

MASSACHUSETTS Lawyers Weekly

Springfield law firm loses opening round in dispute with its insurer

By: Pat Murphy | November 18, 2021

A Springfield law firm insists that its commercial liability policy covers its dispute with a former partner who accuses the firm of not living up to the financial terms of his retirement.

But a federal judge recently rebuffed Egan, Flanagan & Cohen's efforts to have its suit against Twin City Fire Insurance Co. remanded to state court — the firm's forum of choice.

Egan Flanagan had argued that there was no complete diversity of citizenship between parties for federal jurisdiction of the insurance coverage suit it had originally filed in Hampden Superior Court. According to the firm, that was so because in addition to suing Twin City Fire, its Minnesota-based insurer, it had also sued Chase, Clarke, Stewart & Fontana, its Massachusetts-based insurance agent.

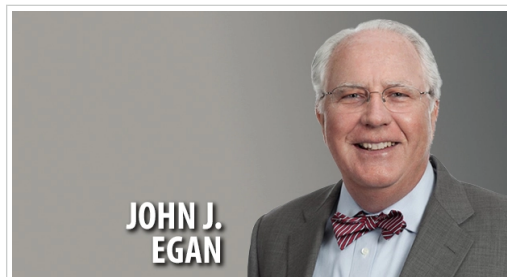
But Twin City argued that the firm had fraudulently joined Chase as a party in a transparent effort to keep the firm's insurance claims out of federal court.

On Nov. 8, U.S. District Court Judge Nathaniel M. Gorton denied Egan Flanagan's motion to remand, concluding that Twin City had carried its burden of establishing fraudulent joinder.

Under well-established federal precedent, a plaintiff "may not thwart removal by fraudulently joining a non-diverse defendant who lacks any real connection to the case," Gorton said.

The judge wrote that joinder is fraudulent, and remand is inappropriate, "where there is no reasonable possibility that the highest court of the state would find that the complaint states a cause of action upon which relief may be granted against the non-diverse defendant."

Egan Flanagan had alleged three substantive claims under Massachusetts law in its declaratory action to establish insurance coverage: (1) breach of the insurance contract; (2) breach of the implied covenant of good faith and fair dealing; and (3) violations of G.L.c. 93A and 176D.



Gorton found that Egan Flanagan had failed to state any viable claims against its local insurance broker, noting first that the law firm had no contractual rights against Chase.

"Twin City, not Chase, issued the policy allegedly breached," Gorton wrote. "While plaintiff maintains that it 'contracted with [Chase] to sell it adequate insurance,' it has alleged no facts which would support that claim or that Chase breached any purported contract. Moreover, the policy itself makes no mention of Chase, nor, despite plaintiff's argument to the contrary, is Chase liable thereunder due to its status as an insurance agent or broker."

The judge concluded that the remaining claims against Chase faltered as well.

"Under Massachusetts law, a claim of breach of the covenant of good faith and fair dealing cannot be maintained in the absence of a contract and no contract exists between plaintiff and Chase," Gorton said. "The alleged violations of M.G.L.c. 93A and 176D, as pled, likewise relate to the alleged breach of the policy."

According to Egan Flanagan's original complaint filed this past March, the insurance coverage dispute has its genesis in firm partner Joseph A. Pacella's decision to retire at the end of March 2020.

The firm's complaint alleges that negotiating the financial terms of Pacella's retirement was complicated by the COVID pandemic. As a consequence of concerns over revenue, Egan Flanagan partners were on the verge of agreeing to take substantial pay deferrals as the firm's fiscal year came to a close. The firm was contemplating other cost-saving measures as well, all in order to avoid having to lay off employees.



With the financial condition of the firm in a state of flux due to the pandemic, Pacella and Egan Flanagan allegedly were unable to agree on the terms of his separation.

Pacella ultimately demanded arbitration, claiming he was being short-changed \$210,000 in deferred compensation.

Egan Flanagan tendered defense and indemnification of the arbitration matter to Twin City under a commercial liability policy with employee benefits liability limits of \$1 million per occurrence and an aggregate limit of \$2 million.

Twin City denied coverage. When Egan Flanagan sued in state court, the insurance company removed the case to federal court.

Egan Flanagan is represented by firm partner John J. Egan, who did not respond to a request for comment prior to deadline. Twin City's counsel, George C. Rockas of Wilson, Elser, Moskowitz, Edelman & Dicker in Boston, also did not respond to a request for comment.

Boston professional liability attorney Charles P. Kazarian says Gorton's decision to hang on to the case in federal court isn't surprising. The law firm's complaint in state court appears to mention Chase, the insurance broker, almost as an afterthought, he says.

While the broker's name appears in the caption, the entire rest of the complaint "fuses" the broker and insurance company into a singular "defendant," Kazarian notes.

"It's almost Freudian: a frank recognition that there really is only one defendant," Kazarian says. "If there is a case to be made against the broker, it certainly doesn't appear in the original complaint, thus leading to the [court's conclusion] that the joinder of [Chase] was fraudulent and designed solely to avoid federal court jurisdiction."

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