

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

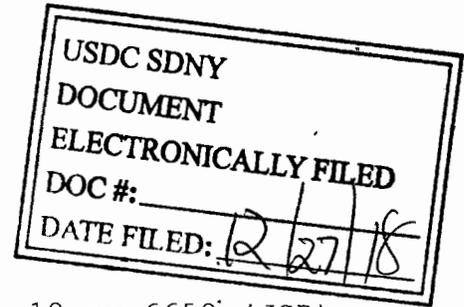
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SENIOR HEALTH INSURANCE COMPANY OF :
PENNSYLVANIA, :
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: :

Plaintiff, :
: :
: :

-v- :
: :
: :

BEECHWOOD RE LTD., B ASSET MANAGER, :
L.P., BEECHWOOD BERMUDA :
INTERNATIONAL, LTD., BEECHWOOD RE :
INVESTMENTS, LLC a/k/a BEECHWOOD RE :
INVESTORS, LLC, MOSHE M. FEUER :
a/k/a MARK FEUER, SCOTT A. TAYLOR, :
DAVID I. LEVY, DHRUV NARAIN, and :
JOHN DOES 1-10, :
: :

Defendants. :
: :
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18-cv-6658 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

In an Opinion and Order dated December 6, 2018, this Court granted in part and denied in part the partial motion of defendants Beechwood Re Ltd., B Asset Manager, L.P., Beechwood Bermuda International, Ltd., Beechwood Re Investments, LLC a/k/a Beechwood Re Investors, LLC, Illumin Capital Management, LP, Moshe M. Feuer a/k/a Mark Feuer, Scott A. Taylor, and Dhruv Narain to dismiss the complaint of plaintiff Senior Health Insurance Company of Pennsylvania ("SHIP"). ECF No. 72. To the extent that the Court dismissed SHIP's claims, it largely did so without prejudice, and it gave SHIP leave to amend its complaint to cure the deficiencies that the Court had identified. Id. at 37-38. However, the Court did dismiss some of SHIP's claims with

prejudice, including, as relevant here, SHIP's claim for fraudulent inducement against Narain and SHIP's claim for civil conspiracy against all defendants. Id.

On December 14, 2018, SHIP filed its First Amended Complaint ("FAC"), as permitted by the Court. ECF No. 76. In addition, SHIP filed a motion for leave to amend the FAC. ECF No. 77. In its motion for leave to amend, SHIP seeks to reinstate its claim for fraudulent inducement against Narain and its claim for civil conspiracy against all defendants. ECF No. 79. SHIP also seeks to add two new claims against all defendants for aiding and abetting fraud and aiding and abetting breach of fiduciary duty. See ECF No. 80, Ex. 1, at ¶¶ 405-26. Defendants oppose SHIP's motion. ECF No. 81.

Although leave to amend should be granted freely under Rule 15(a)(2) of the Federal Rules of Civil Procedure, the Second Circuit has held that "a district court does not abuse its discretion in denying leave to amend the pleadings after the deadline set in the scheduling order where the moving party has failed to establish good cause." Parker v. Columbia Pictures Indus., 204 F.3d 326, 340 (2d Cir. 2000). "Good cause," in turn, "depends on the diligence of the moving party," a burden unlikely to be met where the moving party previously "had all

the information necessary to support” the claims that the party seeks to add by amendment. Id. at 340-41.

Here, the Court entered a civil case management plan on September 7, 2018, in which it set a deadline for amended pleadings of October 12, 2018. ECF No. 55. While, nonetheless, the Court gave SHIP leave to amend its complaint when it ruled on defendants’ partial motion to dismiss, this leave was limited to curing deficiencies related to those claims that the Court dismissed without prejudice. As to those claims that the Court dismissed with prejudice, SHIP has not established good cause for reinstating the fraudulent inducement claim against Narain. Indeed, it appears that SHIP “had all the information necessary to support” this claim at the time it filed its initial complaint. SHIP has also failed to establish good cause for adding two new claims for aiding and abetting fraud and aiding and abetting breach of fiduciary duty. SHIP’s failure to include these claims in its initial complaint could have resulted only from a lack of diligence, and the Court made clear in a conference call held on December 14, 2018 that SHIP would not be permitted to add new causes of action to its complaint where they were not based on newly discovered evidence.

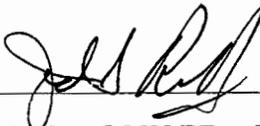
With respect to the civil conspiracy claim, however, SHIP’s motion raises considerations that the Court previously

overlooked. See ECF No. 79, at 5-8. In particular, it now appears to the Court that SHIP had made out a basis for this claim in its prior complaint and that, with the aid of the proposed fuller complaint, this now becomes evident. As a result, the Court will grant SHIP's motion insofar as it seeks to reinstate its conspiracy claim as to all defendants.

In sum, SHIP's motion for leave to amend is granted in part and denied in part. SHIP is hereby permitted to amend the FAC, but only to reinstate the conspiracy claim against all defendants. SHIP's second amended complaint must be filed by no later than December 28, 2018. As discussed with the parties in a conference call held on December 21, 2018, defendants must file any responsive pleadings to the second amended complaint within ten days of the filing thereof. The Clerk is directed to close the entry at docket number 77.

SO ORDERED.

Dated: New York, NY
12/26/ 2018



JED S. RAKOFF, U.S.D.J.