

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CHARLES A. BROWN,)
)
 Plaintiff,)
)
 v.) Civil Action No. 04-930-KAJ
)
 CHURCH INSURANCE COMPANY,)
)
 Defendant.)

MEMORANDUM ORDER

This is an insurance coverage case involving allegations that the defendant denied in bad faith insurance coverage it owed to the plaintiff in connection with a personal injury the plaintiff suffered in August of 1999. (Docket Item ["D.I."] 4 at ¶¶ 3, 8, 25, 28, 40.) Before me is the plaintiff's Motion to Strike Defendant's Motion to Dismiss and [to strike defendant's] Motion for Protective Order and Stay of Discovery. (D.I. 20.) I also have before me the plaintiff's supplemental motion in that regard. (D.I. 22; D.I. 20 and 22 are referred to herein collectively as the "Motion to Strike"). Jurisdiction is based on diversity of citizenship. 28 U.S.C. § 1332.

The basis of the Motion to Strike is the admitted failure of the defendant to obtain a license to engage in insurance transactions in Delaware. One of the consequences of that failure is that the defendant cannot appear in court without taking first taking certain steps, as described in 18 *Del. C.* § 2107(a).¹ The defendant has admitted that it is not

¹ That section provides, in relevant part: Before an unauthorized insurer files or causes to be filed any pleading in any action or proceeding instituted against it under §§ 2104 and 2105 of this title, such insurer shall: ...

(2) Deposit with the clerk of the court in which such action or proceeding is pending cash or securities, or file with such clerk a bond

licensed to transact insurance business in Delaware and is therefore an unauthorized insurer. (D.I. 25.) Therefore, either its pleadings must be stricken or it must be required to post an appropriate bond. See 18 Del. C. § 2107(a); *Imran v. Security Trust Ins. Ltd.*, 2003 WL 22176554 (Del. Super. 2003) (granting motion requiring unauthorized insurer to post bond). The defendant has acknowledged as much. (D.I. 25.) It argues, of course, that permitting it to post bond is the appropriate course. (See D.I. 25, 26.)

I agree that the defendant should be permitted to defend itself in this action, upon the filing of an appropriate bond. The parties have provided their positions with respect to the amount of such a bond, the plaintiff demanding a \$2 million bond (D.I. 28) and the defendant claiming that a bond of no more than \$30,000 should suffice.

The parties' competing positions, though dramatically divergent, actually have a shared understanding at their base, namely that the plaintiff has fully recovered for the personal injury he suffered and that the matter now at stake is making him whole for any damages incurred in finally obtaining coverage due under his insurance contract. (See D.I. 26, 28.) The defendant asserts that plaintiff's attorneys' fees in the underlying personal injury litigation were no more than \$30,000. (D.I. 36 at ¶ 4.) The plaintiff disputes that, saying his attorneys' fees are approximately \$138,000, and asserting also that the defendant has failed to pay \$12,500 in medical payments that are covered.

with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action. ...

(D.I. 28 at ¶ 2.) Based on that and his claim for punitive damages,² the plaintiff submits that \$2 million is the appropriate amount of the bond. (*Id.* at ¶ 3.)

The plaintiff's assessment of the potential liability in this case is exaggerated, and the defendant's is understated. I accept the plaintiff's assertion regarding the amount of fees incurred. However, even giving a generous allowance for a potential award of punitive damages, the availability of which has yet to be established on the facts of this case, a bond in the amount of \$400,000 is wholly adequate to cover the attorneys' fees incurred to date and a multiple associated with a punitive damages award.

Accordingly, IT IS HEREBY ORDERED that the plaintiff's Motion to Strike (D.I. 20, 22) is GRANTED to the extent that the defendants' filings in this matter will be stricken from the record unless, within ten (10) days from the date of this Order, a bond in the amount of \$400,000 is properly posted with the Clerk of the Court.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

December 3, 2004
Wilmington, Delaware

²For reasons not entirely clear to me, the plaintiff also adds the assertion that the defendant has evaded over \$1.5 million in tax premiums due the State of Delaware.