

THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

PENNSYLVANIA MANUFACTURERS' : JANUARY TERM 2012  
ASSOCIATION INSURANCE :  
COMPANY, : No. 4126  
 :  
Plaintiff, : COMMERCE PROGRAM  
 :  
v. :  
 :  
THE PENNSYLVANIA STATE :  
UNIVERSITY and JOHN DOE A, : Control No. 12101309  
 :  
Defendants. :

ORDER

AND NOW, this 12<sup>th</sup> day of December 2012, upon consideration of the motion of Plaintiff, the Pennsylvania Manufacturers' Association Insurance Company ("PMA") for leave to amend its Complaint to add an additional defendant, the response thereto, and the memoranda in support and in opposition, it is hereby ORDERED:

The Motion is DENIED.

BY THE COURT:

  
GLAZER, J.

Pennsylvania Manufactur-ORDOP



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CIVIL TRIAL DIVISION

PENNSYLVANIA MANUFACTURERS' ASSOCIATION INSURANCE COMPANY,	:	JANUARY TERM 2012
	:	No. 4126
Plaintiff,	:	COMMERCE PROGRAM
	:	
v.	:	
	:	
THE PENNSYLVANIA STATE UNIVERSITY and JOHN DOE A,	:	Control No. 12101309
	:	
Defendants.	:	

OPINION

This is a Motion for Leave to File a Third Amended Complaint, filed by Plaintiff, Pennsylvania Manufacturers' Association Insurance Company ("PMA"). PMA seeks leave to file an amended complaint naming John Doe C, a plaintiff in an additional underlying action, as a nominal defendant in this coverage action. For the reasons which follow, the Court will deny PMA's Motion to Amend.

**I. Factual and Procedural History.**

This is a coverage dispute between The Pennsylvania State University ("PSU") and its insurer, Pennsylvania Manufacturers' Association Insurance Company ("PMA"). PSU purchased liability insurance coverage from PMA for several decades. On January 31, 2012, PMA filed this declaratory judgment action in Philadelphia County to determine PSU's right to a defense and to indemnity in an underlying case, *Doe A v. The Second Mile, et al.*<sup>1</sup> The underlying *Doe A* case was filed in Philadelphia County in November, 2011 against Gerald Sandusky and PSU, and alleges sexual abuse and related torts.

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<sup>1</sup> November Term, 2011, No. 2968 (Philadelphia County).

On February 15, 2012, PSU filed an action for bad faith and breach of contract against PMA in Centre County to determine coverage for the *Doe A* claims.<sup>2</sup> Over the objections of PSU, the Court coordinated the actions and transferred the later-filed action to Philadelphia County.

In August 2012, another plaintiff, John Doe C, filed an action against PSU and Sandusky for sexual abuse and related torts. The Doe C action was commenced in August 2012, seven months after this coverage action was filed, and nine months after the Doe A action was filed. In the instant Motion, PMA seeks leave to amend its complaint to add John Doe C as an additional nominal defendant.<sup>3</sup> PSU opposes this motion, arguing that permitting PMA to add plaintiffs in later-filed underlying actions to this case would undermine the goal of judicial efficiency that declaratory actions are meant to further. For the reasons discussed below, this Court will deny PMA's Motion to Amend.

## II. Discussion.

PMA relies upon *Vale Chemical Co. v. Hartford Accident and Indemnity. Co.* to support its motion to amend.<sup>4</sup> In that case, the Pennsylvania Supreme Court held that, in a declaratory judgment action for insurance coverage, the plaintiffs in the underlying action are indispensable parties and must be joined in order for the court to have subject matter jurisdiction.

However, as PSU argues, the Supreme Court subsequently articulated an exception to the *Vale* doctrine in *J.H. France Refractories Co. v. Allstate Insurance. Co.*<sup>5</sup> In *J.H. France*, which was an insurance coverage action related to asbestos exposure litigation, the question was

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<sup>2</sup> February Term, 2012, No. 630 (Centre County).

<sup>3</sup> Doe A is already a nominal defendant in this action.

<sup>4</sup> 512 Pa. 290; 516 A.2d 684 (1986).

<sup>5</sup> 521 Pa. 91; 555 A.2d 797 (1989).

whether the failure to join claimants who filed their claims against J.H. France *after* the coverage action was commenced defeated the court’s jurisdiction. The Supreme Court held that plaintiffs in an action filed subsequent to the filing of the declaratory judgment action were not indispensable parties to the coverage action, both because “once the jurisdiction of a court attaches, it continues until the cause is finally determined” and because “the expense and inconvenience of constantly adding parties as new claims surface would defeat the purpose of simplicity and efficiency of [declaratory judgment actions].”<sup>6</sup>

Here, the plaintiff in question, John Doe C, filed suit against the defendant in the underlying action several months after the instant coverage action was commenced, naming John Doe A as a nominal defendant. As in *J.H. France*, jurisdiction already attached when the first underlying plaintiff was joined. Further, as in *J.H. France*, joining the additional underlying plaintiffs to this action would result in significant delays and undermine the purpose of efficiency. This is especially true because of the large number of potential plaintiffs who may file similar actions. Because many of these potential plaintiffs are minors, there are potentially many years before the statute of limitations would run. If PMA were permitted to amend its Complaint to add each plaintiff as that plaintiff filed suit, this coverage action could be stalled for years.

Furthermore, the interests implicated here are those of the plaintiffs, not PMA. If additional underlying plaintiffs desire to protect their interests in this coverage action, they may move to intervene. It is not for PMA to add them. Accordingly, PMA’s Motion is denied.

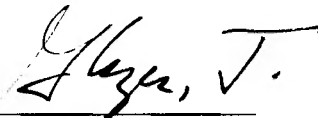
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<sup>6</sup> *Id.* at 97.

**III. Conclusion.**

For all these reasons, PMA's Motion to Amend its Complaint is denied.

**BY THE COURT:**

  
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GLAZER, J.