Liquidation, as claims administration agent for Golden Eagle Insurance Company no later than May 22, 2003, or face dismissal with prejudice of said party from this action.

IT IS FURTHER ORDERED that upon proper and timely service of process as directed by this order, this action shall be stayed as against Golden Eagle Insurance Corporation, in Liquidation, as claims administration agent for Golden Eagle Insurance Company.

1. There is an error in the numbering of paragraphs in the Statement of Uncontested Facts. Two distinct paragraphs have been assigned the number "3", such that Paragraph 4 is erroneously numbered "3" and Paragraph 5 is erroneously numbered "4".

