

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Starr Indemnity & Liability Company v. Chart Industries, Inc.

Starr Indemnity v. Chart Industries · No. 22-cv-03484-HSG · Decided March 3, 2023

SUMMARY

The United States District Court for the Northern District of California granted Chart Industries, Inc.’s motion to dismiss Starr Indemnity & Liability Company’s declaratory judgment action concerning Starr’s alleged duty to indemnify Chart in litigation arising from the Pacific Fertility Center freezer failure. The court held that Starr’s complaint did not establish a ripe, justiciable controversy because liability and damages in the underlying litigation had not been determined. The dismissal was without prejudice, with leave to amend within 21 days.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Haywood S. Gilliam, Jr.
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 3, 2023
DOCKET	22-cv-03484-HSG
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff brought a federal declaratory-judgment action concerning an excess insurer's duty to indemnify. Defendant moved to dismiss under Federal Rule of Civil Procedure 12(b)(1), or alternatively to stay or transfer the action.
STANDARD OF REVIEW	On a facial Rule 12(b)(1) jurisdictional attack, the court confines its inquiry to the complaint's allegations, accepts those allegations as true, and draws all reasonable inferences in the plaintiff's favor, applying a standard comparable to Rule 12(b)(6).
PRECEDENTIAL VALUE	Unknown; federal district court order

TOPICS

- declaratory relief insurance
- duty to indemnify
- subject matter jurisdiction
- standing
- motions to dismiss

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Starr's declaratory-judgment claim concerning its duty to indemnify Chart was ripe under Article III while the underlying Pacific Fertility Center litigation remained unresolved.
2. Whether the complaint adequately alleged a concrete and actual or imminent injury sufficient to establish subject-matter jurisdiction.
3. Whether the court should dismiss, stay, or transfer the action.

HOLDINGS

1. The complaint did not allege facts establishing a ripe Article III case or controversy concerning Starr's duty to indemnify because liability and damages in the underlying litigation had not been determined and the complaint did not identify allegations showing that Starr's policy would be implicated.
2. Because Chart's challenge was treated as a facial attack under Rule 12(b)(1), the court was required to evaluate jurisdiction from the complaint's allegations rather than outside evidence.

KEY QUOTATIONS

“Generally, the duty to indemnify only arises after damages in the underlying actions are fixed.” (at 2)

“In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction.” (at 4)

FACTUAL BACKGROUND

The underlying Pacific Fertility Center litigation arose from a March 2018 accident in which a freezer tank manufactured by Chart allegedly failed, destroying stored eggs and embryos. Claims by affected fertility-treatment patients remained pending or stayed pending appeal, and Chart's liability and the amount of any damages had not been finally determined. Starr sought a declaration concerning its obligations under an excess liability policy providing coverage above \$100 million in underlying insurance, while Chart had demanded that Starr make its policy limits available for settlement.

PROCEDURAL HISTORY

Starr filed an action seeking a declaration regarding whether it would ultimately have a duty to indemnify Chart for claims arising from the Pacific Fertility Center litigation. Chart moved to dismiss, arguing that the duty-to-indemnify issue was not ripe because the underlying litigation and liability determinations remained unresolved. The court granted the motion to dismiss based on the face of the complaint, allowed amendment within 21 days, denied without prejudice an administrative motion concerning applicable law, and directed the parties to file a status report.

DISPOSITION

dismissed

CASES CITED

- Bishop Paiute Tribe v. Inyo County, 863 F.3d 1144, 1153 (9th Cir. 2017)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992)
- Certain Underwriters at Lloyd's of London v. Superior Court, 24 Cal. 4th 945, 958 (2001)
- National Trust Insurance Co. v. Finishing Dynamics, LLC, No. 1:18-CV-0351-AT, 2018 WL 8949791, at *5 (N.D. Ga. Sept. 18, 2018)
- ALEA London Ltd. v. Woodcock, 649 S.E.2d 740, 746 (Ga. Ct. App. 2007)
- American States Insurance Co. v. Kearns, 15 F.3d 142, 144 (9th Cir. 1994)
- Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004)
- Savage v. Glendale Union High School, District No. 205, Maricopa County, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003)
- Leite v. Crane Co., 749 F.3d 1117, 1121 (9th Cir. 2014)
- NewGen, LLC v. Safe Cig, LLC, 840 F.3d 606, 614 (9th Cir. 2016)
- Chart Industries, Inc. v. Starr Indemnity & Liability Company, Case No. 22-cv-02395-LMM (N.D. Ga.)
- E. v. Pacific Fertility Center, Case No. 18-cv-01586-JSC (N.D. Cal.)
- A.B. v. Chart, Inc., Case No. 21-17016 (9th Cir.)

OPINION

Starr Indemnity & Liability Company v. Chart Industries, Inc.

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 STARR INDEMNITY & LIABILITY Case No. 22-cv-03484-HSG

COMPANY,

8 ORDER GRANTING THE MOTION

Plaintiff, TO DISMISS 9 v. Re: Dkt. Nos. 20, 29 10

CHART INDUSTRIES, INC.,

11 Defendant. 12

13 Pending before the Court is Defendant Chart Industries, Inc.'s motion to dismiss or stay. 14
Dkt. No. 20. The Court finds this matter appropriate for disposition without oral argument and the
15 matter is deemed submitted. See Civil L.R. 7-1(b). For the reasons detailed below, the Court 16
GRANTS the motion to dismiss with leave to amend.

17 I. BACKGROUND

18 This is an insurance action regarding Plaintiff Starr Indemnity & Liability Company's duty 19

to indemnify Chart in connection with several state and federal court actions arising from a March 20 2018 accident at the Pacific Fertility Center in San Francisco, California (“PFC Litigation”). See 21 Dkt. No. 1 (“Compl.”) at ¶¶ 1, 12–13. The plaintiffs in the PFC Litigation allege that they had 22 undergone fertility treatments at PFC, and stored their eggs and/or embryos at PFC’s San 23 Francisco location. *Id.* at ¶ 14. The plaintiffs further allege that the eggs and/or embryos were 24 stored in a freezer tank that Chart had manufactured; the tank failed, and the eggs and/or embryos 25 were destroyed; and Chart knew beforehand that the tank was defective. *Id.* at ¶¶ 15–25. Starr 26 brought this action for declaratory judgment regarding whether it ultimately has a duty to 27 indemnify Chart in the PFC Litigation under its excess liability policy. See *id.* at ¶¶ 44–84. 1 District of Georgia the very next day. See *Chart Industries, Inc. v. Starr Indemnity & Liability 2 Company*, Case No. 22-cv-02395-LMM (N.D. Ga.).¹ Chart now moves to dismiss this action 3 under Federal Rule of Civil Procedure 12(b)(1), or in the alternative, to stay this action or transfer 4 it to the Northern District of Georgia. See Dkt. No. 20.

5 II. DISCUSSION

6 Chart argues that because the PFC Litigation remains ongoing, Starr has no current duty to 7 indemnify. Dkt. No. 20 at 1, 3–4, 6–10. Consequently, Chart urges that the case is not ripe and 8 the Court lacks jurisdiction over the matter. *Id.* 9 Article III of the U.S. Constitution limits the jurisdiction of federal courts to live “cases” or 10 “controversies.” U.S. Const. art. III, § 2. One element of this case-or-controversy requirement is 11 that a case must be ripe, meaning “it must present issues that are definite and concrete, not 12 hypothetical or abstract.” *Bishop Paiute Tribe v. Inyo Cnty.*, 863 F.3d 1144, 1153 (9th Cir. 2017) 13 (quotation omitted). “Constitutional ripeness is often treated under the rubric of standing because 14 ripeness coincides squarely with standing’s injury in fact prong.” *Id.* (quotation omitted). “[T]o 15 meet the injury-in-fact prong of standing, the plaintiff must demonstrate ‘an invasion of a legally 16 protected interest which is (a) concrete and particularized and (b) actual or imminent, not 17 conjectural or hypothetical.’” *Id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). 18 Here, Chart urges that whether Starr has a duty to indemnify Chart in connection with the 19 PFC Litigation “is of a hypothetical and contingent nature: the injury may or may not 20 occur depending on the outcome of the [PFC Litigation].” Dkt. No. 20 at 7 (quotation omitted). 21 Unlike the duty to defend, Chart asserts that the duty to indemnify turns on a determination of 22 liability in the PFC Litigation. *Id.* Chart further argues that it is unknown at this point if Chart’s 23 liability in the PFC Litigation will exceed the \$100 million in policy limits afforded by Chart’s 24 other excess coverage such that Starr’s policy will come into play. *Id.*; see also Dkt. No. 1-1, Ex. 25 26 1 The Court notes that the Northern District of Georgia case is currently stayed through April 25, 2023, by stipulation of the parties. See *Chart Industries, Inc. v. Starr Indemnity & Liability 27 Company*, Case No. 22-cv-02395-LMM (N.D. Ga.), Dkt. No. 26. The parties indicated that they 1 A (“Starr Policy”) at 2, 14–15 (providing \$50 million of coverage for “each occurrence” for losses 2 exceeding the \$100 million in “underlying insurance policy(ies)”). 3 The parties appear to acknowledge that the PFC

Litigation remains ongoing. Although judgment has been entered in one federal case as to five of the individual plaintiffs, the judgment and all the remaining related cases have been stayed pending appeal. See *E. v. Pacific Fertility Center*, Case No. 18-cv-01586-JSC (N.D. Cal.), Dkt. Nos. 858, 902, 935; see also *A.B. v. Chart, Inc.*, Case No. 21-17016 (9th Cir.). Oral argument is currently scheduled for March 30, 2023, although the parties indicated that they may have reached a settlement. See *A.B. v. Chart, Inc.*, Case No. 21-17016 (9th Cir.), Dkt. No. 42. Generally, the duty to indemnify only arises after damages in the underlying actions are fixed. See, e.g., *Certain Underwriters at Lloyd's of London v. Superior Ct.*, 24 Cal. 4th 945, 958 (Cal. 2001); *Nat'l Tr. Ins. Co. v. Finishing Dynamics, LLC*, No. 1:18-CV-0351-AT, 2018 WL 13 8949791, at *5 (N.D. Ga. Sept. 18, 2018) (citing *ALEA London Ltd. v. Woodcock*, 649 S.E.2d 740, 14 746 (Ga. Ct. App. 2007)). The Court recognizes that the Ninth Circuit has previously found that a declaratory judgment action to establish whether an insurer has a duty to defend and to indemnify satisfies Article III's case and controversy requirement. See, e.g., *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 144 (9th Cir. 1994). However, the duty to defend—unlike the duty to indemnify—turns on the allegations in the underlying complaint. See, e.g., *Certain Underwriters*, 24 Cal. 4th 19 at 958 (“[T]he duty to defend may arise as soon as damages are sought in some amount.”). Starr does not cite—and the Court is not aware of—any Ninth Circuit case in which a declaratory judgment action regarding just the duty to indemnify was found to satisfy Article III. Starr does not address the distinction between the duty to defend and the duty to indemnify at all. Nor does it explain how its duty to indemnify can be resolved before liability is determined in the PFC litigation. Instead, Starr suggests that Chart has already acknowledged that there is an actual and justiciable controversy by filing its own case in the Northern District of Georgia. See Dkt. No. 32-27 at 6. In that case, Chart alleges that Starr breached the policy “by refusing to pay its limits to 1 Indemnity & Liability Company, Case No. 22-cv-02395-LMM (N.D. Ga.), Dkt. No. 1 at ¶ 47. 2 Chart further contends that under Georgia law, Starr is not entitled to recoup any money it pays in 3 settlement of the PFC Litigation. See *id.* at ¶¶ 7, 53–54. In support of its opposition, Starr has 4 attached Chart’s November 2021 demand letter to the excess insurers, including Starr, requesting 5 that they “make their policy limits available to fund the resolution of the PFC Litigation.” See 6 Dkt. No. 32-6, Ex. E at 2. It has also attached Chart’s January 2021 letter to Starr, challenging 7 Starr’s refusal to tender its policy limits, which Chart states is “blocking the global settlement.” 8 See Dkt. No. 32-7, Ex. F at 1. 9 Chart does not dispute that it has already made a prior demand for payment of the full Starr 10 policy limits or that Starr has refused to comply. Rather, Chart urges that Starr has not adequately 11 alleged this in the complaint in this case. Dkt. No. 34 at 4–5. In this way, Chart appears to raise a 12 facial attack under Rule 12(b)(1). See *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th 13 Cir. 2004) (“A Rule 12(b)(1) jurisdictional attack may be facial or factual.”). “In a facial attack, 14 the challenger asserts that the allegations contained in a complaint are insufficient on their face

to 15 invoke federal jurisdiction.” Id. And a court addressing a facial attack must confine its inquiry to 16 the allegations in the complaint. See *Savage v. Glendale Union High Sch.*, Dist. No. 205, 17 Maricopa Cty., 343 F.3d 1036, 1039, n.2 (9th Cir. 2003); see also *Leite v. Crane Co.*, 749 F.3d 18 1117, 1121 (9th Cir. 2014) (“The district court resolves a facial attack as it would a motion to 19 dismiss under Rule 12(b)(6): Accepting the plaintiff’s allegations as true and drawing all 20 reasonable inferences in the plaintiff’s favor.”). 21 The Court is reluctant to credit Chart’s apparent gamesmanship, and has little doubt that 22 based on the information Starr has already provided, it can adequately amend its complaint to 23 establish a justiciable case or controversy. Cf. *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 614 24 (9th Cir. 2016) (“[A] facial attack is easily remedied by leave to amend jurisdictional allegations 25 pursuant to 28 U.S.C. § 1653.”). But Starr has not identified any allegations in the current 26 complaint that establish the case is ripe.² The Court therefore GRANTS the motion to dismiss 27 1 based on the face of the complaint with leave to amend.

2 || II. CONCLUSION

3 The Court GRANTS the motion to dismiss with leave to amend. Plaintiff may file an 4 amended complaint within 21 days of the date of this order. Plaintiff’s administrative motion 5 seeking leave to file a motion for determination of applicable law, Dkt. No. 29, is DENIED 6 || without prejudice to raising at a later time. Given the recent developments in both the Ninth 7 Circuit and Northern District of Georgia cases, the Court further DIRECTS the parties to file a 8 status report regarding the status of any settlement negotiations between Starr and Chart, as well 9 as regarding the underlying PFC Litigation, and any impact those developments may have on this 10 || declaratory judgment action. The parties shall file a joint statement of three pages or less by 11 March 10, 2023.

12 IT IS SO ORDERED. 13 || Dated: 3/3/2023 v 14 . HAYWOOD S. GILLIAM, JR. IS United States District Judge 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28 . . allegations in evaluating a facial attack.