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

PEBBLEBROOK HOTEL TRUST, Plaintiff,	:	May Term 2021
v.	:	No. 35
ALLIED WORLD ASSURANCE COMPANY (US) INC., ET. AL., Defendants.	:	Commerce Program
	:	Control Number 21070297

ORDER

AND NOW, this 15th day of November 2021, upon consideration of Defendants' Preliminary Objections to Plaintiff's Complaint and Plaintiff's response in opposition, and all matters of record, it hereby is **ORDERED** as follows:

1. Defendants' Preliminary Objections to Count I (Declaratory Judgment) based on lack of subject matter jurisdiction and failure to join necessary parties are **Overruled.**[1]

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[1] Defendants argue that this court lacks subject matter jurisdiction over plaintiff's declaratory judgment claim at Count I of plaintiff's complaint. Their position is that plaintiff failed to name necessary parties in this action and therefore cannot establish subject matter jurisdiction. Defendants state the missing parties are plaintiff's many subsidiaries, affiliates, and management companies who own, lease or operate plaintiff's various hotel properties.

While the joinder provision of Pennsylvania Declaratory Judgments Act, 42 Pa. C. S. §§ 7540 *et. al.* is mandatory, it is subject to important limiting principles. See *City of Philadelphia v. Com.*, 838 A.2d 566, 582, 575 Pa. 542, 568 (Pa. 2003). For example, when a corporate party has an official designee, the appearance of this designee may be sufficient. This occurs when the interests of the designee and the subordinate entities are identical and participation of all would result in duplicative filings. See *City of Philadelphia v. Com.*, 838 A.2d 566, 582, 575 Pa. 542, 568 (Pa. 2003) citing *Leonard v. Thornburgh*, 78 Pa.Cmwlth. 216, 218, 467 A.2d 104, 105 (1983) (*en banc*) (holding that the Governor need not participate in litigation involving a constitutional attack upon a tax statute, where his designee, the Secretary of the Department of Revenue, adequately represented his government's interests).

Here, plaintiff's many subsidiaries, affiliates and management companies are unnecessary and none is indispensable. Plaintiff Pebblebrook Hotel Trust is the official designee for all these subordinate entities interests because their interests are identical---recovery of financial injury caused by COVID-19. See Affidavit of Raymond Martz, Executive Vice President and Chief Financial Officer of Plaintiff, attached to plaintiff's *sur* reply to defendants' preliminary objections. ¶¶13, 14. Defendants' preliminary objections to Count I (declaratory relief) are therefore overruled.

2. Defendant First Specialty Insurance Corporation's Preliminary Objections to plaintiff's complaint for improper/venue jurisdiction are **Overruled.**[2]

BY THE COURT

RAMY I. DJERASSI, J.

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[2] Defendant First Specialty Insurance Corporation ('First Specialty") argues that venue is improper under a forum selection clause that appears in its insurance policy relevant to this case. While First Specialty's insurance policy indeed includes a forum selection clause favoring New York, we find that enforcing this provision is unreasonable under the circumstances of this case and a burden on judicial resources.

Plaintiff's complaint alleges that twenty-eight (28) defendant insurance companies, including First Specialty, breached a Master Policy by denying coverage for COVID-19 related losses and expenses. Plaintiff alleges that defendant insurers, including First Specialty, sold insurance policies to plaintiff covering "all risks of direct physical loss of or damage occurring during the policy period." (Complaint ¶ 41). Plaintiff contends these policies form "an insurance tower comprised of multiple layers of coverage with each insurer assuming responsibility for a portion of the coverage." According to plaintiff, the Master Policy permits insurers to decide whether to limit their coverage to a portion of a single layer or broaden their coverage across multiple layers .Id ¶ 42; See also First Specialty's policy at Exhibit 5, attached to defendant's reply to plaintiff's response to defendant's preliminary objections. ¶ 5.

While there is certainly a forum selection clause in First Specialty's insurance policy favoring New York, it is also clear that the Master Policy permits plaintiff's lawsuit to be filed in this court. (Master Policy ¶ 63). Since First Specialty's coverage is part of an alleged "insurance tower", we find that our enforcement of First Specialty's own forum selection clause is unreasonable because it may lead to a confusing babel of judgments when different courts apply conflicting law to the Master Policy and its subordinate insurance contracts. See *Cent. Contracting Co. v. C.E. Youngdahl & Co.*, 209 A.2d 810, 816 (Pa.1965) (forum selection clauses should be enforced where "the parties have freely agreed that litigation shall be conducted in another forum and where such agreement is not unreasonable at the time of litigation) (Emphasis added); *Patriot Commercial Leasing Co., Inc. v. Kremer Restaurant Enterprises, LLC*, 915 A.2d 647, 651 (Pa. Super. 2006) (forum selection clause in a commercial contract between business entities is presumptively valid but is unenforceable when: 1) the clause itself was induced by fraud or overreaching; 2) the forum selected in the clause is so unfair or inconvenient that a party, for all practical purposes, will be deprived of an opportunity to be heard; or 3) the clause is found to violate public policy (Emphasis added). In *MTPCS, LLC v. Hollis*, 2015 WL 13778548, at *8 (Pa C.P, Montg, April 7, 2015) Judge Thomas P. Rogers found forum selection clauses involving different courts in different states would seriously impair defendant Hollis' lawsuit. The Court also found enforcing the various forum selection clauses would not conserve judicial resources, a problem of public policy and cited *Patriot Commercial Leasing Company*, supra. Similarly, enforcing First Specialty's forum selection clause would seriously impair plaintiff's lawsuit and place a burden on judicial resources. First Specialty's preliminary objections on venue grounds are therefore overruled.